

Sexual Harassment and Discrimination Policy

I. Policy Overview

This policy sets forth Briar Cliff University's obligations under the 2021 Title IX Regulations.

Our Title IX Coordinator is:

David Arens, Assistant Dean of Student Affairs
David.Arens@briarcliff.edu
712-279-1715

Title IX Deputy Coordinators are:

Liz Rembold, Director of Social Work
Liz.Rembold@briarcliff.edu

Ben Irlbeck, Head Golf Coach/Adjunct Faculty
Ben.Irlbeck@briarcliff.edu

Questions about Title IX may be referred to the Title IX Coordinator.

Any person may report conduct prohibited by this policy to the Title IX Coordinator or to Security.

II. Statement of Non-Discrimination

Briar Cliff University does not discriminate on the basis of sex in its educational programs and activities, including employment and admission. Complaints of discrimination on the basis of sex will be handled under Title IX.

III. Scope

This policy applies to all students, faculty, and staff who experience prohibited sexual harassment in Briar Cliff University's education programs or activities. This includes locations, events, or circumstances over which Briar Cliff University exercised substantial control over both the Respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by Briar Cliff University. Briar Cliff University has other policies and procedures that may be applicable if the conduct does not meet the definition of prohibited sexual harassment under this policy or otherwise fall within the scope of this policy

IV. Prohibited Sexual Harassment

In accordance with its obligations under the Title IX Regulations of 2020, Briar Cliff University prohibits sexual harassment, which is conduct on the basis of sex that satisfies one or more of the following definitions:

1. Quid Pro Quo Conduct. An employee of Briar Cliff University conditions the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;

2. Unwelcome Conduct. Unwelcome conduct that is determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to Briar Cliff University's education program or activity; or

3. Sexual assault. An offense classified as a forcible or nonforcible sex offense. This category of prohibited conduct includes the following:

- i. **Sex Offenses**—Any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent.
- ii. **Rape**—(Except Statutory Rape) The actual or attempted carnal knowledge of a person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of their temporary or permanent mental or physical incapacity.
- iii. **Sodomy**—Oral or anal sexual intercourse with another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of their youth or because of their temporary or permanent mental or physical incapacity.
- iv. **Sexual Assault With An Object**—To use an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of their youth or because of their temporary or permanent mental or physical incapacity.
- v. **Fondling**—The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving consent because of their youth or because of their temporary or permanent mental or physical incapacity.
- vi. **Incest**—Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- vii. **Statutory Rape**—Nonforcible sexual intercourse with a person who is under the statutory age of consent.

4. Dating violence. Violence committed by a person— (A) who is or has been in a social relationship of a romantic or intimate nature with the complainants; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The

length of the relationship. (ii) The type of relationship. (iii) The frequency of interaction between the persons involved in the relationship.

5. Domestic violence. A felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the complainant under the domestic or family violence laws of the state of Iowa or by any other person against an adult or youth complainant who is protected from that person's acts under the domestic or family violence laws of the state of Iowa.

6. Stalking. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to— (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.

V. Definitions

- 1. Actual Knowledge When university receives notice of alleged misconduct that meets the definition of “sexual harassment” under Title IX regulations and must respond appropriately.**
- 2. Affirmative consent** means affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that they have the affirmative consent of the other or others to engage in the sexual activity. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time.
 - Lack of protest or resistance does not mean consent.
 - Silence does not mean consent.
 - The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of consent.

It shall not be a valid excuse that the Respondent believed that the Complainant affirmatively consented to the sexual activity if the Respondent knew or reasonably should have known that the Complainant was unable to consent to the sexual activity under any of the following circumstances:

- The Complainant was asleep or unconscious.
- The Complainant was incapacitated due to the influence of drugs, alcohol, or medication, so that the Complainant could not understand the fact, nature, or extent of the sexual activity.
- The Complainant was unable to communicate due to a mental or physical condition.

In addition, it shall not be a valid excuse to alleged lack of affirmative consent that the Respondent believed that the Complainant consented to the sexual activity under either of the following circumstances:

- The Respondent's belief in affirmative consent arose from the intoxication or recklessness of the Respondent.

- The Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the Complainant affirmatively consented.
3. **Allegation** An assertion that someone has engaged in sexual harassment.
 4. **Complainant** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment under this policy.
 5. **Formal complaint** means a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that Briar Cliff University investigate the allegation of sexual harassment. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the education program or activity of Briar Cliff University with which the Formal Complaint is filed.
 6. **Grievance Process** means the fact-finding process from the time of the filing of the Formal Complaint through the final determination of an appeal (if any).
 7. **Reporter** The person who reports sexual harassment to the university. May be the complainant but may also be someone else (also known as a “third party” reporter).
 8. **Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment under this policy.
 9. **Supportive Measures** means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to Briar Cliff University’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or Briar Cliff University’s educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. Supportive measures may also include written notification about available services both within the institution and the community and options for available assistance as required by the Clery Act. Supportive measures are not disciplinary measures.

VI. Reporting Prohibited Sexual Harassment

1. **Notice of Allegations.** Briar Cliff University has notice of sexual harassment or allegations of sexual harassment when such conduct is reported to the Title IX Coordinator or any official of Briar Cliff University who has authority to institute corrective measures on behalf of Briar Cliff University. However, all employees are *required* to report sexual harassment, as defined and prohibited by this policy, to the Title IX Coordinator, consistent with the requests of the Complainant.
2. **Response to a Report.** With or without a Formal Complaint, upon a report of sexual harassment, the Title IX Coordinate will promptly contact the Complainant to discuss the availability of Supportive Measures, consider the Complainant’s wishes with respect to

Supportive Measures, inform the Complainant of the availability of Supportive Measures with or without the filing of a Formal Complaint, and explain to the Complainant the process for filing a Formal Complaint.

- 3. Information Packet.** Upon a receipt of a report of sexual assault, dating violence, domestic violence or stalking, Briar Cliff University shall provide an information packet that contains procedures to follow if a sex offense, domestic violence, dating violence, sexual assault, or stalking has occurred, including information in writing about—
 - i.** The importance of preserving evidence as may be necessary to the proof of criminal domestic violence, dating violence, sexual assault, or stalking, or in obtaining a protection order;
 - ii.** How and to whom the alleged offense should be reported;
 - iii.** Options regarding law enforcement and campus authorities, including notification of the option to:
 - a.** notify proper law enforcement authorities, including on-campus and local police;
 - b.** be assisted by campus authorities in voluntarily notifying law enforcement authorities; and
 - c.** decline to notify such authorities;
 - iv.** Where applicable, their rights and the institution's responsibilities regarding orders of protection, no contact orders, restraining orders, or similar lawful orders issued by a criminal, civil, or tribal court;
 - v.** Information about appropriate and available services both at the institution and in the community; and
 - vi.** Options for, available reasonably available assistance and accommodations and how to request them.

Briar Cliff University's information packet for complainants of sexual assault, dating violence, domestic violence and stalking is available from the Title IX Coordinator.

- 4. Implementation of Supportive Measures.** Briar Cliff University shall treat parties equitably by offering Supportive Measures to the Complainant, and by following a grievance process that complies with this policy before the imposition of any disciplinary sanctions or other actions that are not Supportive Measures as against the Respondent. Briar Cliff University will maintain as confidential any Supportive Measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of Briar Cliff University to provide the Supportive Measures. The Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures. The Title IX Coordinator should record and retain records regarding requests and provision of Supportive Measure in accordance with the requirements set out at XIV. Record Keeping, below.
- 5. Emergency removal.** Nothing in this part precludes a recipient from removing a Respondent from Briar Cliff University's education program or activity on an emergency basis, provided that

Briar Cliff University undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal.

6. **Administrative Leave.** Briar Cliff University reserves the right to place a non-student employee Respondent on administrative leave during the pendency of a grievance process.
7. **Confidential Reporting/ Support.** There are people on campus that complainants or witnesses can talk to confidentially. You can call or approach any of the following professional staff confidentially and tell them what happened. They will listen and explain options, including, where deemed appropriate, the option of reporting a crime on a confidential basis for purposes of the University's annual crime report. Talking to a "Confidential Support Contact" listed below does not constitute reporting the incident to the University.

Confidential Support Contacts:

- Director of Counseling Services: Therese Cople
- Director of Health Services: Jo Morgan
- Campus Minister: Jason Salisbury

VII. Procedures for Resolving Complaints of Prohibited Sexual Harassment

1. Informal Resolution

Consistent with the requirements of this section, at any time prior to reaching a determination regarding responsibility Briar Cliff University may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that Briar Cliff University:

- i. Provides to the parties a written notice disclosing:
 - i. The allegations,
 - ii. The requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a Formal Complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the Formal Complaint, and
 - iii. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.
- ii. Obtains the parties' voluntary, written consent to the informal resolution process; and
- iii. Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.
- iv. Completes the informal resolution process within 60 days of receiving the Formal Complaint, unless unusual or complex circumstances exist.

Briar Cliff University does not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of Formal Complaints of sexual harassment under this policy. Briar Cliff University shall not require the parties to participate in an informal resolution process and will

not offer an informal resolution process unless a Formal Complaint is filed. Informal resolution cannot be used on complaints of employee-on-student harassment.

2. Formal Complaint and the Grievance Process

- i. **Filing a Formal Complaint.** A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information listed for the Title IX Coordinator above. Reports may be submitted through the Title IX webpage [here](#). A “document filed by a Complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by Briar Cliff University) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the Formal Complaint. Where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a party. A Formal Complaint shall trigger an investigation except as specified below.
- ii. **Dismissal of a Formal Complaint.** Briar Cliff University shall investigate the allegations in a Formal Complaint, except as follows:
 - a. Briar Cliff University shall dismiss the Formal Complaint if the conduct alleged in the Formal Complaint
 - i. would not constitute sexual harassment as defined by this policy, even if proved,
 - ii. did not occur in Briar Cliff University’s education program or activity,
 - iii. or did not occur against a person in the United States.
 - iv. This dismissal does not preclude action under another policy or procedure of Briar Cliff University.
 - b. Briar Cliff University may dismiss the Formal Complaint or any allegations therein, if at any time during the investigation or hearing:
 - i. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;
 - ii. The Respondent is no longer enrolled or employed by Briar Cliff University; or
 - iii. Specific circumstances prevent Briar Cliff University from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.
 - c. Upon a dismissal required or permitted under this section, Briar Cliff University will promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.
- iii. **Consolidation of Formal Complaints.** Briar Cliff University may consolidate Formal Complaints as to allegations of sexual harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where a grievance process involves more than one Complainant or more than one Respondent, references in this section to the singular “party,” “Complainant,” or “Respondent” include the plural, as applicable.
- iv. **Notice of Charges**

i. Initial Notice of Charges. Upon receipt of a Formal Complaint, prior to commencing the investigation, Briar Cliff University shall provide the following written notice to the parties who are known. This notice shall include:

- a.** This policy (as a link or attachment).
- b.** Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined in this policy, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment under this policy, and the date and location of the alleged incident, if known.
- c.** A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- d.** Notification to the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney.
- e.** Notification to the parties that they may inspect and review evidence, as set forth in this policy.
- f.** Any provision in Briar Cliff University's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.
- g.** Describes the standard of evidence that will be used.
- h.** Lists all possible sanction the institution may imposed.

v. Amended Notice of Charges. If, in the course of an investigation, Briar Cliff University decides to investigate allegations about the Complainant or Respondent that are not included in the initial notice of charge, Briar Cliff University must provide notice of the additional allegations to the parties whose identities are known.

vi. Principles for the Grievance Process

Under this grievance process, Briar Cliff University shall:

- a.** Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on Briar Cliff University and not on the parties provided that Briar Cliff University cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless Briar Cliff University obtains that party's voluntary, written consent to do so for a grievance process under this section (if a party is not an "eligible student," as defined in 34 CFR 99.3, then Briar Cliff

University must obtain the voluntary, written consent of a “parent,” as defined in 34 CFR 99.3).

- b. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
- c. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
- d. Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the Complainant or Respondent in any meeting or grievance proceeding; however, Briar Cliff University may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.
- e. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.
- f. Require an objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence—and provide that credibility determinations may not be based on a person’s status as a Complainant, Respondent, or witness.
- g. Require that any individual designated as a Title IX Coordinator, investigator, decisionmaker, or any person to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondents generally or an individual Complainant or Respondent. Briar Cliff University may use internal personnel or external parties in the informal resolution process or the grievance process, provided that they meet this requirement.
- h. Include a presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- i. Use the following standard of evidence to determine responsibility for allegations in a Formal Complaint of sexual harassment: the preponderance of the evidence standard. The standard of evidence shall be the same for Formal Complaints against students as for Formal Complaints against faculty and staff.
- j. Not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

vii. Extensions of the Grievance Process

The Title IX Coordinator may grant or deny requests from either party to temporarily delay the grievance process or may issue the limited extension of time frames for good cause with written notice to the Complainant and the Respondent of the delay or extension and the reasons for the action.

Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

viii. Investigation of Formal Complaints

When investigating a Formal Complaint Briar Cliff University shall, within 30 days of receiving the Formal Complaint, unless unusual or complex circumstances exist:

- a.** Engage in fact-gathering of all relevant facts. Credibility resolutions and fact-finding shall be conducted in the live hearing phase of the grievance process.
- b.** Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a Formal Complaint, including the evidence upon which Briar Cliff University does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.
- c.** Prior to completion of the investigative report, send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report.
- d.** Make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination; and
- e.** Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

VIII. Live Hearings Under the Grievance Process

1. Requirement of a Live Hearing for Fact-Finding and Determining Responsibility.

- i.** Following the investigation, within 30 days of sending the final investigative report to the parties, unless unusual or complex circumstances exist Briar Cliff University shall conduct a live hearing for the purposes of determining responsibility for allegations of sexual harassment in the Formal Complaint. The process from investigation through determining responsibility shall be resolved within a 60 day time frame.
- ii.** The decision-maker(s) cannot be the same person(s) as the Title IX Coordinator or the investigator(s).

- iii. If a party does not have an advisor present at the live hearing, Briar Cliff University shall provide without fee or charge to that party, an advisor of Briar Cliff University's choice, who may be, but is not required to be, an attorney, to conduct cross examination on behalf of that party. Briar Cliff University is obligated to ensure each Party has an advisor, either of the Party's or Briar Cliff University's choice regardless of whether or not the Party is present at the hearing.
- iv. Live hearings may be conducted with all parties physically present in the same geographic location or, at Briar Cliff University's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.
- v. At the request of either party, Briar Cliff University shall provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions.
- vi. Briar Cliff University shall create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

2. Questioning at the Live Hearing

- i. At the live hearing, the decisionmaker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those that challenging credibility.
- ii. Only relevant cross examination and other questions may be asked of a party or witness.
- iii. Cross examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally, notwithstanding Briar Cliff University's ability to otherwise restrict the extent to which advisors may participate in the proceedings.
- iv. Before the Complainant, Respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant. The decision-maker(s) must explain to the party proposing the questions any decision to exclude a question as not relevant.
- v. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

3. Use of Witness Statements

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

4. Written Determination of the Decision-Maker

- i. The decision-maker(s) shall issue a written determination regarding responsibility. To reach this determination, the decision-maker must apply the standard of evidence required by this policy. The written determination must include:
 - a. Identification of the allegations potentially constituting sexual harassment as defined by this policy;
 - b. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
 - c. Findings of fact supporting the determination;
 - d. Conclusions regarding the application of Briar Cliff University's policy to the facts;
 - e. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed on the respondent, and whether remedies designed to restore or preserve equal access to Briar Cliff University's education program or activity will be provided to the complainant; and
 - f. The procedures and permissible bases for the Complainant and Respondent to appeal, as set forth in this policy.
- ii. Briar Cliff University shall provide the written determination to the parties simultaneously.
- iii. The determination regarding responsibility becomes final either on the date that Briar Cliff University provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

IX. Appeals

Within 10 days of receiving the written determination, either party may appeal from a determination regarding responsibility, and from Briar Cliff University's dismissal of a Formal Complaint or any allegations therein, on the following grounds:

Ground 1: Procedural irregularity that affected the outcome of the matter;

- Ground 2:** 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
- Ground 3:** The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

As to all appeals, the Title IX Coordinator (or designee) shall:

- i. Notify the other party in writing immediately when an appeal is filed and implement appeal procedures equally for both parties;
- ii. Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
- iii. Ensure that the decision-maker(s) for the appeal complies with the standards set forth in this policy;
- iv. Give the non-appealing party an opportunity to submit a written statement in response to the appeal within 10 days of receiving the appeal, which shall be transmitted within 2 business days to the Appeal Officer;

Within 20 days of receiving the appeal and the response, the Appeal Officer shall issue a written decision describing the result of the appeal and the rationale for the result; and provide the written decision simultaneously to both parties.

X. Remedies and Sanctions

Remedies must be designed to restore or preserve equal access to Briar Cliff University's education program or activity. The University's decision to impose sanctions will depend on the nature and severity of the incident and whether or not it can be determined by a preponderance of the evidence that a policy violation has occurred. If it appears that a policy violation has occurred, the range of responses includes, but is not limited to:

- Intervention by supervisor or appropriate authority
- Individual meeting with option of support person in attendance
- Facilitated conversation or mediation (not available for sexual assault cases)
- Educational or University sponsored activities
- No contact order between complainant and respondent.
- Change in academic or work schedules or arrangements
- Change in living situation on an interim or permanent basis.
- Disciplinary action, including but not limited to:
 - Suspension
 - Dismissal, termination or expulsion.
 - Discipline short of dismissal, termination or expulsion such as verbal or written warnings or probation.
- Public Service.
- Referral to law enforcement when there is danger or threat to community and/or when requested by complainant.

The Title IX Coordinator is responsible for effective implementation of any remedies.

XI. Retaliation Prohibited

No one may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right established by this policy or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy.

Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or Formal Complaint of sexual harassment, for the purpose of interfering with any right under this Policy constitutes retaliation.

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

Complaints alleging retaliation may be filed with the Title IX Coordinator.

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 does not constitute retaliation prohibited under of this section, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

XII. Title IX Amnesty Policy

The health and safety of every student at the university is of utmost importance. The university recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that prohibited conduct under these procedures occurs may be hesitant to report incidents due to fear of potential consequences for their own conduct. The university strongly encourages students to report such prohibited conduct. A student bystander or complainant acting in good faith who discloses any incident of prohibited conduct under these procedures to a Briar Cliff University official or to law enforcement shall not be subject to action under the university's Campus Code of Conduct for violation of alcohol and/or drug use occurring at or near the time of the commission of the prohibited conduct. While no disciplinary action will be taken, Briar Cliff University reserves the right to take steps necessary to address health and safety concerns for the individual and the community, as well as the right to report truthfully to outside agencies.

XIII. Confidentiality

Consistent with the requirements of this policy, Briar Cliff University shall keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a Formal Complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

XIV. Required Trainings

The Title IX Coordinator, investigators, decision-makers, and any person who facilitates an informal resolution process (whether internal or external) shall receive training on the definition of sexual harassment under this policy, the scope of Briar Cliff University’s education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. These individuals shall receive annual training on the issues related to domestic violence, dating violence, sexual assault, and stalking and how to investigate and hearing process that protects the safety of complainants and promotes accountability.

Decision-makers shall receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the Complainant’s sexual predisposition or prior sexual behavior are not relevant.

Investigators shall receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, will not rely on sex stereotypes, and will promote impartial investigations and adjudications of Formal Complaints of sexual harassment.

XV. Recordkeeping.

Briar Cliff University shall maintain for a period of seven years records of— (A) Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under this policy, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to Briar Cliff University’s education programs or activities; (B) Any appeal and the result therefrom; (C) Any informal resolution and the result therefrom; and (D) All materials used to train Title IX Coordinators, investigators, decisionmakers, and any person who facilitates an informal resolution process. A recipient must make these training materials publicly available on its website, or if the recipient does not maintain a website the recipient must make these materials available upon request for inspection by members of the public.

Briar Cliff University shall create, and maintain for a period of seven years, records of any actions, including any Supportive Measures, taken in response to a report or Formal Complaint of sexual harassment. In each instance, Briar Cliff University will document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to Briar Cliff University’s education program or activity. If Briar Cliff University does not provide a complainant with Supportive Measures, then Briar Cliff University must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit Briar Cliff University in the future from providing additional explanations or detailing additional measures taken.

August 25, 2015	New Policy	Legal Reviewed and Approved
September 28, 2015	Updated Director of Counseling Services	

January 27, 2020	Updated Title IX Coordinator and terminology	
March 3, 2020	Updated Director of Counseling	
July 2020	Updated for compliance with New Regulations	Effective August 14, 2020
July 2021	Updated for compliance with New Regulations	Effective August 23, 2021