

Formal Grievance Policy
As Required by the U.S. Department of Education, 34 C.F.R. § 106.45,
Effective August 14, 2020

I. INTRODUCTION

This Policy addresses certain types of sexual misconduct via a process required by the U.S. Department of Education's new Title IX Regulations, effective August 14, 2020. The scope of this Policy is set forth in Section II, below. This Policy follows the requirements of the Regulations, and contains citations to the applicable Title IX Regulations throughout. Many of the citations are "links" which will take you directly to the actual text of the Regulations. See 34 C.F.R. Part 106.

The Formal Grievance Policy, along with the comprehensive Berry Sexual Misconduct Policy, are intended to define, address and remedy sexual misconduct for Berry students and employees.

Berry prohibits sexual misconduct by faculty, staff, students and those who use Berry facilities. The prohibition applies regardless of the gender of the individuals involved and includes sexual relationships involving a status differential and those between peers, colleagues, and co-workers. This Policy applies to all members of the Berry community, including students, faculty and staff.

This Formal Grievance Policy proceeds in four additional sections, summarized here. If you have questions regarding how the comprehensive Policy and this Formal Grievance Policy work, or need assistance regarding any of the defined terms or processes, please contact the Title IX Coordinator.

Section II defines what is covered by this Formal Grievance Policy. Under the new Title IX Regulations, sexual harassment (a subset of sexual misconduct) must be investigated and addressed according to the procedures set forth in this policy. Although the Regulations narrowly define sexual harassment, Berry remains committed to providing a higher education environment that is free from sexual discrimination, sexual misconduct, and gendered violence. Sexual misconduct that does not rise to the level of sexual harassment as defined by the U.S. Department of Education, or that does not meet Title IX's jurisdictional requirements, will still be investigated and addressed under the Berry Sexual Misconduct Policy.

Section III contains Berry's Formal Grievance Process. This section contains information on filing a Formal Complaint of sexual harassment, the investigation process, the role of the Title IX Coordinator, the live hearing requirements, the appeals process, and other topics. Students, faculty, and staff should consult this section to learn about the process Berry will use to investigate and address allegations of sexual harassment.

Section IV contains the U.S. Department of Education's statements regarding equitable treatment under the Title IX Regulations, which are required to appear in this Formal Policy. The concepts of equitable treatment include the provision of supportive measures and waiting until the grievance process concludes to make conclusions.

Section V explains that Berry does not allow or condone retaliation against any person based on that person's involvement in the Title IX process.

Berry has designated a Title IX Coordinator to oversee the investigation and resolution of reports of sexual misconduct and Berry's compliance with Title IX. Any questions about this policy, Berry's processes under Title IX, or reports of alleged sexual misconduct should be directed to the Title IX Coordinator:

Lindsay Norman
Hermann Hall 208
P.O. Box 495009
Mount Berry, Georgia 30149-5009
lnorman@berry.edu
(706) 236-2207

The Title IX Coordinator, in conjunction with the Assistant Vice President for Human Resources, Deputy Title IX Coordinator for faculty and staff matters, will oversee all Berry matters relating to sex discrimination (including sexual harassment), including distribution of policies, investigations, educational programs, policy enforcement, and follow-up with complainants and respondents in investigations.

II. SCOPE OF POLICY

This Formal Grievance Policy will apply to "sexual harassment" alleged to have occurred in a Berry "education program or activity" against a person in the United States, per USDOE Regulations, effective August 14, 2020. 34 C.F.R. § 106.44(a).

A. Definitions

"Sexual harassment" is defined by USDOE to be conduct on the basis of sex that satisfies one or more of the following:

1. A Berry employee conditioning the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct ("quid pro quo");
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to Berry's education program or activity; or
3. Sexual assault, dating violence, domestic violence, or stalking. (These terms are defined in the Berry Sexual Misconduct Policy.)

"Sexual misconduct" is a broader term that covers other sex-based conduct beyond the USDOE's "sexual harassment" definition. If alleged sexual misconduct does not satisfy the USDOE's definitional requirement, then it may be addressed under the Berry Sexual Misconduct Policy instead of this Policy.

The terms "Complainant" and "Respondent" are used throughout this Policy and the comprehensive Berry Sexual Misconduct Policy.

Complainant: an individual who is alleged to be the victim of conduct that could constitute sexual harassment for purposes of this Formal Grievance Policy.

Respondent: an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment for purposes of this Policy. (§ 106.30.)

Other terms, like Supportive Measures and Formal Complaint, are defined below.

All relevant terms, including Consent and Incapacitation, are defined in a separate attachment to the comprehensive Berry Sexual Misconduct Policy.

B. Reports to Which This Formal Policy Applies

For any allegation of sexual harassment to come within the scope of this Formal Grievance Policy, it must fall within the scope of USDOE's rules, as stated above.

An "education program or activity" includes locations, events, or circumstances that Berry exercises substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by Berry. USDOE's Regulations exclude any "education program or activity" that does not occur in the United States. (§ 106.44(a).)

If a reported sexual misconduct does not satisfy the jurisdiction requirement, such as off-campus behavior alleged to have an on-campus effect, then it may be addressed under the comprehensive Berry Sexual Misconduct Policy instead of this Policy

III. FORMAL GRIEVANCE PROCEDURE

This portion of the Policy outlines the steps taken to initiate a grievance, as well as USDOE's procedural requirements for investigation and adjudication of Formal Complaints.

A. Formal Complaint

The submission of a Formal Complaint triggers the Formal Grievance Process described in this section when received by the Title IX Coordinator.

A Formal Complaint is defined as "a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment [as defined by the Title IX Regulations] against a respondent and requesting that [Berry] investigate the allegation of sexual harassment."

At the time a Formal Complaint is filed, "a complainant must be participating in or attempting to participate in the education program or activity." A Formal Complaint must be in writing and may be filed with the Title IX Coordinator in person, by mail, or by email. The Formal Complaint must contain the complainant's physical or digital signature, or some other indication that the complainant is the person filing it. (106.30.)

Berry strongly encourages complainants to file Formal Complaints to initiate the required Formal Grievance Process described in this Policy. If the alleged conduct meets the Regulations' definitional and jurisdictional requirements, the law now requires a Formal

Complaint before Berry can pursue a full investigation or explore the possibility of an informal or early resolution, which occur before holding a disciplinary hearing or issuing sanctions.

If Berry receives a report of sexual misconduct that falls within this Formal Grievance Policy's scope (see Section II) but no Formal Complaint is filed, then the new Title IX Regulations prevent Berry from administering a formal grievance process that may impose disciplinary sanctions or other actions against a respondent. Supportive measures, however, may still be given. According to USDOE, the purpose of the Formal Complaint is to clarify that the complainant (or the Title IX Coordinator) believes that the school should investigate the allegations of sexual harassment against the respondent. 34 C.F.R. § 106.44(a); 34 C.F.R. § 106.45(b)(1)(i); see also 34 C.F.R. § 106.8(c).

- i. After filing a Formal Complaint, a complainant may withdraw their Formal Complaint at any time by providing written notice to the Title IX Coordinator. That withdrawal will result in dismissal of the Formal Grievance Process unless the Title IX Coordinator elects to continue the process by signing a Formal Complaint.
- ii. A Title IX Coordinator may sign a Formal Complaint to initiate or continue the Formal Grievance Process if necessary to fulfill the school's responsibility to not be deliberately indifferent to actual knowledge of sexual misconduct. Signing a Formal Complaint does not make a Title IX Coordinator a complainant or otherwise a party.
- iii. Berry may, but is not required to, consolidate Formal Complaints arising out of the same factual circumstances:
 - a. Where there is more than one complainant or respondent;
 - b. Where a complaint has also been filed by the respondent against the complainant. In such cases, the Formal Grievance Process for a later-filed complaint may be consolidated into an earlier-filed process rather than re-start from the beginning (e.g., the new charges may be considered in the course of a pre-existing investigation). (106.45(b)(4).)
- iv. **Mandatory Dismissal (106.45(b)(3)(i, iii).)**
If a Formal Complaint is filed, Berry will investigate its allegations. If the conduct reported does not meet the Formal Grievance Policy scope requirements for "sexual harassment", Berry **MUST** dismiss the Formal Complaint under this Policy. In such circumstance, the complaint will be transferred into the Berry Sexual Misconduct Policy for review and possible investigation and resolution. In such circumstance, Berry will promptly and simultaneously send written notice to each party of the dismissal of the Formal Complaint, the reasoning, and the transfer.

B. Responsibility of the Title IX Coordinator (106.44(a).)

Upon receipt of any report of alleged sexual misconduct, the Title IX Coordinator will promptly contact the complainant to discuss the availability of supportive measures and explain the process involved in filing a Formal Complaint. The Title IX Coordinator will inform the complainant of the

availability of supportive measures with or without the filing of a Formal Complaint, and will consider the complainant's wishes with respect to supportive measures.

Supportive measures will be assessed and may be offered as needed to complainants, respondents and other members of the Berry community who may have been affected by the alleged conduct. Supportive measures are discussed in Section XI of the comprehensive policy.

The Title IX Coordinator may conduct a limited, threshold investigation prior to the Formal process:

1. to determine if the alleged conduct meets the Formal Grievance Policy scope requirements;
2. to determine whether the college's Title IX obligations require the Title IX Coordinator to "sign" a Formal Complaint if the Complainant does not file one; and
3. for other limited purposes provided that if a Formal Complaint is filed or signed, the Title IX Coordinator will fulfill the terms of this Formal Grievance Process, including the notice provisions immediately below and the more thorough investigation process described below even if it is somewhat duplicative of the threshold investigation.

The Title IX Coordinator may remove a respondent from the education program or activity on an emergency basis if the Title IX Coordinator conducts an individualized safety and risk analysis and determines that there is an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifying removal. The respondent must receive notice and an opportunity to challenge the decision immediately following such removal. (106.44(c).)

The Title IX Coordinator, or the Assistant Vice President for Human Resources for faculty and staff matters, may place a non-student employee respondent on administrative leave during the pendency of a Formal Grievance Process. (106.44(d).)

C. Communication of Complaint (106.45(b)(2))

Upon receipt of a Formal Complaint, Berry will provide written notice to known parties of Berry's Formal Grievance Process by providing access to this policy. The notice must be given as soon as practicable and with sufficient time to prepare a response before any initial investigation interview. The notice will also include the allegations potentially constituting sexual harassment, including sufficient details known at the time.

Sufficient details are defined in the Title IX Regulations to include:

- The identities of the parties involved in the incident, if known;
- The conduct allegedly constituting sexual harassment; and
- The date and location of the alleged incident, if known.

The following statements are also required to be included in the written notice:

- The respondent is presumed not responsible for the alleged conduct.
- A determination regarding responsibility is made at the conclusion of the grievance process.

- The parties may have an advisor of their choice who may be, but is not required to be, an attorney.
- The parties may inspect and review evidence.
- The parties are prohibited from knowingly making false statements or knowingly submitting false information during the grievance process.

If, at any point during the course of the investigation, Berry determines it is necessary to investigate additional conduct allegations not included in the original notice, it will provide supplemental notice of any additional allegations to the parties.

D. Investigation Procedures

The Title IX Coordinator will appoint an Investigator, who will promptly investigate the allegations subject to the Formal Grievance Process. The investigation may include, among other steps, interviewing the complainant, the respondent, and any witnesses; reviewing law enforcement investigation documents if applicable; reviewing relevant student or employment files; and gathering and examining other relevant documents, social media and evidence.

The Investigator will attempt to collect all information and evidence relevant to the allegations. While the Investigator will have the burden of gathering evidence, it is crucial that the parties present evidence and identify witnesses to the Investigator so that they may be considered during the investigation. As described below in Section III.E.ii., while all evidence presented at a hearing by the parties will be considered, the hearing panel may, in their discretion, grant lesser weight to last-minute information or evidence introduced at the hearing that was not previously presented for investigation by the Investigator.

The investigation file should contain all information gathered during the investigation that is potentially relevant to the alleged misconduct; the Investigator should not filter or exclude evidence or decide the weight or credibility of evidence, unless the evidence is clearly irrelevant.

When investigating a Formal Complaint and throughout the grievance process, Berry will:

1. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the college and not on the parties. This means that the college's decision-makers will use the preponderance standard. See also Subsection E below.
2. Provide an equal opportunity for the parties to present witnesses and relevant evidence.
3. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
 - a. Berry expects the parties to respect the sensitive nature of allegations of sexual misconduct and to respect other parties' sense of confidentiality.
 - b. While Berry cannot prevent a party from discussing the allegations under investigation, the Title IX Regulations and this Policy prohibit retaliation against any person because they participate or refuse to participate in any part of the school's sexual misconduct processes.
 - c. FERPA is a federal law that protects the confidentiality of student educational records. Records generated under this Policy, including those shared with the parties, are

educational records covered by FERPA. Consistent with FERPA's prohibition on re-disclosure of confidential information, any person who receives another person's confidential information solely as a result of participation in any investigation or proceeding under this Policy, is prohibited from using or disclosing such information outside of such forums without express consent or for any improper purpose. This provision only applies to other people's confidential information, as a party is never restricted from discussing their own experience. This provision does not apply to any information learned outside of an investigation or proceeding under this Policy.

4. Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to bring an advisor of choice (who may be, but is not required to be, an attorney) to any related meeting or proceeding. Berry will not limit the choice or presence of an advisor for either the complainant or respondent in any meeting or grievance proceeding; however, Berry will restrict the extent to which the advisor may actively participate in the proceedings, which will apply equally to both parties' advisors.

Advisors are not permitted to directly participate in any proceeding, except as specified in Section III.E.iii. below related to hearings. Advisors may be present solely to advise or support the party and are prohibited from speaking directly to the investigator, hearing panel members, other parties, or witnesses in such proceedings.

5. Provide written notice to each party of the date, time, location, participants, and purposes of each Formal Grievance Process meeting at which they are invited to participate, with sufficient time for the party to prepare to participate:
 - a. For all hearings, Berry will provide 10 days' notice;
 - b. For all non-hearing investigative interviews or meetings to which a party is invited or expected at Berry's discretion, Berry will provide 5 days' notice.

Following the investigation, the Investigator will draft an investigation report succinctly describing all collected information. The Investigator will not make any recommendation as to whether a Policy violation has occurred or potential sanctions.

E. Evidentiary Considerations

While investigating the allegations of any Formal Complaint of sexual harassment, the Investigator will conduct an objective evaluation of all relevant evidence. Relevant evidence is any evidence that may tend to make the allegations at issue more or less likely to be true.

1. Standard of evidence

In assessing allegations of sexual harassment and conducting its Formal Grievance Process, Berry will use a preponderance of the evidence standard. This standard means determining whether the alleged sexual misconduct is "more likely than not" to have occurred. This standard will apply to all Formal Complaints of sexual harassment, regardless of whether the Formal Complaint is against a student or any employee, including faculty. (106.45(b)(1)(vii).)

2. Provide both parties an equal opportunity to inspect and review any evidence Berry obtained as part of the investigation, whether obtained from a party or other source that is directly related to the allegations raised in a Formal Complaint. The provision of such evidence is intended to help each party meaningfully respond to the evidence before the investigation concludes.

Parties may elect to submit certain records of medical examinations, treatment, or mental health services. Berry will not access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, *unless* the party voluntarily consents in writing to their use in a Formal Grievance Process. (106.45(b)(5)(i).)

E. Investigative Report (106.45(b)(5)(vi-vii).)

Prior to completion of the investigative report, Berry will send to each party, and the party's advisor if any, a draft investigative report and any relevant evidence. Such evidence will be available at any hearing, to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

Berry retains discretion to elect to send such materials in an electronic format or a hard copy. The provision of such evidence may include data security safeguards that prevent it from being downloaded, printed or forwarded.

The parties will have 10 calendar days to submit a written response. The investigator will consider any such response prior to completion of the final investigative report. The investigator will then create a final investigative report that fairly summarizes the relevant evidence. The final investigative report will not make any recommendation as to whether a policy violation has occurred or potential sanctions.

At least 10 days prior to a hearing, Berry will send the final investigative report to each party, and the party's advisor if any, for their review and written response. Any such response must be received by the Title IX Coordinator within five days of when the final investigative report was delivered to the party, so that the party's response may be available for consideration by the hearing panel. If warranted, the investigator may choose to update the final investigative report to take a party's response into account, in which case the hearing date may be postponed.

F. Permissive Dismissal

At any time during the investigation or hearing, Berry may dismiss the Formal Complaint or any of its allegations if:

- a. A complainant notifies the Title IX Coordinator in writing that he or she would like to withdraw the Formal Complaint in whole or in part;
- b. The respondent is no longer enrolled in or employed by the school; or
- c. Specific circumstances prevent Berry from gathering evidence sufficient to reach a determination as to the Formal Complaint, in whole or in part.

(106.45(b)(3)(ii).)

If a Formal Complaint is withdrawn, the Title IX Coordinator may choose in his or her discretion to sign the Formal Complaint to continue the Formal Grievance Process.

If the respondent is no longer enrolled or employed at the school, Berry may take such action it deems necessary to appropriately mark student or employment records regarding the departure during a disciplinary process without a determination as to responsibility, or reasonably restrict a respondent's access to campus.

If permissive dismissal is granted under this section, the Formal Grievance Process will cease. Per the Title IX Regulations, no further investigation will occur, and no disciplinary sanctions or actions can be imposed against the respondent.

In all such circumstances, supportive measures may be continued.

E. Resolution Procedures

Berry's Formal Grievance Process will then proceed to a live hearing before one or more hearing panel members, who will consider all evidence presented (subject to the terms below) and determine whether a respondent is or is not responsible for a violation of this Policy, based on the standard of a preponderance of evidence. Under that standard, the burden of proof is met, and a respondent may be found responsible for a policy violation, if the hearing panel determine that the evidence proves it is more likely than not that the respondent committed the conduct alleged. If the respondent is found responsible for a violation of this Policy, the respondent may be subjected to disciplinary action. (106.45(b)(6)(i).)

1. The hearing panel members will be selected by the Title IX Coordinator and may vary based on the enrollment or employment status of the respondent.
 - a. Student-respondent cases typically will be adjudicated by a three-member hearing panel of trained Berry faculty and/or staff. One of the three panel members will be designated as the chairperson. A separate hearing officer who is not a member of the three-member panel is also permitted to preside as a hearing officer and make evidentiary rulings at the hearing. Any such hearing officer will not play any active role in deliberations by the hearing panel, or the determination as to whether the Respondent is responsible for the conduct alleged.
 - b. Faculty-respondent cases typically will be resolved by the Provost.
 - c. Employee-respondent cases typically will be resolved by the Vice President for Finance.

The hearing panel members will not be the same person as the Title IX Coordinator or the Investigator.

2. At the request of either party, Berry will conduct the live hearing with the parties located in separate physical locations. Technology will be used to enable the hearing panel and parties to simultaneously see and hear the party or witness answering questions.

3. Berry will transcribe or record (audio or audiovisual) any adjudicative hearing. It will be available to the parties for inspection and review in compliance with FERPA.

i. Pre-hearing Procedures

1. The Title IX Coordinator will identify the hearing panel to the parties ten days in advance of the hearing. Either party may recuse a named hearing panel member if believed to have a conflict of interest or bias. A recusal must be delivered in writing to the Title IX Coordinator at least seven days in advance of the hearing, specifying the reasons for such belief. The Title IX Coordinator has sole discretion to keep or replace the challenged hearing panel member, and if replaced, may postpone the hearing to allow for a replacement.
2. Five days in advance of the hearing, the parties will identify their expected attendees (including any advisor), their expected witnesses (including themselves), and the witnesses' expected sequence, via writing to the Title IX Coordinator, who will supply the disclosure to the other party so that they can be prepared. The parties will not be strictly bound to their disclosures, but they should be submitted in good faith.
3. Generally, parties will be in charge of choosing and supplying their own witnesses at the hearing. When necessary for fair resolution and to gather evidence sufficient to reach a determination, the hearing panel will have discretion to ask the Title IX Coordinator to request additional witnesses after receipt of the parties' witness lists; recognizing, however, that the school has no ability to compel any witness to attend. Any such requested witness will be disclosed to the parties.

ii. Evidence

At the hearing, all relevant evidence will be objectively evaluated. Credibility determinations will not be based on a person's status as a complainant, respondent, or witness. (106.45(b)(1)(ii).)

The Title IX Regulations (34 C.F.R. § 106.45(b)(6)(i)) state that questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless:

- a. "offered to prove that someone other than the respondent committed the conduct alleged" or
- b. "if 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."

While all relevant evidence presented at a hearing by the parties will be considered, the hearing panel have discretion to grant lesser weight to last-minute information or evidence introduced at the hearing that were not previously presented for investigation by the Investigator.

iii. Cross-examination

Each party may be accompanied to the hearing by the advisor of their choice who may be, but is not required to be, an attorney. Advisors may be present solely to advise or support the party

and are prohibited from speaking directly to the investigator, hearing panel, other parties, or witnesses during the hearing, except for conducting cross examination.

At the hearing, each party's advisor is permitted to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross examination at the live hearing must be conducted directly, verbally, and in real time by the party's advisor of choice, and **never by a party personally**. (106.45(b)(6)(i).) The hearing panel will typically ask questions before either advisor.

If a party does not have an advisor present at the live hearing, Berry will provide one without fee or charge to conduct cross-examination on behalf of that party. The advisor provided may be, but is not required to be, an attorney. (106.45(b)(6)(i).)

The hearing panel may consider and rely on, as appropriate, statements of any party or witness in reaching a decision on responsibility, even if that party or witness does not appear or submit to cross-examination. The members of the hearing panel have complete discretion in determining the credibility and reliability of such statements, and what weight to give such evidence in reaching a final determination. However, the hearing panel cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing, refusal to submit to cross-examination, or respond to any questions.

Only relevant cross-examination and other questions may be asked of a party or witness. Before a party or witness answers a cross-examination or other question, the hearing panel or hearing officer must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

If a party or witness does not submit to cross-examination at the live hearing, the hearing panel must not rely on any statement of that party or witness in reaching a determination regarding responsibility. However, the hearing panel cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions. (106.45(b)(6)(i).)

iv. Resolution Procedures

The hearing panel will issue a written determination following the hearing. Based on the preponderance of the evidence standard, the hearing panel will decide if the respondent is responsible for engaging in the conduct alleged, and if so, what disciplinary action may be appropriate.

The written determination will include:

- Identification of the allegations potentially constituting sexual harassment;
- 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 evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of this Policy to the facts;

- A statement of, and rationale for, the findings for each allegation, including:
 - a. A determination regarding responsibility;
 - b. Any disciplinary sanctions the hearing panel imposes on the respondent; and
 - c. Whether remedies designed to restore or preserve equal access to Berry's education program or activity will be provided to the complainant; and
 - d. Procedures and permissible grounds upon which the parties may appeal the determination.

(106.45(b)(7)(ii).)

The written determination will be provided to the parties simultaneously.

Supportive measures also may be provided to the complainant that are designed to restore or preserve equal access to Berry's education program or activity, even if they are not listed in the written determination. Remedies and supportive measures that do not impact the respondent should not be disclosed in the written determination; rather, the determination should simply indicate that "remedies will be provided to the complainant." The Title IX Coordinator is responsible for effective implementation of any remedies and supportive measures.

(106.45(b)(7)(iv)

v. Range of Sanctions and Remedies (106.45(b)(1)(vi))

Sanctions and discipline upon a finding of responsibility may include any and all actions as outlined in the Viking Code, up to and including, disciplinary probation, suspension or expulsion. A list of those actions can be found in [here](#).

vi. Finality

The determination regarding responsibility becomes final either:

1. if an appeal is filed, on the date that Berry provides the parties with the written determination of the result of the appeal, or
2. if an appeal is not filed, the date on which an appeal would no longer be considered timely. (106.45(b)(7)(iii).)

F. Appeal of Resolution

Both parties may appeal from a determination regarding responsibility, or from a dismissal of a Formal Complaint or any allegations therein, only on the following grounds: In order to be considered, appeals must meet one of four conditions:

1. The respondent's right to a fair hearing was violated. Procedural or process errors must be significant enough to have affected the outcome of the case in order for the fair hearing standard to have been violated a procedural irregularity, meaning an alleged failure to follow the process outlined in this Formal Policy, that affected the outcome of the matter;
2. New and significant information can be introduced that was not reasonably available at the time of the hearing or dismissal and could have affected the outcome of the case;

3. The Title IX Coordinator, Investigator, 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. The notice of appeal must describe specifically the basis upon which such conflict of interest or bias is alleged and how it allegedly affected the outcome.
4. Berry reserves the right to offer an appeal equally to both parties on additional grounds in its discretion. (106.45(b)(8)(i-ii).)

Appeals must be submitted in writing to the Title IX Coordinator within 10 days of the date that the written adjudication determination is provided to the parties. The written appeal must state the grounds for the appeal, include the name of the appealing party, and establish that it is submitted by the appealing party. The appeal statement must contain a sufficient description supporting the grounds for appeal. If the grounds for appeal is to consider new evidence that could affect the outcome of the matter that was not reasonably available to the appealing party before or during the time of the hearing or the dismissal, then the written appeal must include such evidence and the reasons why it was not available. The Title IX Coordinator retains discretion to verify and/or waive minor procedural variations in the timing and content of the appeal submission.

Upon receipt of an appeal, Berry will

1. Notify the other party in writing when the appeal is filed and implement appeal procedures equally for both parties;
2. Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the original determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
3. Ensure that the decision-maker(s) for the appeal does not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent, and that the decision-maker(s) for the appeal has received the appropriate and necessary training;
4. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.

Berry will provide a copy of the appeal to the non-appealing party. The non-appealing party may submit a written statement within 10 days that may seek to affirm the initial decision and/or respond to the appeal statement. The Title IX Coordinator has discretion to impose or withhold any applicable sanctions or supportive measures prior to the deadline for submitting an appeal or the resolution of any appeal.

The appeals panel will issue a written decision describing the result of the appeal and the rationale for the result within a reasonably prompt time frame following receipt of all appeals materials. The appeal will determine whether the hearing panel made an error on the grounds alleged in the appeal statement. The appeal is typically determined based on the existing record, but appeals panel will have discretion to convene a limited or full hearing if needed.

The appeal decision will be given simultaneously to both parties. (106.45(b)(8)(iii)(E-F).)

G. Informal Resolution

At any time prior to reaching a determination regarding responsibility, Berry may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication. Berry may not offer an informal resolution process unless a Formal Complaint is filed. Both parties must agree to participate in an informal resolution process, and if they do, the Formal Grievance Process stops. Either party may withdraw from the informal process and re-start the Formal Grievance Process at any time before an informal resolution is reached. Berry will not require the parties to participate in an informal resolution process, and will not require them to waive their rights to a Formal Grievance Process. (106.45(b)(9).)

Berry will not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student. (106.45)(b)(9)(iii).)

Prior to facilitating an informal resolution process, Berry will:

1. Provide written notice to the parties disclosing the following:
 - a. The allegations;
 - b. 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;
 - c. The fact that, at any time prior to agreeing to an informal resolution, any party may withdraw from the informal resolution process and resume the Formal Grievance Process; and
 - d. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.
2. Obtain the parties' voluntary, written consent to the informal resolution process.
(106.45(b)(9)(i-ii).)

If the parties agree to a resolution during an informal resolution process, the Formal Complaint will be deemed withdrawn and the Formal Grievance Process will be terminated. However, the informal resolution will be considered final.

IV. USDOE STATEMENTS OF EQUITABLE TREATMENT

As required by USDOE's Regulations, Berry's Formal Grievance Process will "treat complainants and respondents equitably by [1] offering supportive measures ... to a complainant, and [2] by following a grievance process that complies with [the new Title IX Regulations] before the imposition of any disciplinary sanctions or other actions that are not supportive measures ... against a respondent." (106.44(a); 106.45(b)(1)(i).) Supportive measures also may be offered as needed to respondents and other members of the Berry community who may be affected by sexual misconduct.

The Title IX Regulations define "supportive measures" as "non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent." These measures are offered to support Complainants and Respondents, where appropriate, as a way to assist affected persons in dealing with the conduct alleged and to continue participating in the educational program (if possible), while proceeding

through the process outlined in this Policy. They may be sought or provided before or after a Formal Complaint is filed, or where no Formal Complaint has been filed. “Such measures are designed to restore or preserve equal access to the [school’s] education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the [school’s] educational environment, or deter sexual harassment.”

Supportive measures may include: counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

Berry will keep any supportive measures provided to the complainant or respondent confidential, to the extent possible. However, supportive measures that impact other members of the Berry community (e.g. mutual no-contact orders, where the other party must be informed of the order and its implications) may be disclosed in order to enforce them. The Title IX Coordinator will coordinate the implementation of supportive measures.

An individual’s status as a respondent will not be considered a negative factor during investigation and consideration of the grievance. Respondents are entitled to, and will receive the benefit of, a presumption that they are not responsible for the alleged conduct unless and until the grievance process concludes and a determination regarding responsibility is issued. Similarly, a person’s status as a complainant, respondent, or witness will not determine whether or not they are deemed credible.

Berry’s Formal Grievance Process will provide remedies to a complainant only if the grievance process described in this Policy results in a determination that the respondent is responsible for sexual harassment. Remedies are designed to restore or preserve equal access to the school’s education program or activity, and they may include the same individualized services as supportive measures. Remedies may be disciplinary and punitive.

Title IX Coordinators, investigators, hearing panel members or decision-makers, and any person who facilitates an informal resolution process (Title IX administrators) will not have a conflict of interest or bias in favor of or against complainants or respondents generally, or an individual complainant or respondent in the grievance process. Berry will provide necessary and appropriate training to each administrator involved in the Title IX process. Training materials will not rely on sex stereotypes and will promote impartial investigations and adjudications of Formal Complaints of sexual harassment. (106.45(b)(1)(iii).)

V. PROHIBITION OF RETALIATION (34 C.F.R. § 106.71.)

No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX, its regulation, or this Policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing. “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 purpose of interfering with any right or privilege secured by Title IX or this [Policy], constitutes retaliation.”

Berry will “keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted” by Title IX, FERPA, or as otherwise required by law, or to carry out Berry’s Title IX procedures.

The exercise of rights protected under the First Amendment does not constitute retaliation.

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a sexual misconduct grievance proceeding does not constitute retaliation. A determination regarding responsibility alone, however, is not sufficient to conclude that any party made a materially false statement in bad faith.

Complaints alleging retaliation may be filed with the Title IX Coordinator and will follow grievance procedures either under this Policy or under the Berry Sexual Misconduct Policy.

In the event an individual alleges that the Title IX Coordinator retaliated against them, the individual may file a complaint with the Assistant Vice President for Human Resources, who will follow the grievance procedures either under this Policy or under the Berry Sexual Misconduct Policy. The Title IX Coordinator will not oversee the investigation or adjudication of a complaint alleging that they engaged in retaliation.