

JOHN BROWN UNIVERSITY TITLE IX POLICY

POLICY: Sexual Harassment, Including Sexual Assault, Dating Violence, Domestic Violence, Stalking, and Retaliation

1. Glossary

- *Advisor* means a person chosen by a party or appointed by the institution to conduct cross-examination for the party at the hearing, if any.
- *Reporting Party* means an individual who is alleged to be the victim of conduct that could constitute sexual harassment based on a protected class; or retaliation for engaging in a protected activity.
- *Complaint (formal)* means a document submitted or signed by a Reporting Party or signed by the Title IX Coordinator alleging sexual harassment or retaliation for engaging in a protected activity against a Responding Party and requesting that JBU investigate the allegation.
- *Confidential Resource* means an employee who, because of their professional licensure, is not required to report allegations of harassment and/or retaliation (irrespective of Clery Act Campus Security Authority status).
- *Day* means a calendar day.
- *Education program or activity* means locations, events, or circumstances where JBU exercises substantial control over both the Responding Party 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 JBU.
- *Final Determination*: A conclusion by the preponderance of the evidence that the alleged conduct did or did not violate policy.
- *Finding*: A conclusion by the preponderance of the evidence that the conduct did or did not occur as alleged (as in a “finding of fact”).
- *Formal Grievance Process* means “Process A,” a method of formal resolution designated by JBU to address conduct that falls within the policies included below, and which complies with the requirements of the Title IX regulations (34 CFR §106.45).

- *Grievance Process Committee* includes any investigators, hearing officers, appeal officers, and JBU appointed advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).
- *Hearing Facilitator* role is fulfilled by the Title IX Coordinator or their designee. The Title IX Coordinator may attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.
- *Hearing Officer(s)* refers to those who have decision-making and sanctioning authority within JBU's Formal Grievance process.
- *Investigator* means the person or persons charged by JBU with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.
- *Notice* means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- *Official with Authority (OWA)* means an employee of JBU explicitly vested with the responsibility to implement corrective measures for sexual harassment and/or retaliation on behalf of JBU, and who is obligated by policy to share knowledge, notice, and/or reports of harassment and/or retaliation with the Title IX Coordinator.
- *Parties* include the Reporting Party(ies) and Responding Party(ies), collectively.
- *Process A* means the Formal Grievance Process detailed below and defined above.
- *Process B* means any process designated by JBU to apply only when Process A does not, as determined by the Title IX Coordinator.
- *Recipient* means a postsecondary education program that is a recipient of federal funding.
- *Remedies* are post-finding actions directed to the Reporting Party and/or the community as mechanisms to address safety, prevent recurrence, and restore access to JBU's educational program.

- *Responding Party* means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment or retaliation for engaging in a protected activity.
- *Resolution* means the result of an informal or Formal Grievance Process.
- *Sanction* means a consequence imposed by JBU on a Responding Party who is found to have violated this policy.
- *Sexual Harassment* is the umbrella category including the offenses of sexual harassment, sexual assault, stalking, and dating violence and domestic violence.
- *Title IX Coordinator* is at least one official designated by JBU to ensure compliance with Title IX and JBU's Title IX program. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.
- *Title IX Team* refers to the Title IX Coordinator, Assistant Title IX Coordinator, and any member of the Grievance Process Committee.

2. Rationale for Policy

John Brown University (JBU) is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from sexual harassment and retaliation. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity,

JBU has developed internal policies that provide a prompt, fair, and impartial process for those involved in an allegation of sexual harassment or retaliation. JBU values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all those involved.

3. Applicable Scope

The core purpose of this policy is the prohibition of sexual harassment and retaliation. When an alleged violation of this policy is reported, the allegations are subject to resolution using JBU's "Process A" or "Process B," as determined by the Title IX Coordinator, and as detailed below.

When the Responding Party is a member of the JBU community, a grievance process may be available regardless of the status of the Reporting Party, who may or may not be a member of the

JBU community. This community includes, but is not limited to, students¹, student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, invitees, and campers.

The procedures below may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this policy.

4. Title IX Coordinator

Amy Fisher serves as the Title IX Coordinator and oversees implementation of this policy. The Title IX Coordinator has the primary responsibility for coordinating JBU's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent sexual harassment, and retaliation prohibited under this policy.

5. Independence and Conflict-of-Interest

The Title IX Coordinator manages the Title IX Committee and acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this policy and these procedures.

The members of the Title IX Committee are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Reporting Parties and/or Responding Parties, generally.

To raise any concern involving bias or conflict of interest by the Title IX Coordinator, contact Dr. Kimberly Hadley, Vice President for Finance & Administration at khadley@jbu.edu or their designee. Concerns of bias or a potential conflict of interest by any other Title IX Committee member should be raised with the Title IX Coordinator.

Reports of misconduct committed by the Title IX Coordinator should be reported to Dr. Kimberly Hadley, Vice President for Finance & Administration at khadley@jbu.edu or their designee. Reports of misconduct committed by any other Title IX Team member should be reported to the Title IX Coordinator.

¹ For the purpose of this policy, JBU defines "student" as any individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and who maintains an ongoing relationship with JBU.

6. Administrative Contact Information

Complaints or notice of alleged policy violations, or inquiries about or concerns regarding this policy and procedures, may be made internally to:

Title IX Coordinator – Amy Fisher
Chapman Administration Building Office 28
2000 W University St., Siloam Springs, AR 72761
479.524.7128
TitleIXCoordinator@jbu.edu
www.jbu.edu

Assistant Title IX Coordinator – Melanie Kennedy or Juan Carlos Rodriguez
2000 W University St., Siloam Springs, AR 72761
479.524.7223, 479.524.7344
TitleIXCoordinator@jbu.edu
www.jbu.edu

JBU has determined that the following administrators are Officials with Authority to address and correct sexual harassment and/or retaliation. In addition to the Title IX Team members listed above, these Officials with Authority listed below may also accept notice or complaints on behalf of JBU.

- Dr. Charles Pollard III, President
- Dr. Stephen Beers, Vice President for Student Development, Facilities and Athletics
- Dr. Robert Norwood, Vice President for Academic Affairs
- Dr. Kimberly Hadley, Vice President for Finance and Administration
- Dr. Jim Krall, Vice President for Development
- Juan Carlos Rodriguez, Dean of Residence Life
- Melanie Kennedy, Director of Human Resources
- Scott Wanzer, Director of Campus Safety
- Robyn Daugherty, Director of Athletics
- Any Campus Safety Officer

Inquiries may be made externally to:

Office for Civil Rights (OCR)
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-1100
Customer Service Hotline #: (800) 421-3481

Facsimile: (202) 453-6012
TDD#: (877) 521-2172
Email: OCR@ed.gov
Web: <http://www.ed.gov/ocr>

For complaints involving employees: [Equal Employment Opportunity Commission](#) (EEOC) ²

7. Notice/Complaints of Sexual Harassment and/or Retaliation

Notice or complaints of sexual harassment and/or retaliation may be made using any of the following options:

1) File a complaint with, or give verbal notice to, the Title IX Coordinator or any of the employees listed above as Officials with Authority. Such a report may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator.

[2] Report online, using the reporting form posted at <https://www.jbu.edu/campus-safety/report/>. Anonymous reports are accepted at <https://www.jbu.edu/campus-safety/report/silent/> but can give rise to a need to investigate. JBU tries to provide supportive measures to all Reporting Parties, which is impossible with an anonymous report. Because reporting carries no obligation to initiate a formal response, and as JBU respects Reporting Party requests to dismiss complaints unless there is a compelling threat to health and/or safety, the Reporting Party is largely in control and should not fear a loss of privacy by making a report that allows JBU to discuss and/or provide supportive measures.

3) Report to the Campus Safety Office by phone at 479.215.5000.

A Formal Complaint means a document submitted or signed by the Reporting Party or signed by the Title IX Coordinator alleging a policy violation by a Responding Party and requesting that JBU investigate the allegation(s).

A complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information in the section immediately above, or as described in this section. As used in this paragraph, the phrase “document filed by a Reporting Party” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by JBU) that contains the Reporting Party’s physical or digital signature, or otherwise

² EEOC has jurisdiction over Title IX employment claims. The Little Rock Area Office phone number is 800.669.4000..

indicates that the Reporting Party is the person filing the complaint, and requests that JBU investigate the allegations.

If notice is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Reporting Party to ensure that it is filed correctly.

8. Supportive Measures

JBU will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged sexual harassment and/or retaliation.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to JBU's education program or activity, including measures designed to protect the safety of all parties or JBU's educational environment, and/or deter sexual harassment and/or retaliation.

The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, JBU will inform the Reporting Party that they may file a formal complaint with JBU either at that time or in the future, if they have not done so already.

The Title IX Coordinator works with the Reporting Party to ensure that their wishes are considered with respect to the supportive measures that are planned and implemented.

JBU will maintain the privacy of the supportive measures, provided that privacy does not impair JBU's ability to provide the supportive measures. JBU will act to ensure as minimal an academic or occupational impact on the parties as possible.

JBU will implement measures in a way that does not unreasonably burden the other party.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to community-based service providers
- Visa and immigration assistance
- Student financial aid counseling
- Education to the institutional community or community subgroup(s)
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Providing transportation accommodations

- Implementing contact limitations (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Trespass, Persona Non Grata (PNG), or Be-On-the-Lookout (BOLO) orders
- Timely warnings
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator

Violations of no contact orders will be referred to appropriate student or employee conduct processes for enforcement.

9. Emergency Removal

JBU can act to remove a student Responding Party entirely or partially from its education program or activities, or take HR interim measures for an employee on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal.

This risk analysis is performed by the Title IX Coordinator in conjunction with the Threat Assessment Team using its typical objective violence risk assessment procedures.

In all cases in which an emergency removal is imposed, the student will be given notice of the action and the option to request to meet with the Title IX Coordinator and/or Chair of the Threat Assessment Team prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate.

When this meeting is not requested in a timely manner, objections to the emergency removal will be deemed waived. A Reporting Party and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator and/or Chair of the Threat Assessment Team determines it is equitable to do so.

This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX. There is no appeal process for emergency removal decisions.

A Responding Party may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator and/or Chair of the Threat Assessment Team for the show cause meeting.

The Title IX Coordinator and/or Chair of the Threat Assessment Team has discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion.

JBU will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator and/or the Chair of the Threat Assessment Team, these actions could include, but are not limited to: removing a student from a residence hall, temporarily re-assigning an employee, restricting a student's or employee's access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, authorizing an administrative leave, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics.

At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the parties.

Where the Responding Party is an employee, existing Human Resources measures or interim action are applicable.

10. Promptness

All allegations are acted upon promptly by JBU once it has received notice or a formal complaint. Complaints can take 60-90 days to resolve, typically. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but JBU will avoid all undue delays within its control.

Any time the general timeframes for resolution outlined in JBU procedures will be delayed, JBU will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

11. Privacy

Every effort is made by JBU to preserve the privacy of reports.³ JBU will not share the identity of any individual who has made a report or complaint of harassment or retaliation; any Reporting

³ For the purpose of this policy, privacy and confidentiality have distinct meanings. **Privacy** means that information related to a complaint will be shared with a limited number of JBU employees who "need to know" in order to assist in the assessment, investigation, and resolution of the report. All employees who are involved in JBU's response to notice under this policy receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of student education

Party, any individual who has been reported to be the perpetrator of sexual harassment or retaliation, any Responding Party, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures.

JBU reserves the right to determine which JBU officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act (FERPA). Only a small group of officials who need to know will typically be told about the complaint.

Information will be shared as necessary with Investigators, Hearing Officers, witnesses, and the parties. The circle of people with this knowledge will be kept as tight as possible to preserve the parties' rights and privacy.

JBU may contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk but will usually consult with the student first before doing so.

Confidentiality and mandated reporting are addressed more specifically below.

12. Jurisdiction of JBU

This policy applies to the education program and activities of JBU, to conduct that takes place on the campus or on property owned or controlled by JBU, at JBU-sponsored events, or in buildings owned or controlled by JBU's recognized student organizations. The Responding Party must be a member of JBU's community in order for its policies to apply.

records will be protected in accordance with the Family Educational Rights and Privacy Act ("FERPA"), as outlined in the JBU's Student Records Policy. The privacy of employee records will be protected in accordance with Human Resources policies. **Confidentiality** exists in the context of laws that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. The law creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouses. JBU has designated individuals who have the ability to have privileged communications as Confidential Resources. When information is shared by a Reporting Party with a Confidential Resource, the Confidential Resource cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information. For example, information may be disclosed when: (i) the individual gives written consent for its disclosure; (ii) there is a concern that the individual will likely cause serious physical harm to self or others; or (iii) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18, elders, or individuals with disabilities. Non-identifiable information may be shared by Confidential Resources for statistical tracking purposes as required by the federal Clergy Act. Other information may be shared as required by law.

This policy can also be applicable to the effects of off-campus misconduct that effectively deprive someone of access to JBU's educational program. JBU may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial JBU interest.

Regardless of where the conduct occurred, JBU will address notice/complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity. A substantial JBU interest includes:

- a. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;
- b. Any situation in which it is determined that the Responding Party poses an immediate threat to the physical health or safety of any student or other individual;
- c. Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
- d. Any situation that is detrimental to the educational interests or mission of JBU.

If the Responding Party is unknown or is not a member of the JBU community, the Title IX Coordinator will assist the Reporting Party in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report.

Further, even when the Responding Party is not a member of the JBU community, supportive measures, remedies, and resources may be accessible to the Reporting Party by contacting the Title IX Coordinator.

In addition, JBU may take other actions as appropriate to protect the Reporting Party against third parties, such as barring individuals from JBU property and/or events.

All vendors serving JBU through third-party contracts are subject to the policies and procedures of their employers.

When the Responding Party is enrolled in or employed by another institution, the Title IX Coordinator can assist the Reporting Party in liaising with the appropriate individual at that institution, as it may be possible to allege violations through that institution's policies. Similarly, the Title IX Coordinator may be able to assist and support a student or employee Reporting Party who experiences sexual harassment or retaliation in an externship, study abroad program, or other

environment external to JBU where sexual harassment policies and procedures of the facilitating or host organization may give recourse to the Reporting Party.

13. Time Limits on Reporting

There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the Responding Party is no longer subject to JBU's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

When notice/complaint is affected by significant time delay, JBU will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of notice/complaint.

14. Online Sexual Harassment and/or Retaliation

The policies of JBU are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on JBU's education program and activities or use JBU networks, technology, or equipment.

Although JBU may not control websites, social media, and other venues in which harassing communications are made, when such communications are reported to JBU, it will engage in a variety of means to address and mitigate the effects.

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites, sharing inappropriate content via social media, unwelcome sexual or sex-based messaging, distributing or threatening to distribute revenge pornography, breaches of privacy, or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the JBU community.

15. Policy on Nondiscrimination

The University is committed to the preservation of human dignity, and is particularly concerned about the possibility of harassment, whether sexual, racial, ethnic, or any other type. This applies to all members of the JBU community including but not limited to students, employees, and third parties. Harassment in any form - verbal, physical, or visual - is strictly against University policy and will result in immediate disciplinary action. Harassment of any type is strictly prohibited. It is a violation of state and local law and University regulations to commit a sexual assault (including rape).

The law and the policies of John Brown University prohibit disparate treatment on the basis of sex or any other protected characteristic, with regard to terms, conditions, privileges and perquisites of attendance. The prohibitions against harassment and retaliation are intended to complement and further those policies, not to form the basis of an exception to them.

The prohibited sex discrimination covers sexual harassment, sexual violence, domestic violence, dating violence, sexual assault, and stalking (see definitions below).

16. Definition of Sexual Harassment

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of Arkansas regard Sexual Harassment as an unlawful discriminatory practice.

JBU has adopted the following definition of Sexual Harassment in order to address the unique environment of an academic community.

Sexual Harassment, as an umbrella category, includes the actual or attempted offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

Conduct on the basis of sex or that is sexual that satisfies one or more of the following:

- 1) Quid Pro Quo:
 - a. an employee of JBU,
 - b. conditions⁴ the provision of an aid, benefit, or service of JBU,
 - c. on an individual's participation in unwelcome sexual conduct.

- 2) Sexual Harassment:
 - a. unwelcome conduct,
 - b. determined by a reasonable person,
 - c. to be so severe, and
 - d. pervasive, and,
 - e. objectively offensive,
 - f. that it effectively denies a person equal access to JBU's education program or activity.⁵

⁴ Implicitly or explicitly.

⁵ Unwelcomeness is subjective and determined by the Reporting Party (except when the Reporting Party is younger than the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Reporting Party"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

3) Sexual assault, defined as:

a) Sex Offenses, Forcible:

- Any sexual act directed against another person,
- without the consent of the Reporting Party,
- including instances in which the Reporting Party is incapable of giving consent.

b) Sex Offenses, Non-forcible:

- Incest:
 - 1) Non-forcible sexual intercourse,
 - 2) between persons who are related to each other,
 - 3) within the degrees wherein marriage is prohibited by Arkansas law.
- Statutory Rape:
 - 1) Non-forcible sexual intercourse,
 - 2) with a person who is under the statutory age of consent of 16 years old.

4) Dating Violence, defined as:

- a. violence,
- b. on the basis of sex,
- c. committed by a person,
- d. who is in or has been in a social relationship of a romantic or intimate nature with the Reporting Party.
 - i. The existence of such a relationship shall be determined based on the Reporting Party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
 - ii. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - iii. Dating violence does not include acts covered under the definition of domestic violence.

5) Domestic Violence, defined as:

- a. violence,
- b. on the basis of sex,
- c. committed by a current or former spouse or intimate partner of the Reporting Party,
- d. by a person with whom the Reporting Party shares a child in common, or
- e. by a person who is cohabitating with, or has cohabitated with, the Reporting Party as a spouse or intimate partner, or

- f. by a person similarly situated to a spouse of the Reporting Party under the domestic or family violence laws of Arkansas, or
- g. by any other person against an adult or youth Reporting Party who is protected from that person's acts under the domestic or family violence laws of Arkansas.

*To categorize an incident as Domestic Violence, the relationship between the Responding Party and the Reporting Party must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

6) Stalking, defined as:

- a. engaging in a course of conduct,
- b. on the basis of sex,
- c. directed at a specific person, that
 - i. would cause a reasonable person to fear for the person's safety, or
 - ii. the safety of others; or
 - iii. Suffer substantial emotional distress.

For the purposes of this definition—

- (i) Course of conduct means two or more acts, including, but not limited to, acts in which the Responding Party directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- (ii) Reasonable person means a reasonable person under similar circumstances and with similar identities to the Reporting Party.
- (iii) Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

JBU reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this policy.

c. Force, Coercion, Consent, and Incapacitation

As used in the offenses above, the following definitions and understandings apply:

Force: Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., "Have sex with me or I'll hit you," "Okay, don't hit me, I'll do what you want.").

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

Coercion: Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

Consent is:

- knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.

Individuals may experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.

Consent to some sexual contact cannot be presumed to be consent for other sexual activity. A current or previous intimate relationship is not sufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on JBU to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

Incapacitation: A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As

stated above, a Responding Party violates this policy if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to a sexual assault policy violation that the Responding Party neither knew nor should have known the Reporting Party to be physically or mentally incapacitated. "Should have known" is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the "who, what, when, where, why, or how" of their sexual interaction).

Incapacitation is determined through consideration of all relevant indicators of an individual's state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

17. Retaliation

Protected activity under this policy includes reporting an incident that may implicate this policy, participating in the grievance process, supporting a Reporting Party or Responding Party, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this Policy.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. JBU will take all appropriate and available steps to protect individuals who fear that they may be subjected to retaliation.

JBU and any member of JBU's community are prohibited from taking materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or 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 under this policy and procedure.

Filing a complaint within Process B could be considered retaliatory if those charges could be applicable under Process A, when the Process B charges are made for the purpose of interfering with or circumventing any right or privilege provided afforded within Process A that is not provided by Process B. Therefore, JBU vets all complaints carefully to ensure this does not happen, and to assure that complaints are tracked to the appropriate process.

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 grievance proceeding under this policy and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

18. Employee Reporting Responsibilities

All JBU employees (faculty, staff, administrators) are strongly encouraged to report actual or suspected sexual harassment or retaliation to appropriate officials immediately, though there are some limited exceptions.

In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality and are not required to report actual or suspected sexual harassment or retaliation. They may offer options and resources without any obligation to inform an outside agency or campus official unless a Reporting Party has requested the information be shared.

If a Reporting Party expects formal action in response to their allegations, reporting to any Official with Authority can connect them with resources to report crimes and/or policy violations, and these employees will immediately pass reports to the Title IX Coordinator (and/or police, if desired by the Reporting Party), who will take action when an incident is reported to them.

The following sections describe the reporting options at JBU for a Reporting Party or third-party (including parents/guardians when appropriate):

a. Confidential Resources

If a Reporting Party would like the details of an incident to be kept confidential, the Reporting Party may speak with:

- Counselors at the Student Counseling Center while functioning in the counseling role
- On-campus nurse
- On-campus members of the clergy/chaplains working within the scope of their licensure or ordination
- Off-campus (non-employees):
 - Licensed professional counselors and other medical providers
 - Local rape crisis counselors
 - Domestic violence resources
 - Local or state assistance agencies
 - Clergy/Chaplains
 - Attorneys

All of the above-listed individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, and/or professional credentials, except in extreme cases of immediacy of threat or danger or abuse of a minor, or when required to disclose by law or court order.

The counselors at The Student Counseling Center are available to help students free of charge and may be consulted on an emergency basis during normal business hours. Counseling for employees can be requested through the Title IX or Human Resources Offices.

b. Anonymous Notice to Officials with Authority

At the request of a Reporting Party, notice may be given by an Official with Authority to the Title IX Coordinator anonymously, without identification of the Reporting Party. The Official with Authority cannot remain anonymous themselves.

If a Reporting Party has requested that an Official with Authority maintain the Reporting Party's anonymity, the Official with Authority may do so unless it is reasonable to believe that a compelling threat to health or safety could exist. The Official with Authority can consult with the Title IX Coordinator on that assessment without revealing personally identifiable information.

Anonymous notice will be investigated by JBU to the extent possible, both to assess the underlying allegation(s) and to determine if supportive measures or remedies can be provided.

However, anonymous notice typically limits JBU's ability to investigate, respond, and provide remedies, depending on what information is shared.

When a Reporting Party has made a request for anonymity, the Reporting Party's personally identifiable information may be withheld by an Official with Authority, but all other details must be shared with the Title IX Coordinator. Officials with Authority will not be able to maintain requests for anonymity for Reporting Parties who are minors, elderly, and/or disabled, due to state reporting of abuse requirements.

c. Officials with Authority and Formal Notice/Complaints

The following employees of JBU: Cabinet Officers, Title IX Coordinator and Assistant Coordinator, Associate Vice President for Academic Administration, Dean of Residence Life, Director of Athletics, and any Campus Safety Officer are Officials with Authority and must promptly share with the Title IX Coordinator all known details of a report made to them in the course of their employment.

Officials with Authority must also promptly share all details of behaviors under this policy that they observe or have knowledge of, even if not reported to them by a Reporting Party or third-party.

Reporting Parties may want to carefully consider whether they share personally identifiable details with non-confidential Officials with Authority, as those details must be shared with the Title IX Coordinator.

Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as “Take Back the Night” marches or speak-outs do not provide notice that must be reported to the Coordinator by Officials with Authority, unless the Reporting Party clearly indicates that they desire a report to be made or seek a specific response from JBU.

Supportive measures may be offered as the result of such disclosures without formal JBU action.

Failure of an Official with Authority, as described above in this section, to report an incident of sexual harassment or retaliation of which they become aware is a violation of JBU policy and can be subject to disciplinary action for failure to comply.

Though this may seem obvious, when an Official with Authority is engaged in harassment or other violations of this policy, they still have a duty to report their own misconduct, though JBU is technically not on notice when a harasser is also an Official with Authority unless the harasser does in fact report themselves.

Finally, it is important to clarify that an Official with Authority who is themselves a target of harassment or other misconduct under this policy is not required to report their own experience, though they are, of course, encouraged to do so.

19. When a Reporting Party Does Not Wish to Proceed

If a Reporting Party does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law.

The Title IX Coordinator has ultimate discretion over whether JBU proceeds when the Reporting Party does not wish to do so, and the Title IX Coordinator may sign a formal complaint to initiate a grievance process upon completion of an appropriate violence risk assessment.

The Title IX Coordinator’s decision should be based on results of the violence risk assessment that show a compelling risk to health and/or safety that requires JBU to pursue formal action to protect the community.

A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. JBU may be compelled to act on alleged employee misconduct irrespective of a Reporting Party’s wishes.

The Title IX Coordinator must also consider the effect that non-participation by the Reporting Party may have on the availability of evidence and JBU's ability to pursue a Formal Grievance Process fairly and effectively.

When the Title IX Coordinator executes the written complaint, they do not become the Reporting Party. The Reporting Party is the individual who is alleged to be the victim of conduct that could constitute a violation of this policy.

When JBU proceeds, the Reporting Party (or their Advisor) may have as much or as little involvement in the process as they wish. The Reporting Party retains all rights of a Reporting Party under this Policy irrespective of their level of participation. Typically, when the Reporting Party chooses not to participate, JBU may appoint a proxy for the Reporting Party throughout the process, who will act to ensure and protect the rights of the Reporting Party, though this does not extend to the provision of evidence or testimony.

Note that JBU's ability to remedy and respond to notice may be limited if the Reporting Party does not want JBU to proceed with an investigation and/or grievance process. The goal is to provide the Reporting Party with as much control over the process as possible, while balancing JBU's obligation to protect its community.

In cases in which the Reporting Party requests confidentiality/no formal action and the circumstances allow JBU to honor that request, JBU will offer informal resolution options (see below), supportive measures, and remedies to the Reporting Party and the community, but will not otherwise pursue formal action.

If the Reporting Party elects to take no action, they can change that decision if they decide to pursue a formal complaint at a later date. Upon making a formal complaint, a Reporting Party has the right, and can expect, to have allegations taken seriously by JBU, and to have the incidents investigated and properly resolved through these procedures. Please consider that delays may cause limitations on access to evidence, or present issues with respect to the status of the parties.

20. Federal Timely Warning Obligations

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, JBU must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

JBU will ensure that a Reporting Party's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

21. False Allegations and Evidence

Deliberately false and/or malicious accusations under this policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination.

Additionally, witnesses and parties knowingly providing false evidence, tampering with, or destroying evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under JBU policy.

22. Amnesty for Reporting Parties and Witnesses

The JBU community encourages the reporting of misconduct and crimes by Reporting Parties and witnesses. Sometimes, Reporting Parties or witnesses are hesitant to report to JBU officials or participate in grievance processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Responding Parties may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of the JBU community that Reporting Parties choose to report misconduct to JBU officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

To encourage reporting and participation in the process, JBU maintains a policy of offering parties and witnesses amnesty from policy violations.

Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution. The decision not to offer amnesty is based on neither sex nor gender, but on the fact that collateral misconduct is typically addressed for all students within a progressive discipline system, and the rationale for amnesty – the incentive to report serious misconduct – is rarely applicable to Responding Party with respect to a Reporting Party.

Students: Sometimes, students are hesitant to assist others for fear that they may get in trouble themselves (for example, an underage student who has been drinking or using marijuana might hesitate to help take an individual who has experienced sexual assault to the Campus Safety Office).

JBU maintains a policy of amnesty for students who offer help to others in need. Although policy violations cannot be overlooked, JBU may provide purely educational options with no official disciplinary finding, rather than punitive sanctions, to those who offer their assistance to others in need.

23. Federal Statistical Reporting Obligations

Certain campus officials – those deemed Campus Security Authorities – have a duty to report the following for federal statistical reporting purposes (Clery Act):

- a) All “primary crimes,” which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
- b) Hate crimes, which include any bias-motivated primary crime as well as any bias motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;
- c) VAWA-based crimes,⁶ which include sexual assault, domestic violence, dating violence, and stalking; and
- d) Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.

All personally identifiable information is kept private, but statistical information must be shared with the Campus Safety Office regarding the type of incident and its general location (on or off-campus or in the surrounding area, but no addresses are given) for publication in the Annual Security Report and daily campus crime log.

A Campus Security Authority (CSA), as defined by the US Department of Education, is someone who has significant responsibility for student and campus activities. CSAs, to whom crimes may be reported include:

- Student Development Staff, including RAs and other student workers
- Athletics Staff, including student workers
- Campus Safety Staff, including student workers

Pastoral and professional counselors are exempt from CSA reporting requirements, but if and when they deem appropriate, they are encouraged to inform the persons they are counseling of procedures to report crimes on a voluntary, confidential basis.

RESOLUTION PROCESS FOR ALLEGED VIOLATIONS OF THE POLICY ON SEXUAL HARASSMENT (KNOWN AS PROCESS “A”)

1. Overview

JBU will act on any formal or informal notice/complaint of violation of the Policy that is received by

⁶ VAWA is the Violence Against Women Act, enacted in 1994 codified in part at 42 U.S.C. sections 13701 through 14040.

the Title IX Coordinator⁷ or any other Official with Authority by applying these procedures, known as “Process A.”

The procedures below apply to all allegations of sexual harassment or retaliation involving students, staff, administrators, or faculty members. A set of technical dismissal requirements within the Title IX regulations may apply as described below, but when a technical dismissal under the Title IX allegations is required, any remaining allegations will proceed using these same grievance procedures, clarifying which policies above are applicable. Although the effect of the Title IX regulations can be confusing, these grievance procedures apply to all policies above.

The procedures below may be used to address collateral misconduct arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another). All other allegations of misconduct unrelated to incidents covered by the Policy will be addressed through procedures described in the student, faculty, and staff handbooks.

2. Notice/Complaint

Upon receipt of a complaint or notice to the Title IX Coordinator of an alleged violation of the Policy, the Title IX Coordinator initiates a prompt initial assessment to determine the next steps JBU needs to take.

The Title IX Coordinator will initiate at least one of three responses:

- 1) Offering supportive measures because the Reporting Party does not want to file a formal complaint; and/or
- 2) An informal resolution (upon submission of a formal complaint); and/or
- 3) A Formal Grievance Process including an investigation and a hearing (upon submission of a formal complaint).

JBU uses the Formal Grievance Process to determine whether or not the Policy has been violated. If so, JBU will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to sexual harassment or retaliation, their potential recurrence, or their effects.

⁷ Anywhere this procedure indicates “Title IX Coordinator,” JBU may substitute a trained designee.

3. Initial Assessment

Following receipt of notice or a complaint of an alleged violation of this Policy, the Title IX Coordinator⁸ engages in an initial assessment, typically within one to five days. The steps in an initial assessment can include:

- If notice is given, the Title IX Coordinator seeks to determine if the person impacted wishes to make a formal complaint, and will assist them to do so, if desired.
 - If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint because a violence risk assessment indicates a compelling threat to health and/or safety.
- If a formal complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Reporting Party to make sure it is correctly completed.
- The Title IX Coordinator reaches out to the Reporting Party to offer supportive measures.
- The Title IX Coordinator works with the Reporting Party to ensure they are aware of the right to have an Advisor.
- The Title IX Coordinator works with the Reporting Party to determine whether the Reporting Party prefers a supportive and remedial response, an informal resolution option, or a formal investigation and grievance process.
 - If a supportive and remedial response is preferred, the Title IX Coordinator works with the Reporting Party to identify their wishes, assesses the request, and implements accordingly. No Formal Grievance Process is initiated, though the Reporting Party can elect to initiate one later, if desired.
 - If an informal resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for informal resolution, which informal mechanism may serve the situation best or is available and may seek to determine if the Responding Party is also willing to engage in informal resolution.
 - If a Formal Grievance Process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX:
 - If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address:
 - an incident, and/or
 - a pattern of alleged misconduct, and/or
 - a culture/climate concern, based on the nature of the complaint.
 - If it does not, the Title IX Coordinator determines that Title IX does not apply (and will “dismiss” that aspect of the complaint, if any), assesses which policies may apply, which resolution process is applicable, and will

⁸ If circumstances require, the Vice President for Finance & Administration or Title IX Coordinator will designate another person to oversee the process below should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.

refer the matter accordingly. Please note that dismissing a complaint under Title IX is solely a procedural requirement under Title IX and does not limit JBU's authority to address a complaint with an appropriate process and remedies.

a. Dismissal (Mandatory and Discretionary)⁹

JBU must dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

- 1) The conduct alleged in the formal complaint would not constitute sexual harassment as defined above, even if proved; and/or
- 2) The conduct did not occur in an educational program or activity controlled by JBU (including buildings or property controlled by recognized student organizations), and/or JBU does not have control of the Responding Party; and/or
- 3) The conduct did not occur against a person in the United States; and/or
- 4) At the time of filing a formal complaint, a Reporting Party is not participating in or attempting to participate in the education program or activity of JBU.¹⁰

JBU may dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing:

- 1) A Reporting Party notifies the Title IX Coordinator in writing that the Reporting Party would like to withdraw the formal complaint or any allegations therein; or
- 2) The Responding Party is no longer enrolled in or employed by JBU; or
- 3) Specific circumstances prevent JBU from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon any dismissal, JBU will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.

This dismissal decision is appealable by any party under the procedures for appeal below. The decision not to dismiss is also appealable by any party claiming that a dismissal is required or appropriate. This appeal may be made in writing to one of the Hearing Officers within seven days

⁹ These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR §106.45.

¹⁰ Such a Reporting Party is still entitled to supportive measures, but the formal grievance process is not applicable.

of notification of dismissal. A Reporting Party who decides to withdraw a complaint may later request to reinstate it or refile it.

4. Counterclaims

JBU is obligated to ensure that the grievance process is not abused for retaliatory purposes. JBU permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith. Counterclaims by a Responding Party may be made in good faith, but are, on occasion, also made for purposes of retaliation. Counterclaims made with retaliatory intent will not be permitted.

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

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

5. Right to an Advisor

The parties may each have an Advisor¹¹ of their choice present with them for all meetings, interviews, and hearings within the resolution process, if they so choose. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available.¹² Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the Hearing Officer.

a. Who Can Serve as an Advisor

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside of the JBU community.

The Title IX Coordinator will also offer to assign an Advisor for any party if the party so chooses.

¹¹ This could include an attorney, advocate, or support person. The law permits one Advisor for each party (witnesses are not entitled to Advisors within the process, though they can be advised externally.)

¹² "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing.

b. Advisor's Role in Meetings and Interviews

The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors may help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

JBU cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, JBU is not obligated to provide an attorney.

c. Advisors in Hearings/JBU-Appointed Advisor

Under U.S. Department of Education regulations under Title IX, a form of indirect questioning is required during the hearing, but must be conducted by the parties' Advisors. The parties are not permitted to directly question each other or any witnesses. If a party does not have an Advisor for a hearing, JBU will appoint an Advisor for the limited purpose of conducting any questioning of the other party and witnesses.

A party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor. If the party's Advisor will not conduct questioning, JBU will appoint an Advisor who will do so, regardless of the participation or non-participation of the advised party in the hearing itself. Extensive questioning of the parties and witnesses may also be conducted by the Hearing Officer during the hearing.

e. Pre-Interview Meetings

Advisors may request to meet with the administrative officials conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and JBU's policies and procedures.

f. Advisor Violations of JBU Policy

All Advisors are subject to the same JBU policies and procedures, whether they are attorneys or not. Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address JBU officials unless invited to, in a meeting or interview unless invited to (e.g., asking procedural questions). The Advisor may not make a presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Hearing Officer except during a hearing proceeding, during cross-examination.

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

Any Advisor who oversteps their role as defined by this policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

g. Sharing Information with the Advisor

JBU expects that the parties may wish to have JBU share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process.

If a party requests that all communication be made through their advisor, JBU will not comply with that request. Communication will typically be made directly with the party.

h. Privacy of Records Shared with Advisor

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by JBU. JBU may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by JBU's privacy expectations.

i. Expectations of an Advisor

JBU generally expects an Advisor to adjust their schedule to allow them to attend JBU meetings when planned, but may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

JBU may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

j. Expectations of the Parties with Respect to Advisors

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are encouraged to inform the Investigator(s) of the identity of their Advisor at least two (2) days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are encouraged to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor may be secured. Parties are encouraged to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) days before the hearing.

6. Resolution Processes

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with JBU policy. Although there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose, with the exception of information the parties agree not to disclose related to Informal Resolution, discussed below. JBU encourages parties to discuss any sharing of information with their Advisors before doing so.

a. Informal Resolution

Informal Resolution can include three different approaches:

- When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) to remedy the situation.
- When the parties agree to resolve the matter through an alternate resolution mechanism as described below, including mediation, restorative practices, etc., usually before a formal investigation takes place; see discussion in b., below.
- When the Responding Party accepts responsibility for violating policy, and desires to accept a sanction and end the resolution process (similar to above, but usually occurs post-investigation).

To initiate Informal Resolution, a Reporting Party needs to submit a formal complaint, as defined above. A Responding Party who wishes to initiate Informal Resolution should contact the Title IX Coordinator.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process.

Prior to implementing Informal Resolution, JBU will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by JBU.

JBU will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

b. Alternate Resolution Mechanism

Alternate Resolution is an informal mechanism, including mediation or restorative practices, etc. by which the parties reach a mutually agreed upon resolution of an allegation. All parties must consent to the use of an Alternate Resolution mechanism.

The Title IX Coordinator may look to the following factors to assess whether Alternate Resolution is appropriate, or which form of Alternate Resolution may be most successful for the parties:

- The parties' amenability to Alternate Resolution;
- Likelihood of potential resolution, considering any power dynamics between the parties;
- The parties' motivation to participate;
- Civility of the parties;
- Results of an ongoing risk analysis;
- Disciplinary history;
- Whether an emergency removal is needed;
- Complaint complexity;
- Emotional investment/capability of the parties;
- Rationality of the parties;
- Goals of the parties;
- Adequate resources to invest in Alternate Resolution (time, staff, etc.)

The ultimate determination of whether Alternate Resolution is available or successful is to be made by the Title IX Coordinator. The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions. Results of complaints resolved by Informal Resolution or Alternate Resolution are not appealable.

c. Responding Party Accepts Responsibility for Alleged Violations

The Responding Party may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Responding Party indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the Title IX Coordinator will determine whether Informal Resolution can be used according to the criteria

above.

If Informal Resolution is applicable, the Title IX Coordinator will determine whether all parties and JBU are able to agree on responsibility, sanctions, and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Responding Party is in violation of JBU policy and implements agreed-upon sanctions and/or remedies, in coordination with other appropriate administrator(s), as necessary.

This result is not subject to appeal once all parties indicate their written assent to all agreed upon terms of resolution. When the parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused.

When a resolution is accomplished, the appropriate sanction or responsive actions are promptly implemented in order to effectively stop the sexual harassment or retaliation, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Reporting Party and the community.

d. Negotiated Resolution

The Title IX Coordinator, with the consent of the parties, may negotiate and implement an agreement to resolve the allegations that satisfies all parties and JBU. Negotiated Resolutions are not appealable.

7. Grievance Process Committee

The Formal Grievance Process relies on a committee of administrators (“the Committee”) to carry out the process.

a. Committee Member Roles

Members of the Committee are trained annually, and can serve in in the following roles, at the direction of the Title IX Coordinator:

- To provide appropriate intake of and initial guidance pertaining to complaints
- To act as an Advisor to the parties
- To serve in a facilitation role in Informal Resolution or Alternate Resolution if appropriately trained in appropriate resolution modalities (e.g., mediation, restorative practices)
- To perform or assist with initial assessment
- To investigate complaints
- To serve as a hearing facilitator (process administrator, no decision-making role)
- To serve as a Hearing Officer regarding the complaint

- To serve as an Appeal Hearing Officer

b. Committee Member Appointment

The Title IX Coordinator, in consultation with the other administrators, appoints the Committee, which acts with independence and impartiality. Although members of the Committee are typically trained in a variety of skill sets and can rotate amongst the different roles listed above in different cases, JBU can also designate permanent roles for individuals in the Committee, using others as substitutes or to provide greater depth of experience when necessary. This process of role assignment may be the result of particular skills, aptitudes, or talents identified in members of the Committee that make them best suited to particular roles.

c. Committee Member Training

The Committee members receive annual training jointly OR based on their respective roles. This training includes, but is not limited to:

- The scope of JBU's Sexual Harassment Policy and Procedures
- How to conduct investigations and hearings that protect the safety of Reporting Parties and Responding Parties, and promote accountability
- Implicit bias
- Disparate treatment and impact
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, and impartial manner
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- How to apply definitions used by JBU with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy
- How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes
- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- Any technology to be used at a live hearing
- Issues of relevance of questions and evidence

- Issues of relevance to create an investigation report that fairly summarizes relevant evidence
- How to determine appropriate sanctions in reference to all forms of harassment and/or retaliation allegations
- Recordkeeping

8. Formal Grievance Process: Notice of Investigation and Allegations

The Title IX Coordinator will provide written notice of the investigation and allegations (the “NOIA”) to the Responding Party upon commencement of the Formal Grievance Process. This facilitates the Responding Party’s ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Reporting Party, who is to be given advance notice of when the NOIA will be delivered to the Responding Party.

The NOIA will include:

- A meaningful summary of allegations,
- The identity of the involved parties (if known),
- The precise misconduct being alleged,
- The date and location of the alleged incident(s) (if known),
- The specific policies implicated,
- A description of the applicable procedures,
- A statement of the potential sanctions/responsive actions that could result,
- A statement that JBU does not presume that the Responding Party is responsible for the alleged misconduct until the conclusion of the investigation and hearing process. Before a presumption of responsibility is made, all parties will have the opportunity to inspect and review all directly related and/or relevant evidence obtained during the investigation and will have the opportunity to comment on the evidence,
- A statement about JBU’s policy on retaliation,
- Information about the privacy of the process,
- Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor,
- A statement informing the parties that JBU’s Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,
- Detail on how the party may request disability accommodations during the interview process,
- The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have, and
- An instruction to preserve any evidence that is directly related to the allegations.

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges. Notice will be

made in writing and may be delivered via email to the parties' JBU-issued email or designated accounts. Once emailed, notice will be presumptively delivered.

9. Resolution Timeline

JBU will make a good faith effort to complete the resolution process within a sixty-to-ninety (60-90) daytime period, including appeal, which can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

10. Appointment of Investigators

Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints Committee members to conduct the investigation (typically using a team of two Investigators), usually within two (2) days of determining that an investigation should proceed.

11. Ensuring Impartiality

Any individual materially involved in the administration of the resolution process [including the Title IX Coordinator, Investigator(s), and Hearing Officer] may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Reporting Party or Responding Party.

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

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

JBU operates with the presumption that the Responding Party is not responsible for the reported misconduct unless and until the Responding Party is determined to be responsible for a policy violation by the preponderance of the evidence standard of proof.

12. Investigation Timeline

Investigations are completed expeditiously, normally within thirty (30) days, though some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

JBU will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

13. Delays in the Investigation Process and Interactions with Law Enforcement

JBU may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions.

JBU will communicate in writing the anticipated duration of the delay and reason to the parties and provide the parties with status updates if necessary. JBU will promptly resume its investigation and resolution process as soon as feasible. During such a delay, JBU will implement supportive measures as deemed appropriate.

JBU action(s) or processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

14. Steps in the Investigation Process

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence, and to fully review and respond to all evidence on the record.

The Investigator(s) typically take(s) the following steps, if not already completed (not necessarily in this order):

- Determine the identity and contact information of the Reporting Party
- In coordination with campus partners (e.g., the Title IX Coordinator), initiate or assist with any necessary supportive measures

- Identify additional policies implicated by the alleged misconduct and notify the Reporting Party and Responding Party of the policies implicated
- Assist the Title IX Coordinator with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the parties
- Meet with the Reporting Party to finalize their interview/statement, if necessary
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings
- Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of the other party and witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions
- Complete the investigation promptly and without unreasonable deviation from the intended timeline
- Provide regular status updates to the parties throughout the investigation
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) with a list of witnesses whose information will be used to render a finding
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included
- The Investigator(s) gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report
- The Investigator(s) shares the report with the Title IX Coordinator for their review and feedback, and the Investigator(s) incorporate any relevant feedback
- Prior to the conclusion of the investigation, the Title IX Coordinator will provide the parties and their respective Advisors (if so desired by the parties) a secured electronic or hard copy of the draft investigation report and the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which JBU does not intend to rely in reaching a determination, for a ten (10) day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten days.

- The Title IX Coordinator will provide the names of the hearing panelists to the parties when the draft of the investigation report is made available to the parties.
- The Investigator(s) may elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses
- The Investigator(s) will incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period
- The final report is then shared with all parties and their Advisors through secure electronic transmission or hard copy at least ten (10) days prior to a hearing. The parties are also provided with a file of any directly related evidence that was not included in the report

15. Role and Participation of Witnesses in the Investigation

Witnesses (as distinguished from the parties) who are employees of JBU are expected to cooperate with and participate in JBU's investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of policy and may warrant discipline. Student witnesses and witnesses from outside the JBU community are encouraged to cooperate with JBU investigations and to share what they know about a complaint.

Although in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. JBU will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

Witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s), though not preferred.

16. Recording of Interviews

No unauthorized audio or video recording of any kind is permitted during investigation meetings. JBU investigator(s) will record audio and/or video, and all involved parties will be made aware of audio and/or video recording.

17. Evidentiary Considerations in the Investigation

The investigation does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) questions and evidence about the Reporting Party's sexual

predisposition or prior sexual behavior, unless such questions and evidence about the Reporting Party's prior sexual behavior are offered to prove that someone other than the Responding Party committed the conduct alleged by the Reporting Party, or if the questions and evidence concern specific incidents of the Reporting Party's prior sexual behavior with respect to the Responding Party and are offered to prove consent.

18. Referral for Hearing

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing.

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

The Title IX Coordinator will select an appropriate Hearing Officer from the Committee.

19. Hearing Panel Composition

JBU will designate a Hearing Officer and two panelists from the Committee, at the discretion of the Title IX Coordinator. The Hearing Officer chairs the hearing panel discussions, chairs the live hearing, and will make the final decision on whether or not JBU's policy was violated. The Hearing Officer will consult with the Hearing Panel during the decision phase of the investigation.

The Hearing Panel will not have had any previous involvement with the investigation, The Title IX Coordinator may elect to have an alternate from the Committee sit in throughout the hearing process in the event that a substitute is needed for any reason.

Those who are serving as Advisors for any party may not serve as Hearing Officers or panelists in that matter.

The Title IX Coordinator may not serve as a Hearing Officer in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill this role. The hearing will convene at a time determined by the Hearing Officer or designee.

20. Evidentiary Considerations in the Hearing

Any evidence that the Hearing Officer determines is relevant and credible may be considered. The hearing does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) questions and evidence about the Reporting Party's sexual predisposition or

prior sexual behavior, unless such questions and evidence about the Reporting Party's prior sexual behavior are offered to prove that someone other than the Responding Party committed the conduct alleged by the Reporting Party, or if the questions and evidence concern specific incidents of the Reporting Party's prior sexual behavior with respect to the Responding Party and are offered to prove consent.

Previous disciplinary action of any kind involving the Responding Party may be considered in determining an appropriate sanction upon a determination of responsibility. This information is only considered at the sanction stage of the process and is not shared until then.

The parties may each submit a written impact statement prior to the hearing for the consideration of the Hearing Officer at the sanction stage of the process when a determination of responsibility is reached.

After post-hearing deliberation, the Hearing Officer renders a determination based on the preponderance of the evidence; whether it is more likely than not that the Responding Party violated the Policy as alleged.

21. Notice of Hearing

No less than ten (10) days prior to the hearing, the Title IX Coordinator or the Hearing Officer will send notice of the hearing to the parties. Once emailed, notice will be presumptively delivered.

The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.
- Information about any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Hearing Officer and parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator at least five (5) days prior to the hearing.
- Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence. For compelling reasons, the Hearing Officer may reschedule the hearing.
- A statement that any party or witness may choose not to offer evidence and/or answer questions at the hearing, either because they do not attend the hearing, or because they

attend but refuse to participate in some or all questioning. And that the Hearing Officer can only rely on whatever relevant evidence is available through the investigation and hearing in making the ultimate determination of responsibility. The Hearing Officer may not draw any inference solely from a party's or witness' absence from the hearing or refusal to submit to cross-examination or answer other questions.

- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they do not have an Advisor, and JBU will appoint one. Each party must have an Advisor present. There are no exceptions.
- A copy of all the materials provided to the Hearing Officer about the matter, unless they have been provided already.
- An invitation to each party to submit to the Hearing Officer an impact statement pre-hearing that the Hearing Officer will review during any sanction determination.
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) days prior to the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Responding Party is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by JBU and remain within the 60-90 day goal for resolution.

22. Alternative Hearing Participation Options

If a party or parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Title IX Coordinator or the Hearing Officer at least five (5) days prior to the hearing.

The Title IX Coordinator or the Hearing Officer can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the Title IX Coordinator or the Hearing Officer know at least five (5) days prior to the hearing so that appropriate arrangements can be made.

23. Pre-Hearing Preparation

The Hearing Officer or Title IX Coordinator after any necessary consultation with the parties, Investigator(s) and/or Title IX Coordinator, will provide all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) days prior to the hearing.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s) or have proffered a written statement or answered written questions, unless all parties and the Hearing Officer assent to the witness's participation in the hearing. The same holds for any evidence that is first offered at the hearing. If the parties and Hearing Officer do not assent to the admission of evidence newly offered at the hearing, the Hearing Officer may delay the hearing and instruct that the investigation needs to be re-opened to consider that evidence.

The parties will be given the name of the Hearing Officer at in the Hearing Notice. All objections to any Hearing Officer or panelist must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than the date the investigation report is finalized. Hearing Officers will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

The Title IX Coordinator will give the Hearing Officer a list of the names of all parties, witnesses, and Advisors at least five (5) days in advance of the hearing. Any Hearing Officer or panelist who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a Hearing Officer or panelist is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

During the ten (10) day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Hearing Officer at the pre-hearing meeting or at the hearing and will be exchanged between each party by the Hearing Officer.

24. Pre-Hearing Meetings

The Hearing Officer may convene a pre-hearing meeting(s) with the parties and/or their Advisors to invite them to submit the questions or topics they (the parties and/or their Advisors) wish to ask or discuss at the hearing, so that the Hearing Officer can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or provide recommendations for more appropriate phrasing. However, this advance review opportunity does not preclude the Advisors from asking a question for the first time at the hearing or from asking for a reconsideration based on any new information or testimony offered at the hearing. The Hearing Officer must document and share the rationale for any exclusion or inclusion at a pre-hearing meeting.

The Hearing Officer, **only** with full agreement of the parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the investigation report or during the hearing.

At each pre-hearing meeting with a party and their Advisor, the Hearing Officer will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not

relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant.

The Hearing Officer may rule on these arguments pre-hearing and may exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing. The Hearing Officer may consult with legal counsel and/or the Title IX Coordinator or ask either or both to attend pre-hearing meetings.

The pre-hearing meeting(s) may be recorded.

25. Hearing Procedures

At the hearing, the Hearing Officer has the authority to hear and make determinations on all allegations of sexual harassment and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the sexual harassment and/or retaliation, even though those collateral allegations may not specifically fall within the Policy. The Hearing Officer will consult with the Hearing Panelists during the decision phase of the investigation.

Participants at the hearing will include the Hearing Officer, any additional panelists, the parties, Advisors to the parties, any called witnesses, the Title IX Coordinator or their designee, and anyone providing authorized accommodations or assistive services. The Investigator(s) who conducted the investigation may attend, if needed.

The Hearing Officer will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Hearing Officer will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Hearing Officer and the parties and may then be excused.

26. Joint Hearings

In hearings involving more than one Responding Party or in which two (2) or more Reporting Parties have accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly.

However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Responding Party to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Responding Party with respect to each alleged policy violation.

27. The Order of the Hearing – Introductions and Explanation of Procedure

The Hearing Officer explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of the Hearing Officer on the basis of bias or conflict of interest. The Hearing Officer will rule on any such challenge unless the Hearing Officer is the individual who is the subject of the challenge, in which case the Title IX Coordinator will review and decide the challenge.

At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process may be managed by the Title IX Coordinator or their designee. The Title IX Coordinator also may attend to logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

28. Testimony and Questioning

The parties and witnesses may provide relevant information in turn, beginning with the Reporting Party, and then in the order determined by the Hearing Officer. The parties/witnesses will submit to questioning by the Hearing Officer and then by the parties through their Advisors (“cross-examination”).

All questions are subject to a relevance determination by the Hearing Officer. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Hearing Officer upon request if agreed to by all parties and the Hearing Officer), the proceeding will pause to allow the Hearing Officer to consider it (and state it if it has not been stated aloud), and the Hearing Officer will determine whether the question will be permitted, disallowed, or rephrased.

The Hearing Officer may invite explanations or persuasive statements regarding relevance with the Advisors, if the Hearing Officer so chooses. The Hearing Officer will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Hearing Officer will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Hearing Officer will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Hearing Officer has final say on all questions and determinations of relevance. The Hearing Officer may consult with legal counsel on any questions of admissibility. The Hearing Officer may ask Advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the Advisors on relevance once the Hearing Officer has ruled on a question.

If the parties raise an issue of bias or conflict of interest of an Investigator or Hearing Officer at the hearing, the Hearing Officer may elect to address those issues, consult with legal counsel, and/or refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not in issue at the hearing, the Hearing Officer should not permit irrelevant questions that probe for bias.

29. Refusal to Submit to Cross-Examination and Inferences

Any party or witness may choose not to offer evidence and/or answer questions at the hearing, either because they do not attend the hearing, or because they attend but refuse to participate in some or all questioning. The Hearing Officer can only rely on whatever relevant evidence is available through the investigation and hearing in making the ultimate determination of responsibility. The Hearing Officer may not draw any inference solely from a party's or witness' absence from the hearing or refusal to submit to cross-examination or answer other questions.

If charges of policy violations other than sexual harassment are considered at the same hearing, the Hearing Officer and Panelists may consider all evidence it deems relevant, may rely on any relevant statement, and may draw reasonable inferences from any decision by any party or witness not to participate or respond to questions.

If a party's Advisor of choice refuses to comply with JBU's established rules of decorum for the hearing, JBU may require the party to use a different Advisor. If a JBU-provided Advisor refuses to comply with the rules of decorum, JBU may provide that party with a different Advisor to conduct cross-examination on behalf of that party.

30. Recording Hearings

Hearings (but not deliberations) are recorded by JBU for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The Hearing Officer and Panelists, the parties, their Advisors, and appropriate administrators of JBU will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

31. Deliberation, Decision-making, and Standard of Proof

The Hearing Officer will determine whether the Responding Party is responsible or not responsible for the policy violation(s) in question. The preponderance of the evidence standard of proof is used. The Title IX Coordinator may be consulted by the Hearing Officer, but only to facilitate procedurally, not to address the substance of the allegations.

When there is a finding of responsibility on one or more of the allegations, the Hearing Officer may then consider the previously submitted party impact statements in determining appropriate sanction(s).

The Hearing Officer will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The Hearing Officer may – at their discretion – consider the statements, but they are not binding.

The Hearing Officer will review the statements and any pertinent conduct history provided by the Title IX Coordinator or the Dean of Residence Life and will determine the appropriate sanction(s) in consultation with other appropriate administrators, as required.

The Hearing Officer will then prepare a written statement and deliver it to the Title IX Coordinator, detailing the determination, rationale, the evidence used in support of its determination, the evidence not relied upon in its determination, credibility assessments, and any sanctions.

This report will be submitted to the Title IX Coordinator within seven (7) days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

32. Notice of Outcome

Using the deliberation statement, the Title IX Coordinator will work with the Hearing Officer to prepare a Notice of Outcome. The Title IX Coordinator will then share the letter, including the final determination, rationale, and any applicable sanction(s) with the parties and their Advisors within 7 days of receiving the Hearing Officer's determination statement.

The Notice of Outcome will then be shared with the parties simultaneously. Notification will be made in writing and will be emailed to the parties' JBU-issued email or otherwise approved account. Once emailed, notice will be presumptively delivered.

The Notice of Outcome will articulate the specific policy(ies) reported to have been violated, including the relevant policy section, and will contain a description of the procedural steps taken by JBU from the receipt of the misconduct report to the determination

The Notice of Outcome will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent JBU is permitted to share such information under state or federal law; any sanctions issued which JBU is permitted to share according to state or federal law; and any remedies provided to the Reporting Party designed to ensure access to JBU's educational or employment program or activity, to the extent JBU is permitted to share such information under state or federal law (this detail is not

typically shared with the Responding Party unless the remedy directly relates to the Responding Party).

The Notice of Outcome will also include information on when the results are considered by JBU to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

33. Sanctions

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Responding Party's disciplinary history
- Previous allegations or allegations involving similar conduct
- The need for sanctions/responsive actions to bring an end to the sexual Harassment and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of sexual harassment and/or retaliation
- The need to remedy the effects of the sexual harassment and/or retaliation on the Reporting Party and the community
- The impact on the parties
- Any other information deemed relevant by the Hearing Officer

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.

a. Student Sanctions

The following are typical sanctions that may be imposed upon students or organizations singly or in combination:

- *Warning*: A formal statement that the conduct was unacceptable and a warning that further violation of any JBU policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Probation*: A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of

campus, no-contact orders, and/or other measures deemed appropriate.

- *Suspension*: Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at JBU.
- *Dismissal*: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend JBU-sponsored events.
- *Restriction in commencement activities*: JBU may deny a student participation in commencement activities as a sanction if the student is found responsible for an alleged violation.
- *Organizational Sanctions*: Deactivation, loss of recognition, loss of some or all privileges (including JBU registration) for a specified period of time.
- *Other Actions*: In addition to or in place of the above sanctions, JBU may assign any other sanctions as deemed appropriate. The above sanctions may be accompanied by the support of required counseling.

b. Employee Sanctions/Responsive Actions

Responsive actions for an employee who has engaged in harassment and/or retaliation include:

- *Warning – Verbal or Written*
- *Performance Improvement Plan*
- *Enhanced supervision, observation, or review*
- *Required Training or Education*
- *Probation*
- *Denial of Pay Increase*
- *Loss of Oversight or Supervisory Responsibility*
- *Demotion*
- *Transfer*
- *Reassignment*
- *Assignment to new supervisor*
- *Restriction of stipends, research, and/or professional development resources*
- *Suspension with pay*
- *Suspension without pay*
- *Termination*

Other Actions: In addition to or in place of the above sanctions/responsive actions, JBU may assign any other responsive actions as deemed appropriate. The above sanctions may be accompanied by the support of required counseling.

34. Withdrawal or Resignation While Charges Pending

Should a student decide to not participate in the resolution process, the process proceeds absent

their participation to a reasonable resolution. Should a student Responding Party permanently withdraw from JBU, the resolution process ends, as JBU no longer has disciplinary jurisdiction over the withdrawn student.

However, JBU will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged sexual harassment and/or retaliation. The student who withdraws or leaves while the process is pending may not return to JBU without the approval of the Title IX Coordinator and the Office of Residence Life. Such exclusion applies to all campuses of JBU. A hold will be placed on their ability to be readmitted. They may also be barred from JBU property and/or events.

If the student Responding Party only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely and that student is not permitted to return to JBU unless and until all sanctions have been satisfied.

b. Employees: Should an employee Responding Party resign with unresolved allegations pending, the resolution process ends, as JBU no longer has disciplinary jurisdiction over the resigned employee.

However, JBU will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or retaliation.

The employee who resigns with unresolved allegations pending is not eligible for rehire with JBU or any campus of JBU, and the records retained by the Title IX Coordinator will reflect that status.

All JBU responses to future inquiries regarding employment references will include only titles and dates of employment.

35. Appeals

Any party may file a request for appeal (“Request for Appeal”), but it must be submitted in writing to the Title IX Coordinator within seven days of the delivery of the Notice of Outcome.

A new Hearing Officer will be selected by the Title IX Coordinator from the Title IX Committee. The Appeal Hearing Officer will not have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process.

The Request for Appeal will be forwarded to the Appeal Hearing Officer for consideration to determine if the request meets the grounds for appeal.

This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed.

a. Grounds for Appeal

Appeals are limited to the following grounds:

- (A) Procedural irregularity that affected the outcome of the matter;
- (B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- (C) The Title IX Coordinator, Investigator(s), or Hearing Officer had a conflict of interest or bias for or against Reporting Parties or Responding Parties generally or the specific Reporting Party or Responding Party that affected the outcome of the matter.

If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied by the Appeal Hearing Officer and the parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Appeal Hearing Officer will notify the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Hearing Officer.

The other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Hearing Officer will be emailed a copy of the request with the approved grounds and then be given seven (7) days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Hearing Officer to all parties for review and comment.

The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed to determine if it meets the grounds in this Policy by the Appeal Hearing Officer and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Investigator(s) and/or original Hearing Officer, as necessary, who will submit their responses in seven (7) days, which will be circulated for review and comment by all parties.

Neither party may submit any new requests for appeal after this time period. The Appeal Hearing Panel will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses and the Appeal Lead Hearing Officer will render a decision in no more than seven (7) days, barring exigent circumstances. All decisions apply the preponderance of the evidence standard.

A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each

approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which JBU is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent JBU is permitted to share under state or federal law.

Notification will be made in writing and may be emailed to the parties' JBU-issued email or otherwise approved account. Once emailed, notice will be presumptively delivered.

b. Sanctions Status During the Appeal

Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

If any of the sanctions are to be implemented immediately post-hearing, but pre-appeal, then emergency removal procedures (detailed above) for a hearing on the justification for doing so must be permitted within 48 hours of implementation.

JBU may still place holds on course registration pending the outcome of an appeal when the original sanctions included separation.

c. Appeal Considerations

- Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- An appeal is not an opportunity for the Appeal Hearing Officer to substitute their judgment for that of the original Hearing Officer merely because they disagree with the finding and/or sanction(s).
- The Appeal Hearing Officer may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Hearing Officer for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, decided on appeal.
- When appeals result in no change to the finding or sanction, that decision is final. When an appeal results in a new finding or sanction, that finding or sanction can be appealed one final time on the grounds listed above and in accordance with these procedures.

- In rare cases where a procedural or substantive error cannot be cured by the original Hearing Officer (as in cases of bias), the appeal may order a new hearing with a new Hearing Officer.
- The results of a new hearing can be appealed, once, on any of the three available appeal grounds.
- In cases in which the appeal results in reinstatement to JBU or resumption of privileges, all reasonable attempts will be made to restore the Responding Party to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

36. Long-Term Remedies/Other Actions

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the sexual harassment and/or retaliation, remedy the effects, and prevent reoccurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to Human Resources for potential Employee counseling
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training
- Provision of transportation accommodations
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no policy violation is found.

When no policy violation is found, the Title IX Coordinator will address any remedies owed by JBU to the Responding Party to ensure no effective denial of educational access.

JBU will maintain the privacy of any long-term remedies/actions/measures, provided privacy does not impair JBU's ability to provide these services.

37. Failure to Comply with Sanctions and/or Interim and Long-term Remedies and/or Responsive Actions

All Responding Parties are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Hearing Officer (including the Appeal Hearing Officer).

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, dismissal, and/or termination from JBU.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

38. Recordkeeping

JBU will maintain for a period of at least seven years records of:

1. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
2. Any disciplinary sanctions imposed on the Responding Party;
3. Any remedies provided to the Reporting Party designed to restore or preserve equal access to the JBU's education program or activity;
4. Any appeal and the result therefrom;
5. Any Informal Resolution and the result therefrom;
6. All materials used to train Title IX Coordinators, Investigators, Hearing Officers, and any person who facilitates an Informal Resolution process. JBU will make these training materials publicly available on JBU's website.
7. Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment, including:
 - a. The basis for all conclusions that the response was not deliberately indifferent;
 - b. Any measures designed to restore or preserve equal access to the JBU's education program or activity; and
 - c. If no supportive measures were provided to the Reporting Party, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

JBU will also maintain any and all records in accordance with state and federal laws.

39. Disabilities Accommodations in the Resolution Process

JBU is committed to providing reasonable accommodations and support to qualified students,

employees, or others with disabilities to ensure equal access to JBU's resolution process.

Anyone needing such accommodations or support should contact the Coordinator of Disability and Testing Services, or the Human Resources Office if employee, who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process. Jarrod Heathcote, Coordinator of Disability and Testing Services can be contacted at jheathcote@jbu.edu or 479.524.7464.

40. Revision of this Policy and Procedures

This Policy and procedures supersede any previous policy(ies) addressing harassment, sexual misconduct and/or retaliation under Title IX and will be reviewed and updated annually by the Title IX Coordinator. JBU reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the resolution process, the Title IX Coordinator may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The Title IX Coordinator may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this Policy and procedures.

If government laws or regulations change – or court decisions alter – the requirements in a way that impacts this document, this document will be construed to comply with the most recent government regulations or holdings.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws which frame such policies and codes, generally.

This Policy and procedures are effective November 18, 2021.

ATIXA 2020 INTERIM MODEL SEXUAL HARASSMENT POLICIES AND PROCEDURES

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