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Sexual Misconduct and Other Prohibited Conduct Policy

Type & Status

Institution (relates to structure and infrastructure of the organization)

Policy/Procedure Status, Date of Last Review or Modification	Current, as of November 18, 2020
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I. Rationale

The purposes of this Policy are to: 1) define [Prohibited Conduct](#) for Baylor College of Medicine (BCM) Community Members, 2) establish mechanisms for reporting alleged violations of this Policy, 3) describe BCM's centralized investigation and adjudication procedures, and 4) describe the range of disciplinary actions and remedies applicable to violations of this Policy.

II. Stakeholders Affected by this Policy

This Policy applies to allegations of Prohibited Conduct committed by or against BCM Community Members, which may include a third party unaffiliated with BCM (e.g., patients, guests, invitees) as a Complainant or Respondent, that may occur in any location that is outside of the borders of the United States of America and/or within the borders of the United States of America but outside the scope of an education program or activity sponsored by BCM. The [Title IX Misconduct and Grievance Policy \(02.2.20\)](#) shall govern alleged misconduct of a sexual nature that occurs within the United States of America and within the scope of an education program or activity sponsored by BCM.

III. Definitions

- (a) **BCM** – Baylor College of Medicine.
- (b) **BCM Community Members** – includes the BCM Board of Trustees, faculty, staff, residents/fellows, postdoctoral trainees, contractors, and students enrolled in all schools and programs.
- (c) **Coercion** – unreasonable pressure for sexual activity. Coercive behavior is determined based on the type of pressure an individual uses to gain Consent from another person.
- (d) **Complainant** – a person who is alleged to have experienced an incident of Prohibited Conduct.
- (e) **Consent** – the clear, knowing, active and voluntary permission by a person of legal age to participate in sexual contact or sexual activity. Consent can be given by words or actions as long

as those words or actions create mutually understood clear permission regarding an individual's willingness to engage in and the conditions of the sexual contact or sexual activity. Consent is not passive; silence in and of itself cannot be interpreted as Consent. Consent to any one form of sexual contact or sexual activity does not automatically imply Consent to any other form of sexual activity, and Consent in any particular instance may not be inferred solely from Consent given in previous instances.

- (f) **Course of Conduct** – two or more acts, including, but not limited to, acts in which the individual directly, indirectly, or through third parties, by action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- (g) **Dating Violence** – violence committed by a person who is or has been in a social relationship of a romantic or intimate nature, such as a “dating relationship” as defined by the Texas Family Code. The existence of such a relationship is based on consideration of: 1) the length of the relationship, 2) the nature of the relationship, and 3) the frequency of interactions between persons involved in the relationship. Examples of Dating Violence include but are not limited to sexual abuse, physical abuse, or the threat of such abuse. Dating Violence is considered a crime for the purposes of Clery Act reporting.
- (h) **Domestic Violence** – an act of violence committed by a current or former spouse, intimate partner, domestic partner, co-parent (a person who shares a child in common), person similarly situated to a spouse under the domestic or family violence laws of the State of Texas, or by any other person against an adult or youth who is protected from that person's acts under the domestic or family violence laws of the State of Texas. Examples of Domestic Violence include but are not limited to sexual abuse, physical abuse, or the threat of such abuse. Domestic Violence is considered a crime for the purposes of Clery Act reporting.
- (i) **Evidence** – information, in whatever form, relevant to a determination of a potential violation of this Policy, regardless of whether such information would be admissible under the Texas or federal rules of evidence.
- (j) **Fondling** – 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 age or temporary or permanent mental incapacity. For the purposes of this policy, “private body parts” include the genitals, anus, groin, breasts, inner thigh, and buttocks. Fondling is considered a crime for the purposes of Clery Act reporting.
- (k) **Force** – the use of physical violence and/or physical intimidation of an individual to gain sexual access. Force may include threats, intimidation (implied threats), and/or Coercion that diminishes resistance or produces submission or involuntary verbal assent. The presence of Force is not demonstrated by the absence of resistance; however, resistance is a clear indicator of Non-Consensual sexual activity.
- (l) **Incapacitation** – a state of mind in which a person cannot make rational, reasonable decisions and lacks the capacity to give knowing Consent for sexual activity. Incapacitation may result from mental disability, sleep or sleep deprivation, involuntary physical restraint, and/or the consumption of alcohol or other drugs – note that incapacitation from alcohol or drugs is different than mere intoxication. Sexual activity with an individual that one knows to be, or should know to be, mentally or physically incapacitated constitutes a violation of this Policy. This is an objective standard, determined according to what a reasonable person would do (or not do) under the totality of the circumstances. For instance, a reasonable person would presume that another person is incapacitated and unable to Consent to sexual activity if the person is observed to be unconscious after consuming drugs or alcohol. A reasonable person would also presume that another person who exhibits slurred speech or difficulty walking, performing simple tasks (like opening a door), or remaining alert after consuming alcohol is likewise incapacitated and unable to Consent to sexual activity.
- (m) **Intimidation** – verbal threats or acts intended to incite fear of harm.
- (n) **Non-Consensual** – without explicit Consent.
- (o) **Prohibited Conduct** – Dating Violence, Domestic Violence, Sexual Assault, Sexual Exploitation, Sexual Harassment, Sexual Misconduct, and Stalking that occurs outside the scope of a BCM education program or activity and/or in a foreign locale.

- (p) **Proceeding** – all activities related to a non-criminal resolution of an allegation of Prohibited Conduct, including but not limited to fact-finding investigations and meetings. Proceeding does not include communications and meetings between BCM administrators only, or between BCM Administrators and Complainants concerning administrative actions or remedies made available prior to adjudication of a report or complaint.
- (q) **Reporter** – a person who provides information to BCM regarding an incident of Prohibited Conduct. A Reporter need not be a Complainant.
- (r) **Respondent** – a BCM Community Member who is reported to have engaged in Prohibited Conduct.
- (s) **Retaliation** – any adverse action threatened or taken against a person, including a Complainant and Reporter, *because* the individual has filed, supported, or provided information in connection with a reported violation of this Policy or engaged in other legally protected activities. Examples of retaliation include but are not limited to intimidation, threats, and harassment.
- (t) **Sexual Assault** (Non-Consensual sexual intercourse or attempted sexual intercourse) – any sexual intercourse or attempted sexual intercourse of a person upon another person however slight, with or without an object, that is without Consent and/or by Force. Examples of Sexual Assault include, but are not limited to, statutory rape; incest; oral copulation (mouth to genital contact or genital to mouth contact); vaginal or anal penetration by a penis, object, tongue or finger, no matter how light the penetration or contact. Sexual Assault is considered a crime for the purposes of Clery Act reporting.
- (u) **Sexual Exploitation** – Non-Consensual sexual advances of another that do not otherwise constitute one of the other types of Prohibited Conduct defined in this policy. Examples of sexual exploitation include: going beyond boundaries of sexual Consent; prostitution of a person; Non-Consensual photography, video or audio recording of sexual activity; Non-Consensual photography or video of a nude or partially-nude person; Non-Consensual sharing or distribution of a photograph, video or audio recording of sexual activity; voyeurism; knowingly transmitting a sexually transmitted infection (STI) or HIV to another person; exposing one’s genitals in Non-Consensual circumstances; exposing another’s genitals in Non-Consensual circumstances.
- (v) **Sexual Harassment** - unwelcomed verbal or physical conduct of a sexual nature that:
- Is so severe, pervasive, or persistent that it interferes with, denies, or limits a person’s ability to participate in or benefit from the College’s educational programs or activities; or
 - Unreasonably interferes with a person’s work performance; creates an intimidating, hostile, or offensive work environment; or is based on power differentials, quid pro quo, or retaliation.

Examples of sexual harassment include, but are not limited to, attempted coercion of an unwilling person into a sexual relationship or experience; repeated subjection to egregious, unwelcomed sexual attention; punishment in response to a refusal to comply with a sexual request; or conditional benefits that require submission to sexual advances or requests.

- (w) **Sexual Misconduct** (Non-consensual sexual contact or attempted sexual contact) – intentional sexual touching of a person, with or without an object, that is without Consent and/or by Force. Examples of Sexual Misconduct include, but are not limited to: Fondling; attempted touching of another with one’s own breasts, buttocks, groin, anus, or genitals or making another touch themselves, the Respondent, or another person with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with any previously mentioned body part.
- (x) **Stalking** - a Course of Conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others (e.g., family member, household member), or suffer Substantial Emotional Distress. Stalking may occur through virtual (e.g., social networks, online forums), electronic (e.g., personal computer, phone, PDA) or physical means. Examples of stalking include: repeatedly following a person; persistent observation of a person in an intimidating manner; acts that threaten or intimidate a person or members of that person’s family or household through fear of bodily injury or death of self; or vandalism directed against that person’s property. Stalking is considered a crime for the purposes of Clery Act reporting.
- (y) **Substantial Emotional Distress** – significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

- (z) **Support Person** - an individual chosen by a Complainant or Respondent, at the Complainant's or Respondent's own expense, to provide support during any meetings related to the investigation and/or adjudication of a reported violation of this Policy. Support Persons will not be directly involved in the investigative process. Complainants and Respondents are expected to speak on their own behalf when providing factual information during the investigative process, and Support Persons are present only to provide assistance or advice to the individual they are supporting. The Support Person may but need not be a licensed attorney and may also speak on behalf of a Complainant or Respondent at any Proceeding to advocate for a Complainant or Respondent. BCM will not unreasonably delay the investigation and/or adjudication of a reported violation of this Policy due to the unavailability of a selected Support Person. A Support Person who fails to adhere to this Policy or otherwise unreasonably disrupts Proceedings taking place pursuant to this Policy may be instructed to leave the Proceeding by BCM.

IV. Policy

- A. **BCM is subject to Title IX of the Education Amendments of 1972, 20 U.S.C. §1681 et seq., and its implementing regulations, 38 C.F.R. Part 106.** Title IX prohibits discrimination based on sex in all programs or activities that receive Federal financial assistance. In accordance with Title IX BCM is committed to providing a safe and supportive environment for all BCM Community Members, who have the right to be free from all forms of sex-based discrimination, and will investigate and adjudicate any allegations that meet the definition of Title IX Misconduct in accordance with the [Title Misconduct and Grievance Policy \(02.2.20\)](#). If the alleged conduct would be prohibited by this Policy as well as the Title Misconduct and Grievance Policy (02.2.20), then the Title Misconduct and Grievance Policy shall supersede this Policy.
- B. **Interaction Between this Policy and BCM's Policy Regarding Harassment, Discrimination, and Retaliation** (02.2.25). BCM's [Policy Regarding Harassment, Discrimination, and Retaliation \(02.2.25\)](#) addresses sexual discrimination that does not constitute Prohibited Conduct as defined in [Section IV.C](#) of this Policy, and other forms of harassment and discrimination that are prohibited by the College but are not violations of this Policy. If the alleged misconduct would be prohibited by the Policy Regarding Harassment, Discrimination, and Retaliation (02.2.25) and this Policy, this Policy controls.
- C. **Prohibited Conduct.**
1. **Defined.** Consistent with BCM's Code of Conduct, BCM Community Members are expected to conduct themselves in a lawful manner that does not infringe on the rights of others. Prohibited Conduct under this Policy includes:
 - a. Dating Violence,
 - b. Domestic Violence,
 - c. Sexual Assault,
 - d. Sexual Exploitation,
 - e. Sexual Harassment,
 - f. Sexual Misconduct, and
 - g. Stalking.
 2. **Evidence Preservation.** BCM encourages Complainants and Reporters to preserve Evidence supporting a claim of Prohibited Conduct. Any persons that may have experienced Prohibited Conduct should go to the hospital for treatment and assistance with the preservation of Evidence as soon as practicable after the incident.
 3. **Rights: Reporting to and Resolution by the College.** Complainants have the right to report incidents of Prohibited Conduct to BCM and to receive prompt and equitable resolution of the report. BCM encourages Complainants and Reporters to report incidents or assertions of Prohibited Conduct to BCM using the methods described in [Section IV.F](#) of this Policy.
 4. **Alleged Crimes.** An incident of Prohibited Conduct may constitute a crime as established by applicable state and federal criminal laws. Complainants have the right to choose

whether to report an alleged crime to law enforcement, to be assisted by the College in reporting an alleged crime to law enforcement, or to decline reporting to law enforcement.

D. Privacy Protection for Reporters, Complainants, and Respondents.

1. Legitimate Educational Interest. BCM strives to comply with the Family Educational Rights and Privacy Act (FERPA) and will safeguard the privacy of any student who makes a report (e.g., Complainant, Reporter), as well as any student named in a report of Prohibited Conduct (e.g., Respondent), to the extent possible. To protect the privacy of all BCM Community Members who may be Reporters, Complainants, and Respondents, College administrators will take reasonable steps to prevent unauthorized access to verbal and written reports and other documentation of alleged Prohibited Conduct, including interview notes collected during the investigation process. College administrators will share information only on a “need to know” basis, and as required to investigate, adjudicate, and/or implement sanctions arising out of a report.
2. Disclosure to Respondents. In accordance with U.S. Department of Education guidance issued in September 2017 (see [Section X.C](#), below), each notice of investigation provided by BCM must include the names of the Complainant and Respondent (see [Section VI.A.2\(2.3\)](#), below), which may prevent BCM from honoring a Complainant’s request to remain anonymous during investigation and adjudication of the alleged incident.
3. Public Awareness Events. An incident or assertion of Prohibited Conduct disclosed at a Sexual Harassment, Sexual Assault, Dating Violence, or Stalking public awareness event that is sponsored by BCM or a BCM-affiliated student organization may be kept confidential, and does not create a duty to report the alleged Conduct to the Title IX Coordinator. Event attendee privacy should be respected.
4. Privacy Violations.
 - a. *College Administrators* – Disclosures by College Administrators of the name of a Complainant or Respondent to another person that does not have a legitimate institutional interest in that information will result in corrective or disciplinary action. After a finding that an allegation is unsubstantiated or without merit, College administrators are prohibited from disclosing the name of the Respondent to persons outside the investigation or adjudication process.
 - b. *Complainants, Respondents, Reporters, and Support Persons* – BCM expects Complainants, Respondents, Reporters, Support Persons, and witnesses to respect the privacy of others who are named in an allegation of Prohibited Conduct and refrain from disclosing their names to others uninvolved in resolution of the allegation. Disclosures by these persons of the name of a Complainant or Respondent to another person that does not have a legitimate interest in that information may be a lapse in professionalism that could result in corrective or disciplinary action. This subsection cannot be construed to prohibit Complainants, Reporters, or Respondents from having private conversations with Support Persons, pursuing counseling, attending public awareness events, or reporting alleged Prohibited Conduct.

E. Reporting Prohibited Conduct to the College.

1. Voluntary Reporting is an option for two categories of reporters.
 - a. Any BCM Community Member who believes, in good faith, they have experienced Prohibited Conduct is encouraged but not required to report the Prohibited Conduct to the Title IX Coordinator or Security Office. All allegations of Prohibited Conduct committed against BCM Community Members will be investigated to the extent possible and adjudicated in accordance with this Policy, including alleged Prohibited Conduct committed by third parties unaffiliated with BCM.
 - b. Students and trainees with knowledge of an incident or assertion of Prohibited Conduct are strongly encouraged to make a good faith report of such conduct immediately using reporting options described below (see [Section IV.F](#)).

2. Mandatory Reporting: Faculty and Staff have a duty to report to the Title IX Coordinator.
 - a. *Responsible Employees.*
 - 1) All faculty and staff with knowledge of an incident or assertion of Prohibited Conduct committed by or against another employee or enrolled student must promptly report such conduct to the Title IX Coordinator using traditional reporting (see [Section IV.F.1-2](#)). Reports must include all information concerning the alleged Prohibited Conduct that is known to the responsible employee and relevant to the investigation, including whether the alleged Complainant has expressed a desire for confidentiality in reporting the incident.
 - 2) The duty to report is triggered when a faculty or staff member either witnesses an incident of perceived Prohibited Conduct or is informed about an incident of Prohibited Conduct except when the report is made in a patient encounter or provision of medical or mental health services (see [Section IV.E.2.b](#)).
 - For example, during a career-mentoring session, a faculty member receives a verbal report of Prohibited Conduct from a trainee who does not want to report the incident to the BCM Security Office or to any other College office—the faculty member must nevertheless report it to the Title IX Coordinator.
 - b. *Health Privacy Concerns.* Relevant provisions of the Health Insurance Portability and Accountability Act (HIPAA) require healthcare providers who receive a report of Prohibited Conduct during the provision of clinical services to a BCM Community Member to maintain confidentiality. Thus faculty and staff providing medical and mental health services are not obligated under this policy to report Prohibited Conduct discovered during the provision of those services to the Title IX Coordinator, but may have a duty to make a report to the College or state licensing authorities established by another BCM policy or other applicable laws, regulations, or standards (see Sections [IV.E.2](#) and [F](#)).
 - c. *Responsible Employee Noncompliance.*
 - 1) In accordance with Tex. Educ. Code § 51.255, a responsible employee that has a duty to report and knowingly fails to report a perceived incident of Prohibited Conduct commits an offense that may expose the employee to misdemeanor criminal liability under Texas law if charged.
 - 2) In accordance with Tex. Educ. Code § 51.255(c) and BCM policies regarding employee discipline and grievances (see [Section IX](#)), BCM must terminate the employment of an employee that has a duty to report and knowingly fails to report a perceived incident of Prohibited Conduct.
3. Security Office Reporting. BCM security personnel are available to help Reporters and Complainants evaluate their options and contact the appropriate law enforcement agency. Such personnel also may take reasonable steps to create a safe environment while investigation is pending, such as no-contact orders and changes to work or academic environments, where appropriate (for example, increased security patrol around a Complainant's worksite after an allegation of Stalking). Also, if Prohibited Conduct occurs on campus, Reporters and Complainants may contact the BCM Security Office directly for help 24 hours a day, seven days a week. Administrators in the Security Office are required to report incidents and allegations of Prohibited Conduct to the Title IX Coordinator.
 - a. Anyone experiencing an on-campus emergency may call extension 8811 (713-798-8811)
 - b. For non-emergency assistance, please call [BCM Security Office at extension 8-3000](#) (713-798-3000).

F. **Options for Reporting Prohibited Conduct to the College.** Regardless of whether reporting is voluntary or compulsory, BCM strongly encourages prompt reporting of Prohibited Conduct and offers three reporting options: traditional, confidential, and anonymous.

1. Traditional Reporting to the College: Filing a Complaint. Individuals who have experienced Prohibited Conduct may report a complaint to the BCM Title IX Coordinator(s), or the Security Office (see [Section IV.E](#), above). Complaints may be reported to the College even if police conclude there is insufficient evidence for criminal charges, or the Complainant does not want to participate further in the College’s investigation process. Online complaints may be filed through the [Integrity Hotline](#), and complaints may otherwise be filed in-person, through interoffice mail, U.S. Mail, or email to:

Title IX Coordinator	Toni M. Gray Director of Title IX & Disability Services	title-ix@bcm.edu Mail Stop: BCM 411 (713) 798-8137
Deputy Title IX Coordinator	Marsha Brewington Office of Title IX	Marsha.Brewington@bcm.edu Mail Stop: BCM 411 (713) 798-2527

2. Anonymous Reporting to the College. Individuals who do NOT have a duty to report under this Policy and who wish to remain anonymous may report by telephone or in writing via the Integrity Hotline phone or web portals. All reports and complaints of Prohibited Conduct are forwarded to the Title IX Coordinators for processing. BCM takes seriously and investigates all reports received; however, the continuing anonymity of the Reporter may hinder the results of the investigation and the College’s ability to stop the behavior, remedy its effects, and prevent recurrence.

- Integrity Hotline: 855-764-7292 or <https://secure.ethicspoint.com> (Enter “Baylor College of Medicine” as the Organization Name)

3. Confidential Discussions within the College. Confidential reporting means that the information provided will not be shared with anyone else, including the Title IX Coordinator(s), without the Consent of the Complainant. Confidential reporting does not constitute legal notice to BCM that this policy may have been violated, and as a result, the College will not investigate or take any action in response to confidential reports. BCM offers the following confidential services:

- *For confidential discussion and healthcare services, consult:*
 - Student and House Staff Mental Health Service: 713-798-4881 or student-help@bcm.edu;
 - Wellconnect (students only): 866-640-4777 or <http://www.wellconnectbysrs.com>;
 - Employee Assistance Program (resources are for faculty/staff only): 713-500-3008 or 866-893-3776.
- *For confidential discussion only, consult the Office of the Ombudsman.*
 - The BCM Ombudsman is a resource who provides confidential discussion of any BCM-related concern. BCM Community Members may consult the Office of the Ombudsman *before* proceeding with a formal report of Prohibited Conduct, and the Ombudsman is permitted to serve as a resource to individuals who perceive systemic issues or other concerns impacting the working or learning environment. The Office of the Ombudsman has no authority to receive notice of any legal claims, crimes, or alleged misconduct, institute corrective measures, conduct informal resolution processes (such as mediation), or generate or preserve any records on behalf of BCM pursuant to this Policy. Sharing of information regarding alleged Prohibited Conduct with the BCM Ombudsman does not constitute notice to the College and will not result

in action by the College, and the BCM Ombudsman is prohibited from participating in the formal and informal adjudication, appeal, or grievance procedures established pursuant to this Policy and the Title IX Misconduct and Grievances Policy (02.2.20). Please consult the [Office of the Ombudsman: Structure, Function, and Resources Policy \(32.1.01\)](#) for more information.

- Phone: (713) 798-5039
- Email: ombudsoffice@bcm.edu;
- Website: <https://www.bcm.edu/ombuds>;

4. **Options for Reporting outside the College.** Questions concerning the application of Title IX and its implementing regulations to BCM may be referred to state or federal agencies, such as the Office of Civil Rights, as provided in [Section VIII.B.2-3](#) (below).
- G. **Reporting Prohibited Conduct to State Licensing Authorities.** [Section IV.E](#) (above) is not intended to address reporting to state licensing authorities and does not limit or mitigate the obligation of licensed healthcare providers to make a report to the appropriate licensing board as required by relevant state law(s), specialty-specific rules of professional conduct, or other BCM policies (e.g., the Texas Medical Board mandates reporting of Prohibited Conduct by physicians). If any BCM Community Member is suspected of or found to have violated this policy, and such suspicion or violation triggers mandatory reporting to a state licensing authority pursuant to applicable laws, regulation, standards, or other BCM policies, then a licensed individual with knowledge may report the same as required by the applicable authority.
- H. **Retaliation.** BCM will not tolerate Retaliation in response to or in connection with any report of Prohibited Conduct and may impose interim or permanent sanctions against individuals who retaliate in violation of this Policy. Any party who believes that they have experienced Retaliation should report the incident immediately to either or both BCM Title IX Coordinators identified in this Policy. Upon notice of alleged Retaliation, the College will take necessary steps to provide a safe learning and working environment, in accordance with the BCM [Code of Conduct \(31.1.01\)](#) and [Integrity Hotline Policy \(31.2.02\)](#).
- I. **Interim Administrative Action & Remedial Measures.** BCM reserves the right to undertake any administrative action it deems necessary to ensure the safety of BCM Community Members in response to a report or complaint of Prohibited Conduct, including interim measures to ensure safety of all parties after a report has been made and while an investigation or adjudication process may be pending. Measures may include, but are not limited to:
1. Administrative Actions, such as:
 - a. Administrative leave, temporary removal from the BCM community, or temporary removal from College duties pending the conclusion of an investigation and adjudication of the report;
 - b. Issuance of a timely community notification by the BCM Security Office;
 - c. Issuance of a No Contact Order.
 2. Remedies, such as:
 - a. Relocation of work, academic, or extracurricular activities;
 - b. Arranging for a Complainant or Respondent to have the ability to make-up lost work or academic progress without penalty;
 - c. Arranging for a Complainant or Respondent to withdraw from a course without penalty;
 - d. Providing access to counseling, medical and/or academic support services;
 - e. Conducting educational programs or trainings for BCM community members.
- J. **Academic Administration Requirements.**
1. Student Withdrawal or Graduation during Investigation or Adjudication.
 - a. If a student withdraws or graduates from BCM pending a disciplinary charge alleging that the student violated BCM's Code of Conduct (such as by

- engaging in Prohibited Conduct), BCM may not end the adjudication process or issue a transcript to the student until a final determination of responsibility is made. In such cases, BCM will attempt to expedite the process to accommodate the Complainant and Respondent. For the purposes of this policy, a disciplinary charge is considered “pending” after the transmission of written notice of investigation to the involved parties (see [VI.A.2\(2.3\)](#), below).
- b. The final determination of responsibility may include a decision that the student is ineligible to reenroll in the institution for a reason other than an academic or financial reason. If, as a result of the adjudication process, the student is ineligible to reenroll due to Prohibited Conduct, this determination shall be documented in the student’s academic record as provided in [Section IV.J.3](#) (below).
2. Requests for Student Disciplinary Records. In compliance with Texas law, on request of another postsecondary educational institution BCM will provide information relating to a determination that a student enrolled at BCM violated the BCM Code of Conduct by engaging in Prohibited Conduct. This information may be redacted as necessary to comply with applicable state or federal confidentiality laws (e.g., HIPAA, FERPA) and the Student Records Policy (23.1.06).
 3. Transcript Notation.
 - a. *Inclusion*. If a student is ineligible to reenroll in the institution for a reason other than an academic or financial reason, Texas law requires BCM to include a notation on the transcript that the student is ineligible to reenroll in BCM schools and programs for a reason other than an academic or financial reason (see Tex. Educ. Code §51.9634(c)).
 - b. *Removal*. BCM may remove this transcript notation at the student’s request, provided that the student becomes eligible to reenroll or BCM determines good cause exists to remove the notation.
 4. False Reports of Prohibited Conduct. Any faculty, staff, resident or fellow physician, postdoctoral trainee, or enrolled student who, with the intent to harm or deceive, knowingly makes a report that is false, commits an offense that may expose the person to misdemeanor criminal liability under Texas law if charged (refer to Tex. Educ. Code § 51.255). Bad faith reporting of a false allegation is a lapse in professionalism that will result in serious disciplinary action, up to and including termination of employment and dismissal from the learner’s school and program. Persons acting in good faith that report alleged Prohibited Conduct, provide testimony or statements, or otherwise participate in the investigation, adjudication, or proceeding arising from such report will not be subject to disciplinary action or Retaliation at BCM.

V. Responsibilities

A. Title IX Coordinator.

1. Education, Training, and Compliance Oversight. The Title IX Coordinator is the designated administrator who monitors compliance with this Policy, including but not limited to training, education, prevention efforts, communication with stakeholders, and oversight of investigation and adjudication procedures for all reported policy violations. With respect to the training of designated Title IX investigators, the Coordinator will facilitate assignment of mandatory education and training, whether in the form of online modules or other training, to include trauma-informed investigation.
2. Sex Discrimination. The Title IX Coordinator is also the official designated by BCM to coordinate the College’s efforts to comply with its obligations regarding sex-based discrimination. Students, postdoctoral trainees, residents, fellows, faculty, and staff who may be experiencing sex or gender discrimination, harassment, or retaliation should consult BCM’s Policy Regarding Harassment, Discrimination, and Retaliation (02.2.25) for further information and remedies. Any questions about BCM’s compliance with these rules and policies should be directed to the Title IX Coordinator.

3. Reports to BCM CEO.
 - a. Title IX Coordinator will submit to the BCM CEO or designee a written summary of reports of Prohibited Conduct received from responsible employees pursuant to the mandatory reporting requirement (see [Section IV.E.2](#)). This summary report must be submitted at least once per quarter, and include information regarding investigations, disposition of disciplinary procedures arising from those reports (if any), and the reports for which the institution did not initiate a disciplinary process (if any).
 - b. If the Coordinator has cause to believe that the safety of any person is in imminent danger as a result of an incident of Prohibited Conduct, the Coordinator will immediately report the incident to the BCM CEO or designee.
4. Statistical Reports to BCM Community. At least once during each fall or spring semester the Title IX Coordinator will prepare the following statistical information and submit to the BCM CEO:
 - a. The number of reports of Prohibited Conduct received from responsible employees;
 - b. The number of investigations conducted as a result of those reports;
 - c. The disposition, if any, of disciplinary processes arising from those reports;
 - d. The number of reports for which BCM determined not to initiate the disciplinary process, if any; and
 - e. Any disciplinary actions taken under [Tex. Educ. Code § 51.255](#).

B. Title IX Deputy Coordinator & BCM Security Office.

1. The Title IX Coordinator and Deputy Coordinator are responsible for receiving and investigating complaints of Prohibited Conduct.
2. The Title IX Coordinator will have continued communication with the Deputy Coordinator, officials in the Security Office, and the Office of the General Counsel on investigations, remedies, education and reporting. Statistical and programmatic information will be provided to the BCM Security Office for annual Clery Reporting and inclusion in the Annual Security Report (ASR).
3. The Clery Act requires colleges and universities that receive federal funding to disseminate a public ASR to employees and learners every October 1st. This ASR must include statistics of campus crime for the preceding three calendar years, plus details about efforts taken to improve campus safety (see [Section VIII.A.3](#)).
4. Coordinators will work together to ensure community member compliance during investigations, create adequate remedies, and facilitate education and reporting across the College. Specific responsibilities of the Deputy Coordinator include, but are not limited to, overseeing compliance efforts of a specific school/area/population, providing ongoing training, consultation, and communication to that population, implementing associated procedures, and other duties as requested by the Title IX Coordinator.

C. BCM CEO.

1. At least once during each fall or spring semester, BCM's CEO or designee is responsible for ensuring internet publishing of a statistical report (see [Section V.A.4](#), above) intended for the BCM community and submission of the report to the BCM Board of Trustees.
2. As provided in Tex. Educ. Code § 51.258(a), on an annual basis BCM's CEO will certify in writing to the Texas Coordinating Board that BCM is in substantial compliance with this law. The Coordinating Board is authorized to mete out administrative penalties of up to \$2 million if it determines an institution is not in substantial compliance.

VI. Procedures for Implementation and Review

- A. Investigation & Adjudication Procedures.** All reports of Prohibited Conduct are investigated and resolved according to the procedures outlined below. Once an investigation has concluded, BCM may take administrative action, including issuance of sanctions or remedies. If a

Complainant or Respondent is dissatisfied with the outcome of an investigation, he or she may proceed with adjudication and petition for appeal.

1. Standard of Proof. All investigations and adjudications conducted pursuant to this Policy will apply the “preponderance of the evidence” standard (i.e., a claim is more likely than not to be true), which requires that the Evidence supporting a finding of responsibility be more convincing than the information in opposition to it. Individuals are presumed not to have engaged in a violation of this Policy unless or until this standard is met.
2. Procedures.
 - 2.1 After receiving a report of alleged Prohibited Conduct, the Title IX Coordinator will conduct an initial evaluation of the allegation to assess the need for interim administrative action and/or interim remedial measures.
 - 2.2 The Title IX Coordinator will conduct a preliminary inquiry of the report to determine if, based on the information provided, there is reasonable cause to indicate that further investigation is warranted.
 - a. If the Title IX Coordinator determines there is no reasonable cause for further investigation, then they may impose or provide interim or permanent administrative measures or remedies, or take no further action, as is warranted under the circumstances.
 - b. If the Title IX Coordinator determines there is reasonable cause for further investigation, the Title IX Coordinator will assign a trained Title IX Investigator to investigate the allegation. The Title IX Investigator is a neutral factfinder, and does not advocate for the College, Complainant or Respondent.
 - 2.3 Complainant and Respondent will receive simultaneous written notice of the initiation of an investigation, which includes the identities of the parties involved, a description of the alleged Prohibited Conduct, date and location of the alleged incident(s), the Policy provisions alleged to have been violated, and information about applicable rights and available resources.
 - 2.4 Complainant and Respondent have the ability to have a Support Person present throughout the process and during any meetings related to the investigation and/or adjudication of a report of Prohibited Conduct.
 - 2.5 Generally, BCM will strive to complete investigations within thirty (30) days of a report or complaint of Prohibited Conduct to the College. During investigation, both Complainant and Respondent have the opportunity to identify witnesses and submit evidence relevant to the alleged incident. BCM will use its best efforts to investigate all reports of Prohibited Conduct, but unavailability of witnesses or any refusal by the Complainant, Respondent, or Reporter to provide relevant information may impede or undermine BCM’s ability to produce a complete and thorough investigation. To the extent possible, investigation will include interviews with individuals, including the Complainant, Respondent, and witnesses, and confirmation or examination of relevant evidence. Delays to the investigation will be communicated in writing to both Complainant and Respondent.
 - 2.6 Once the investigation is complete, the Investigator will prepare a written report of the investigation. The investigation report will include a statement of the allegation(s), the persons involved, a summary of the Evidence reviewed, factual findings with respect to each allegation of Prohibited Conduct, and a determination by the Investigator(s) as to whether the Policy has been violated. Both Complainant and Respondent receive reasonable and equitable access to all Evidence relevant to the alleged incident that is within BCM’s possession, although Evidence may be redacted as necessary to comply with applicable state or federal confidentiality laws (e.g., HIPAA, FERPA). Relevant Evidence may include statements made by the parties or other witnesses, written or electronic communications pertaining to the incident, social media posts, physical or other Evidence.

- 2.7 The Title IX Coordinator will review and then accept or reject the investigation report. Rejected investigation reports may result in the initial report reentering the Investigation process, as outlined in this Policy, although the Title IX Coordinator will assign an alternate trained Investigator to complete the second investigation. Accepted investigation reports are used in adjudication, which may lead to appropriate sanctions or remedies, if warranted. The Complainant and Respondent are entitled to view and respond to the accepted investigation report prior to adjudication of responsibility.
- 2.8 The Title IX Coordinator will provide simultaneous written notice of adjudication to Complainant and Respondent, including a summary of the Investigator's findings, rationale for Coordinator determination(s), any sanctions and remedies imposed by the Coordinator, and a clear deadline for requesting an appeal (e.g., date, time).
- 2.9 Complainant and Respondent each have three (3) days from the date of receipt of the notice of adjudication to decide whether to accept its stated findings, sanctions, and remedies, or to request an appeal. However, the Title IX Coordinator has discretion to modify the response period on a case-by-case basis, taking into account all relevant facts. Complainant and Respondent must state their position, in writing, to the Title IX Coordinator.
 - a. If Complainant and Respondent both choose to accept, then the findings and imposed sanctions and/or remedies will be implemented immediately.
 - b. If either Complainant or Respondent chooses not to accept, then the dissenting party may request an appeal according to the procedures described in this Policy.
 - c. All requests for appeal must be submitted directly to the Title IX Coordinator prior to the deadline stated in the notice of adjudication, or the appeal will be denied.
3. Participation of Support Persons. In the event that a Complainant or Respondent elects to have a Support Person present during a Proceeding, the Title IX Coordinator or designee must notify the Office of the General Counsel (OGC) and provide the opportunity for an OGC representative to attend the Proceeding. If the Support Person is not a licensed attorney, the OGC representative's participation is limited to observation.
4. Decorum in Proceedings. Anyone participating in any Proceeding arising out of an alleged violation of this policy is expected to exhibit civility and decorum commensurate with the serious subject matter, and the Title IX Coordinator has the authority and discretion to remove any participant who fails to adhere to this standard of conduct.

B. Appeal of Adjudications.

1. There is one centralized appeal procedure for all stakeholders contesting a notice of adjudication. All sanctions or remedies imposed due to violations of this Policy (i.e., findings of responsibility for engaging in Prohibited Conduct) may be appealed using this procedure, which supersedes procedures for appeal described in other BCM policies with respect to grievances and adverse actions arising out of Prohibited Conduct. Appeal procedures described in the following policies may not be used to contest remedies, sanctions, or findings of responsibility imposed by the Title IX Coordinator or designee: [02.5.25 - Faculty Grievance Procedures](#), [02.5.26 - Staff Grievance Procedure](#), [27.4.12 – GME Mistreatment and Grievances Policy](#), [23.1.08 – Student Appeals and Grievances Policy](#), and [27.6.2 – \[GME\] Appeal of Adverse Actions Policy](#).
2. Scope of Appeal. Appeals are intended to afford Complainant and Respondent the opportunity to ensure that procedures described in this Policy are performed consistently and documented correctly. Appeals are not intended for use as a substitute adjudication process, and therefore Complainant and Respondent may not pursue appeals based on

mere disagreement with adjudication findings or sanctions. Valid grounds for appeal are described below.

3. Requests for Appeal. Complainant and/or Respondent may request an appeal in writing to the Title IX Coordinator within three (3) days of the date they receive written notice of adjudication. Requests can be submitted online or via email, interoffice mail, or postal service. **A request for appeal must be based on at least one of the following grounds, or the request for appeal will be denied:**
 - a. **A substantial deviation from the procedures outlined in this Policy** which substantially affected the outcome of the case;
 - b. **Discovery of new evidence, unknown or unavailable during the investigation**, which could substantially impact the finding and/or sanctions. “Substantially impact” means a shift in the weight of the evidence sufficient to result in a different or wholly opposite outcome, i.e., the evidence strongly indicates alternate findings and/or sanctions. A summary of this new evidence and its potential impact must be included;
 - c. The **sanctions imposed are disproportionate given both the severity of the Prohibited Conduct proven and a consideration of previous Respondent conduct** (e.g., documented in personnel file or academic record).
4. Appeal Procedure. Except where newly discovered evidence is the basis for the appeal, appeals are limited to a review of the Evidence and written documentation created and acquired during the investigation and adjudication (e.g., investigation report, notice of adjudication) and documentation supporting the grounds for appeal. Appeals are not a full re-investigation of the allegation (i.e., *de novo*).
 - 4.1 The party requesting appeal must show that at least one of the grounds for appeal has been met in order for the Title IX Coordinator to approve the request.
 - a. If the Title IX Coordinator determines none of the grounds for appeal have been plausibly asserted, then the request will be denied and the original finding and/or sanctions will take effect immediately.
 - b. If the Title IX Coordinator determines at least one of the grounds for appeal has been plausibly asserted, then the request will be approved and follow the procedures described in this Policy.
 - c. If the Title IX Coordinator determines that there are valid grounds for appeal based on new evidence that was unknown or unavailable during the original investigation, then the request will be approved and will follow the procedures described in this Policy. It is within the Coordinator’s discretion to reconsider previous findings in light of the new evidence, or direct an Investigator to gather additional information and produce an addendum to the original report prior to reconsideration.
 - 4.2 If the requested appeal meets the standards set forth in the previous section, the non-appealing party will receive written notice that a request for appeal has been approved. The notice must include the grounds for appeal, a copy of the request, and a clear deadline for submitting a written response. The non-appealing party will have three (3) days from the date of notice to submit a written response to the Title IX Coordinator.
 - 4.3 A three-member appeal panel made up of trained representatives from The Office of Human Resources, the Office of the Provost, and the Faculty Senate will have seven (7) days to render a decision after receiving appeal documents which may include, but are not limited to, the initial report of Prohibited Conduct, investigation report, approved request for appeal, and non-appealing party’s response. If the appeal is based on new evidence, the Title IX Coordinator must submit a written statement to the panel based on

reconsideration of new evidence and/or additional investigation, as well as a copy of any addendum(s) made to the Investigator's original written report.

- 4.4 The appeal panel has the ability to:
 - a. Affirm the findings, sanctions, and/or remedies imposed during adjudication;
 - b. Modify the sanctions and/or remedies imposed during adjudication;
 - c. Remand the case to the Title IX Coordinator with corrective instructions to address the procedural deviations, which could include a new investigation;
 - d. In the event of new evidence, accept and affirm findings, sanctions and/or remedies;
 - e. In the event of new evidence, modify finding(s) based on the standard of proof and remand to the Title IX Coordinator for new sanctions.
5. Notice of Appeal Decision. Complainants and Respondents will receive simultaneous written notice of the decisions of the appeal panel which will take effect immediately. The decision of the appeal panel is final and is not subject to any further review.

C. Sanctions for Violations of this Policy.

1. Respondents found to have engaged in Sexual Assault will be removed from the BCM community, i.e., employees will be terminated and students and trainees will be dismissed.
2. Respondents who are found to have engaged in other Prohibited Conduct may face one or more of the following sanctions, depending on the severity of the reported incident and consideration of any previous policy violations:
 - Mandatory educational programs (e.g., sexual harassment education seminar);
 - Mandatory training programs (e.g., sensitivity training);
 - Issuance of a No Contact Order;
 - School and/or program-specific disciplinary action, such as:
 - Formal Warnings, and
 - Adverse Actions, e.g., probation, suspension, non-reappointment, failure to promote, dismissal;
 - Administrative leave of absence;
 - Restriction(s) on or removal from a work, academic, or extracurricular activity, duty, or environment;
 - Employment-specific disciplinary action, such as:
 - Verbal or written warning,
 - Probation, and
 - Termination of employment.

- D. Policy Review and Update.** This Policy shall be reviewed and revised as necessary, but at least every 2 years.

VII. Stakeholder Compliance

BCM Community Members who violate this Policy by engaging in Prohibited Conduct or acts of retaliation will face disciplinary action, which may include the loss of privileges associated with enrollment, training, or employment, or removal of College duties or honors.

VIII. Tools

A. Resources.

1. Complainants & Witnesses:

- Read more about Title IX, Gender Discrimination, and other College resources here: <https://www.bcm.edu/education/academic-faculty-affairs/academic-policies/title-ix-and-gender-discrimination>
 - if you believe you have suffered a violation of this Policy, or know someone who has, you may report it here: https://secure.ethicspoint.com/domain/en/default_reporter.asp
2. Employees:
 - [Resources for Responsible Employees.](#)
 3. Security Office: [Annual Security Report.](#)

B. Options for Reporting Prohibited Conduct to Outside Entities. Reporting of Prohibited Conduct to outside entities is completely voluntary for anyone who has suffered a violation of this Policy, regardless of whether the individual is a student, postdoctoral trainee, resident/fellow, faculty member, staff member, trustee, or invitee. A Reporter may choose to notify authorities including law enforcement, state agencies, and federal agencies.

1. Law Enforcement Reporting.
 - BCM strongly encourages anyone who believes they have knowledge of a crime to make a report to law enforcement. If notified, law enforcement officials may assist persons in obtaining orders of protection, restraining orders or other court orders.
 - In the case of an emergency, call the police at 911.
2. State Agency Reporting.
 - *Texas Medical Board (TMB)* – Complaints about physicians, as well as other licensees and registrants of the TMB, including physician assistants, acupuncturists, and surgical assistants may be reported for investigation at the following address:
 - Texas Medical Board Attention: Investigations 333 Guadalupe, Tower 3, Suite 610 P.O. Box 2018, MC-263 Austin, Texas 78768-2018.
 - Assistance in filing a complaint is available by calling the following telephone number: 1-800-201-9353.
 - For more information, please visit: www.tmb.state.tx.us.
 - *Texas Board of Nursing (TBON)* – Complaints about licensees and registrants of the TBON, including registered nurses and advanced practice registered nurses, may be reported for investigation in writing.
 - Reporters may write on plain paper or use an appropriate [complaint form](#), and submit via email (complaints@bon.texas.gov) or U.S. mail at the following address: Texas Board of Nursing, Enforcement, Suite 3-460, 333 Guadalupe St, Austin, Texas 78701.
 - Assistance in filing a complaint is available by calling the following telephone number: (512) 305-7431.
 - For more information, please visit: https://www.bon.texas.gov/discipline_and_complaints_policies_and_guidelines_filecomplaint.asp.
 - *Texas Workforce Commission:* By virtue of their status as paid employees of BCM, members of the BCM community may report Prohibited Conduct at:
 - Texas Workforce Commission, Civil Rights Division
101 East 15th St., Room 144T
Austin, TX 78701
Phone: 512-463-2642 or 888-452-4778
800-735-2989 (TDD)
http://www.twc.state.tx.us/crd/file_emp.html;
3. Federal Agency Reporting.

- Paid employees of BCM may also contact the following sources to report Prohibited Conduct:
 - U.S. Equal Employment Opportunity Commission
207 S. Houston Street, 3rd Floor
Dallas, Texas 75202
Phone: 800-669-4000
Fax: 214-253-2720
 - The Office for Civil Rights (OCR) is a federal agency responsible for enforcing Title IX.
Office for Civil Rights, Dallas Office
U.S. Department of Education
1999 Bryan Street, Suite 1620
Dallas, TX 75201-6810
Telephone: (214) 661-9600; Fax: (214) 661-9587
Email: OCR.Dallas@ed.gov;
 - To file an online OCR complaint, consult:
<http://www2.ed.gov/about/offices/list/ocr/docs/howto.html?src=rt>.

IX. Related Policies

- [BCM Code of Conduct](#);
- [02.2.20 – Title IX Misconduct and Grievance Policy](#);
- [02.2.22 – Title IX Misconduct and Grievance Procedures](#);
- [02.2.25 – Policy Regarding Harassment, Discrimination and Retaliation](#);
- see also BCM's [Notice of Nondiscrimination](#);
- [02.5.26 – Staff Grievance Procedures](#);
- [02.5.25 – Faculty Grievance Procedures](#);
- [23.1.08 – Student Appeals and Grievances Policy](#);
- [27.4.12 – GME Mistreatment and Grievances Policy](#);
- [27.6.2 – \[GME\] Appeal of Adverse Actions Policy](#);
- [31.2.02 – Integrity Hotline Policy: Reporting Improper Activity or Wrongdoing](#);
- [32.1.01 – Office of the Ombudsman: Structure, Function, and Resources](#);

X. Applicable Laws, Regulations & Standards

A. Federal and State Laws:

- [42 U.S.C. § 2000e](#) (Title VII of the Civil Rights Act of 1964);
- [20 U.S.C. § 1681 et seq](#) (Title IX of the Education Amendments of 1972);
- [34 U.S.C. §§12291 – 12512](#) (Violence Against Women Reauthorization Act of 2019);
- [20 U.S.C. § 1092](#) (Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act); See also [20 U.S.C. § 1092\(f\)](#) (Campus Sexual Violence Elimination Act);
- [20 U.S.C. § 1232g](#) (Family Educational Rights and Privacy Act);
- [Tex. Educ. Code § 51.252](#) ([Employee] Reporting Required for Certain Incidents);
- [Tex. Educ. Code § 51.255](#) (Failure to Report or False Report; Offenses);
- Tex. Educ. Code § 51.253 (Administrative Reporting requirements)
- [Tex. Educ. Code § 51.258](#) (Compliance);
- [Tex. Educ. Code § 51.282](#) (Policy on Sexual Harassment, Sexual Assault, Dating Violence, and Stalking);
- [Tex. Educ. Code §51.287](#) (Student Withdrawal or Graduation Pending Disciplinary Charges);
- [Tex. Educ. Code § 51.9364](#) (Transcript Notation);

B. Regulations:

- [34 C.F.R. Part 106](#), as amended (Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance);
- [34 C.F.R. Part 668](#); see [§ 668.46](#) (Institutional Security Policies and Crime Statistics); see also [Appendix A to Subpart D of Part 668](#) (Crime Definitions in Accordance with the FBI's UCR Program).
- [34 C.F.R. § 99](#) (FERPA regulations);

C. Guidance:

- U.S. Department of Education, [Interim Guidance on Campus Sexual Misconduct \(September 2017\)](#);
- OCR, [Questions and Answers on Campus Sexual Misconduct](#);
- [Not Alone White House Task Force Report, 2014](#);
- [Summary - Campus Sexual Violence Elimination Act](#);
- [Summary - Clery Act](#);
- [U.S. Department of Education: FERPA Guidance](#);