

26. TITLE IX POLICY¹

University Commitment. California Baptist University (“CBU” and “University”) is committed to providing a learning, working and living environment that promotes personal integrity, civility, and mutual respect in a setting that is free of discrimination on the basis of sex, which includes all forms of sexual Misconduct. Sex discrimination violates an individual’s fundamental rights and personal dignity. CBU considers Sex discrimination in all its forms to be a serious offense.

26.1. Title IX of the Education Amendments of 1972.

Title IX of the Education Amendments of 1972 (“Title IX”) prohibits discrimination based on sex in educational programs and activities that receive federal financial assistance. Title IX states, “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance” (20 U.S.C. § 1681). The Office of Civil Rights of the U.S. Department of Education defines Sexual Harassment under Title IX as consisting of “verbal or physical conduct of a sexual nature, imposed on the basis of sex, by an employee or agent of a recipient that denies, limits, provides different, or conditions the provisions of aid, benefits, services, or treatment protected under Title IX.” To ensure compliance with Title IX, CBU has developed policies and procedures that prohibit Sex Discrimination in all of its forms.

26.2. Title IX Statement on Non-Discrimination.

CBU does not unlawfully discriminate on the basis of sex in its educational programs and activities. This Policy extends to employment with and admission to the University, as well as access to facilities, financial aid, and courses.

26.3. Purpose of Policy.

This Policy governs receipt and processing of reports, Complaints, Formal Complaints, Investigations, adjudication, appeals, and use of informal resolution in cases involving allegations of discrimination, harassment and/or related Retaliation based on a protected class (discrimination), including complaints made by University Officials, Students and/or third parties.

All complaints, appeals, or reports of discrimination received by the University will be appropriately reviewed and addressed in accordance with this Policy. The University will respond to reports or Formal Complaints (as defined herein) of conduct prohibited under this Policy with measures designed to stop the prohibited conduct, prevent its recurrence, and remediate any adverse effects of such conduct on campus or in University-related programs or activities.

26.4. Title IX Coordinator.

The University’s Title IX Coordinator oversees all reports, complaints, and Formal Complaints of violations of this Policy, and coordinates the University’s centralized response to ensure compliance with Title IX and the 2013 Amendments to the Violence Against Women Act (VAWA). The Title IX Coordinator’s responsibilities include, but are not limited to:

- a. Overseeing and providing prompt, fair, and equitable resolution to all Title IX and VAWA complaints and investigations.
- b. Identifying and addressing patterns or systemic problems related to Title IX and VAWA.
- c. Meeting with members of the campus community regarding issues related to Title IX and VAWA, providing support and serving as a resource.
- d. Coordinating training, education, and communication pertaining to Title IX and VAWA.
- e. Ensuring the University carries out Title IX and VAWA responsibilities.

Title IX Coordinator Contact Information

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Title IX Coordinator
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26.5. Key Definitions. To provide clarity for all involved, the following definitions are provided for the purpose of this Policy:

Actual Knowledge – means notice of Sexual Harassment or allegations of Sexual Harassment to the University’s Title IX Coordinator or any University official who has the authority to institute corrective measures on behalf of the University.

Advisor – an individual selected by each Complainant and respondent to provide guidance during the investigation and resolution process and to conduct cross-examination when a complaint is referred to a formal Hearing. An Advisor may be an attorney. The University may appoint an Advisor of its choice for a Complainant or respondent for a Hearing if either party does not have an Advisor present. Advisors may not otherwise represent or speak for the party they are advising. Each party is allowed one Advisor.

Appellate Authority – an individual or panel responsible for rendering appeal decisions (e.g. Student Services Committee). The role of the Appellate Authority is to review the process by which an original decision was reached and render an appellate decision, consistent with the grounds for appeal. The Title IX Coordinator may not serve as an Appellate Authority in any case involving an allegation of discrimination or harassment based on sex.

Coercion – the act, process, or power of compelling a person to take an action, make a choice, or allow an act to happen that they would otherwise not choose or give Consent to.

Complainant – the individual(s) who is alleged to have been subjected to discrimination.

Complaint – an oral or written report of an alleged violation of this Policy. A Complaint may be filed by a Complainant, University Official or Student, or a third party. The Complaint does not have to meet the definition of a “Formal Complaint” (see below).

Confidential – communication that cannot legally be disclosed to another person without the Consent of the individual who originally provided the information, except under very limited circumstances such as allegations of elderly, disabled or child abuse; an imminent threat of injury or to the life of any person; or as required by law.

Confidential Resource – a University Official designated or permitted by the University to receive Complaints of discrimination and maintain confidentiality. Exceptions to confidentiality/privacy include reports of child abuse, abuse or neglect of disabled or elderly persons, and when a party poses an imminent danger to themselves or others.

¹ From Student Handbook, Section 26

Consent – Affirmative Consent is the basis of the analysis applied to unwelcome sexual contact. Lack of affirmative Consent is the critical factor in any incident of sexual Misconduct. For purposes of this Policy, Consent must be “affirmative Consent” which is defined as conscious and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure affirmative Consent is obtained from the other individual(s) engaging in the sexual activity. Lack of protest or resistance does not mean Consent, nor does silence mean Consent. Affirmative Consent must be ongoing throughout a sexual activity and can be revoked at any time. 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.

- a. Consent is informed, freely and actively given and requires clear communication between all persons involved in the sexual encounter.
- b. Consent is active, not passive. Consent must be mutually understandable. Silence cannot be interpreted as Consent.
- c. Individuals who initiate sexual contact are responsible for fully understanding what the other individual(s) involved in the sexual contact want and do not want sexually.
- d. Consent to one form of sexual activity does not imply Consent to other forms of sexual activity.
- e. Previous relationships or Consent does not imply Consent to future sexual acts.
- f. Consent cannot be procured by use of physical force, compelling threats, intimidating behavior, or Coercion. Coercion is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get Consent from another.
- g. Effective Consent cannot be given by minors, mentally disabled individuals or persons Incapacitated as a result of drugs or alcohol.
- h. If you have sexual activity with someone you know to be—or should know to be—mentally or physically Incapacitated (by alcohol or other drug use, unconsciousness or blackout), you are in violation of this Policy.
- i. Incapacitation is a state where one cannot make a rational, reasonable decision because they lack the ability to understand the who, what, when, where, why or how of their sexual interaction.
- j. This Policy also covers someone whose incapacity results from mental disability, sleep, involuntary physical restraint, or from the taking of a so-called “date-rape” drug. Possession, use and/or distribution of any of these substances, including Rohypnol, Ketamine, GHB, Burundanga, etc. is prohibited, and administering one of these drugs to another Student for the purpose of inducing incapacity is a violation of this Policy. More information on these drugs can be found online at 911rape.org.
- k. Use of alcohol or drugs will never function to excuse behavior that violates this Policy.

Dating Violence – violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship will be determined based on the Complainant’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:

- a. Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
- b. Dating Violence does not include acts covered under the definition of Domestic Violence. [34 U.S.C. 12291(a)(10)]

Dating Violence is explicitly prohibited under this Policy. Aiding another in the commission of Dating Violence is also prohibited under this Policy. Dating Violence is a form of Sexual Harassment or Sex-Based Misconduct.

Designated Administrator – may be a University Official, an individual designated by the University, or a Hearing officer/panel but may not include a person with a clear conflict of interest (e.g., supervisor, subordinate, and/or family member of either party) or personal bias. The Designated Administrator cannot have served as an Investigator nor may they later serve as an Appellate Authority in the same case. Designated Administrators may consist of a single decision-maker (Hearing officer for formal Hearings) or a group of decision makers (Hearing panel for formal Hearings).

Domestic Violence – a felony or misdemeanor crime of violence committed by:

- a. a current or former spouse or intimate partner of the victim;
- b. a person with whom the victim shares a child in common;
- c. a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
- d. a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
- e. any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred. [34 U.S.C. 12291(a)(8)]

Domestic Violence is explicitly prohibited under this Policy. Aiding another in the commission of Domestic Violence is also prohibited under this Policy. Domestic Violence is a form of Sexual Harassment or Sex-Based Misconduct.

Educational Program or Activity – an “Educational Program or Activity” includes all of the University’s operations, including locations, events, or circumstances over which the University exercised substantial control over both the Respondent and the context in which the alleged discriminatory behavior occurred, including any building owned or controlled by a student organization that is officially recognized by the University. Per Federal Regulations, this Policy applies to Educational Programs or Activities that occur within the United States. However, the University reserves the right to address Student behavior that is contrary to the Standard of Student Conduct, regardless of location.

Evidence – means everything that is used to determine or demonstrate the truth of an assertion.

Exculpatory Evidence – Evidence that would tend to support a finding that a Respondent did not commit the alleged Misconduct.

Formal Complaint – a document or electronic submission (such as by electronic mail or through an on-line portal provided for this purpose) filed by a Complainant, or signed by the Title IX Coordinator, alleging sex-based discrimination against a Respondent and requesting that the University investigate the allegation(s). The Formal Complaint must contain the Complainant’s physical or digital signature, or otherwise indicate that the Complainant is the person filing the Complaint. Alternatively, a Title IX Coordinator may sign a Formal Complaint but is not a Complainant or otherwise a party to the Complaint.

Hearing – a scheduled meeting held between a Student, University Official(s) or panel at the request of the University for the purpose of presenting, reviewing, and evaluating Evidence related to any current or potential Judicial Action.

Hostile Environment – a situation in which there is unwelcome harassing conduct based on a legally protected class that is Severe, Pervasive, and Objectively Offensive (as defined below) enough to create a hostile work, educational, or campus living environment as determined by a Reasonable Person (as defined below). The determination of whether an environment is “hostile” must be based on all of the circumstances, which may include the frequency of the conduct, the nature and severity of the conduct, whether the conduct was physically threatening or humiliating, and/or the mental or emotional effect of the conduct on the individual(s) subjected to the alleged discrimination.

Incapacitated – a state in which a person, due to a disability, the use of alcohol or drugs, being asleep, or for any other reason, is not capable of making rational decisions about Consent to sexual activity and recognizing the consequences of their decision.

Inculpatory Evidence – Evidence that would tend to support a finding that a Respondent is responsible for alleged Misconduct.

Informal Resolution – resolution of a civil rights complaint without the use of a formal Hearing. Informal Resolutions may or may not involve the establishment of findings of fact and the application of Sanctions.

Investigator – an individual appointed to conduct a formal investigation to discover and examine the facts of an allegation and conclude if, based on the Preponderance of the Evidence, the allegation is substantiated, unsubstantiated, or if there is insufficient information. In Complaints involving allegations of sex-based behaviors, the Investigator will be limited to only reporting the Evidence collected during the investigation, as well as issuing appropriate determinations surrounding credibility of Witnesses and Evidence.

Misconduct – an action or actions that violate published behavioral standards.

Objectively Offensive – behavior determined by a Private to be Offensive.

Offensive – actions that cause unreasonable harm or distress to another individual or group of people.

Persistent – conduct occurring frequently over an unspecified period of time.

Pervasive – conduct existing in or spreading over a large area of an activity or program over a period of time.

Private – that which affects, characterizes, or belongs to an individual person, as opposed to the general public. With respect to this Policy, Private means restricting information to those with a reasonable need to know.

Private Body Parts – a person’s breast, posterior (butt), groin, and/or genitals.

Quid Pro Quo Sexual Harassment – “this” for “that”; i.e., unwelcome sexual advances, requests for sexual favors or other verbal, nonverbal or physical conduct of a sexual nature, the submission to or rejection of which may result in an adverse educational or employment action. Quid Pro Quo Sexual Harassment is explicitly prohibited under this Policy. Aiding another in the commission of Quid Pro Quo Sexual Harassment is also prohibited under this Policy.

Reasonable Person – a comparative standard on one person’s assessment of an action, actions, or situation compared with how most persons might act or react based on similar circumstances. This standard considers the identities of an individual as well as the context of the actions being evaluated.

Remedies – actions taken to restore or preserve equal access to the University’s Education Program or Activity. Remedies may be disciplinary in nature and may burden the Respondent.

Reporter – an individual who observed or was made aware of an alleged violation and who provides an initial oral or written account of an alleged violation of this Policy.

Respondent – an individual who has been alleged to have engaged in discriminatory conduct as defined in this Policy.

Retaliation – intimidation, threats, Coercion, or discrimination against any individual for the purpose of interfering with any right or privilege secured under civil rights laws and regulations, 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. The exercise of rights protected under the First Amendment does not constitute prohibited Retaliation, nor does the filing of a mandatory report as required by applicable law. In addition, a University Official who files a mandatory report or charges an individual with making a materially false statement in the course of an investigation has not engaged in prohibited Retaliation. Retaliation is explicitly prohibited under this Policy. Aiding another in the commission of Retaliation is also prohibited under this Policy.

Sanction - restriction placed upon a Student as a direct result of behavior in conflict with the Standard of Student Conduct

Severe – of sufficient seriousness to interfere with the rights, privileges, and legal activities of an individual, as well as actions that would be deemed by a Reasonable Person to be extreme or life- threatening.

Sexual Assault – an offense that meets the definition of rape, fondling, incest or statutory rape as used in the FBI’s Uniform Crime Reporting system. A sex offense is any sexual act directed against another person, without the Consent of the victim, including instances in which the victim is incapable of giving Consent. These offenses are defined as:

- a. Rape: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the Consent of the victim.
- b. Fondling: The touching of the Private Body Parts of another person for the purpose of sexual gratification, without the Consent of the victim, including instances where the victim is incapable of giving Consent because of his/her age or because of his/her temporary or permanent mental incapacity.
- c. Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- d. Statutory Rape: Sexual intercourse with a person who is under the statutory age of Consent.

Sexual Assault is explicitly prohibited under this Policy. Aiding another in the commission of Sexual Assault is also prohibited under this Policy. Sexual Assault is a form of Sexual Harassment or Sex-Based Misconduct.

Sex-Based Misconduct – unwelcome conduct on the basis of sex that is Severe, Pervasive, and Objectively Offensive enough to create a work, educational, or campus living environment that a Reasonable Person would consider intimidating abusive, or Offensive. Sex-based Misconduct is explicitly prohibited under this Policy. Aiding another in the commission of Sex-Based Misconduct is also prohibited under this Policy. Sex-based includes, but is not limited to, Sexual Assault, Sexual Exploitation, Dating Violence, Domestic Violence, and Stalking Based on Sex.

Sex Discrimination – behaviors and actions that deny or limit a person’s ability to benefit from, and/or fully participate in the educational programs, activities or employment opportunities because of a person’s sex. Examples of Sex Discrimination under Title IX include, but are not limited to, Sexual Harassment, Sexual Assault, Stalking Based on Sex, Dating Violence, Domestic Violence, failure to provide equal opportunity in education programs and co-curricular programs including athletics, discrimination based on pregnancy, and employment discrimination.

Sexual Exploitation – a situation in which an individual(s) takes non-consensual or abusive sexual advantage of another for his or her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited. For example, Sexual Exploitation could include such actions as secretly videotaping sexual activity, voyeurism, Stalking Based on Sex, invasion of sexual privacy, exposing one’s genitals or causing another to expose one’s genitals, and knowingly exposing another person to a sexually transmitted infection or disease. Sexual Exploitation is a form of Sex-Based Misconduct.

Sexual Exploitation is explicitly prohibited under this Policy. Aiding another in the commission of Sexual Exploitation is also prohibited under this Policy.

Sexual Harassment – a form of Sex Discrimination. Unwelcome conduct on the basis of sex (of a sexual nature or otherwise): (1) by a University Official who conditions the provision of an aid, benefit, or service of the University on an individual’s participation in that unwelcome sexual conduct; (2) determined by a Reasonable Person to be so Severe and Pervasive and Objectively Offensive that it effectively denies a person equal access to the University’s Education Program or Activity; or (3) Sexual Assault or Dating Violence, Domestic Violence, or Stalking Based on Sex.

Stalking Based on Sex – engaging in a course of conduct directed at a specific person that would cause a Reasonable Person to:

- a. fear for the person’s safety or the safety of others; or
- b. suffer substantial emotional distress.
- c. For the purposes of this definition:
 - i. Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property.
 - ii. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling. [34 CFR 668.46(a)]

Stalking Based on Sex is explicitly prohibited under this Policy. Aiding another in the commission of Stalking Based on Sex is also prohibited under this Policy. Stalking Based on Sex is a form of Sexual Harassment or Sex-Based Misconduct.

Standard of Student Conduct – refers to the University’s Standard of Student Conduct set forth in the Student Handbook.

Supportive Measures – 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 the University’s Education Program or Activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University’s educational or work 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 or workplace, and other similar measures.

Title IX Coordinator – an employee designated and authorized to coordinate the University’s efforts to comply with its responsibilities under the Title IX of the Education Amendments of 1972 Act.

26.6. **Grievance Process.**

26.6.1 Complaints. Anyone who experiences, observes, or becomes aware of alleged discrimination must promptly report the incident(s) to a University Official. If any individual reasonably believes that an incident constitutes Sexual Harassment, Sexual Assault, or Domestic Violence, Dating Violence, or Stalking Based on Sex and that the incident is alleged to have been committed by or against a person who was a Student enrolled at or an Employee of the University at the time of the incident, the individual must promptly report the incident to the University’s Title IX Coordinator or University-appointed designee. Students and third parties (including, but not limited to, anyone receiving services from the University, vendors and Private business associates) are strongly encouraged to report the incident(s) promptly to the University’s Title IX office. When applicable, an alleged victim of Sexual Harassment, Sexual Assault, or Domestic Violence, Dating Violence, or Stalking Based on Sex should be encouraged to go to a hospital for treatment and/or preservation of Evidence as practicable following an incident.

26.6.1.1 Any person may report sex discrimination, including Sexual Harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination) in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person’s verbal or written report. Such a report may be made at any time (including during non-business hours).

26.6.1.2. A University Official or Student is not required to report discrimination to a direct supervisor or to the alleged offender. The alleged offense may instead be reported to another University Official.

26.6.1.3. The report shall include all information concerning the incident known to the reporting person including whether a Complainant has expressed a desire for confidentiality in reporting the incident.

- 26.7. **Investigations and Adjudications.** Complaints of Sexual Harassment, Sexual Assault or Domestic Violence, Dating Violence, or Stalking Based on Sex will be processed under Title IX if all of the following apply:
- a. The University has Actual Knowledge of a notice of Sexual Harassment or a Complaint involving allegations of Sexual Harassment, Sexual Assault, and/or Dating Violence, Domestic Violence, and Stalking Based on Sex to the University's Title IX Coordinator or any University Official who has authority to institute corrective measures on behalf of the University. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute Actual Knowledge;
 - b. A Formal Complaint is filed by the Complainant or signed by the Title IX Coordinator;
 - c. The alleged behavior/conduct must have occurred against a person while in the United States;
 - d. At the time the Formal Complaint was filed, the Complainant was participating or attempting to participate in the University's Education Program or Activity. This includes an enrolled Student, an Employee, and applicants for admission or employment at the University, and;
 - e. The alleged conduct meets the definition of Sexual Harassment as set forth in this Policy.
- 26.7.1. The burden of proof and the burden of gathering Evidence sufficient to reach a determination regarding responsibility rests on the University and not on the parties, provided that the 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 the University obtains that party's voluntary, written Consent to do so for the grievance process.
- 26.7.2. In all investigations and in any Hearing, a presumption will exist that a Respondent is not responsible for the allegations until a determination is made at the conclusion of an adjudicatory process.
- 26.7.3. Mandatory Dismissals – If the conduct alleged in the Formal Complaint would not constitute Sexual Harassment as defined even if proved, did not occur in the University's Education Program or Activity, or did not occur against a person in the United States, then the University must dismiss the Formal Complaint with regard to that conduct for purposes of Sexual Harassment under Title IX; such dismissal does not preclude action under another provision of the University's conduct standards.
- 26.7.4. Discretionary Dismissals – the University may also dismiss a Formal Complaint if the Complainant notifies the Title IX Coordinator in writing that the Complainant wishes to withdraw it, if the Respondent is no longer enrolled or employed by the University, or if specific circumstances prevent the University from collecting Evidence sufficient to reach a determination (for example, when the Complainant has ceased participating in the process; in certain fact-specific cases when the passage of time precludes the collection of sufficient Evidence; when Complainant's identity is not known; and when the exact same allegations have already been investigated and adjudicated); such dismissal does not preclude action under another provision of the University's conduct standards.
- 26.7.5. Upon a dismissal required or permitted pursuant to this section, the University must promptly send written notice of the dismissal and the reason(s) therefore simultaneously to the parties. A party may appeal the dismissal as described in Appeals.
- 26.7.6. The University may consolidate Formal Complaints as to allegations of sex-based violations against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, when the allegations of Sexual Harassment arise out of the same facts or circumstances.
- 26.7.7. The University must provide a notice of allegations in cases involving sex-based violations which include 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, and the date and location of the alleged incident, if known. The written notice must include 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. The written notice must inform the parties that they may have an Advisor of their choice who may be, but is not required to be, an attorney, and that they may inspect and review Evidence. The written notice must also inform the parties that they are prohibited from knowingly making false statements or knowingly submitting false information during the grievance process. If, in the course of an investigation, the University decides to investigate allegations about the Complainant or Respondent that were not included in the original notice, the University must provide notice of the additional allegations to the parties whose identities are known.
- 26.7.8. The University must provide to each party whose participation in the investigation is invited or expected written notice of the date, time, location, participants, and purpose of all Hearings, investigative interviews, and other meetings, with sufficient time for the party to prepare to participate.
- 26.7.9. The University must provide an equal opportunity for the parties to present Witnesses, including fact and expert witnesses, and other Inculpatory and Exculpatory Evidence; not restrict the ability of either party to discuss the allegations under investigation or gather and present relevant Evidence; provide the parties with the same opportunities to have others with them during the grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the Advisor of their choice; and not limit the choice or presence of the Advisor in any meeting or grievance proceeding. However, the 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. Advisors who fail to adhere to established rules may be dismissed from the process at the discretion of the University.
- 26.7.10. After the final draft investigation report is prepared, the University must provide 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 the Formal Complaint, including the Evidence upon which the 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 the conclusion of the investigation. This includes sending to each party and the party's Advisor, if any, the final draft investigation report (with exhibits) subject to inspection and review in an electronic format or a hard copy, and the parties must have at least ten (10) days to submit a written response, which the Investigative Authority will consider prior to final completion of the investigative report. Both the report and the collected Evidence will be unredacted to the extent allowed by law. Investigation reports should include a statement of the allegation(s), a listing of individuals interviewed including the dates of the interviews, all Inculpatory and Exculpatory Evidence collected in the investigation, credibility assessments (which may not be based on an individual's status as a Complainant, Respondent, or Witness), and a listing of relevant documents attached to the report as exhibits. Reports should not contain speculation, opinions, findings, decisions, or recommendations for Sanctions.
- 26.7.11. The Title IX Coordinator or designee will provide the final investigative report and exhibits to the parties. The parties will be provided a pre-Hearing conference to review the Hearing process as well as to explore any available options for Informal Resolution. The parties will be provided at least ten (10) business days to review the final investigative report and to respond in writing to the Title IX Coordinator or designee prior to the Hearing.

- 26.7.12. At any time prior to the adjudication of a Formal Complaint, the parties may seek Informal Resolution to resolve the Complaint (see Informal Resolution).
- 26.7.13. Administrative Conferences. If the Complainant, Respondent, and the University all agree on both the findings associated with the allegations and the Sanctions to be imposed, the Title IX Coordinator or Designated Administrator may reach a written resolution of the Complaint without a Hearing. The pre-Hearing conference may serve as the administrative conference. Administrative conferences are considered a form of Informal Resolution (see Informal Resolution).
- 26.7.14. If a Formal Complaint cannot be resolved through an informal process or if either the Complainant or the Respondent requests a Hearing, a formal live Hearing will be conducted by the Designated Administrator (a Hearing officer or Hearing panel). Under this option, the following rules apply:
- a. Unless waived by the parties, following the pre-Hearing conference the parties will be given a minimum of ten (10) business days' notice of any formal Hearing. The notice must include the date, time, and location of the Hearing, as well as instructions for those participating in Hearings through online means.
 - b. Within five (5) business days of the Hearing, parties will be required to identify Witnesses to be called at the Hearing, as well as to provide a brief written explanation of the information each Witness would be asked to provide, such that the presiding Hearing officer can determine their relevance. The presiding Hearing officer has the discretion to exclude from the Hearing Evidence/Witnesses/questions deemed irrelevant.
 - c. Hearings will be closed to the public. The 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. Physical access to the recording or transcript must be provided upon request for the purpose of preparing an appeal following the Hearing.
 - d. A Complainant and a Respondent at a Hearing must have an Advisor with them. In cases in which a party does not have an Advisor, the University will provide an Advisor to assist them in the Hearing process.
 - e. Cross-examination of the Complainant, Respondent, and any Witnesses may not be conducted by the opposing party but must be conducted by their Advisor. Questions are to be directed to the presiding Hearing officer or Hearing panel chair, who will determine whether or not each question will be admitted into the Hearing. If a question is deemed repetitious or not relevant, the decision-maker(s) must explain the decision to exclude it. When parties are being subject to cross-examination, the Advisor may not answer on behalf of the party. Doing so could result in removal from the proceeding.
 - f. 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 alleged conduct, 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. The presiding Hearing officer makes final determinations on the relevance of questions and Evidence.
 - g. The Office of General Counsel may also make available a legal advisor for the proceeding. The legal advisor may be present for the proceeding and the presiding Hearing officer may recess the proceeding and consult with the legal advisor as necessary.
 - h. Attendance at a Hearing may be in person or may be conducted through remote means, provided that all parties and the presiding Hearing officer or Hearing panel can see and hear one another in real time during the course of the Hearing.
 - i. If a Complainant, Respondent, or Witness is not in attendance at a live Hearing, the Hearing officer or Hearing panel cannot rely on the previously submitted statements of the absent party in reaching a determination, but may utilize all other Evidence, including Witnesses who interacted with the absent party, but not hearsay testimony of what the absent party told that individual. A Complainant, Respondent, or Witness statement can also not be utilized in a determination if that person refuses to submit to cross-examination at a live Hearing.
 - j. Hearing officers/Hearing panels cannot draw an inference 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.
 - k. No Hearing officer or Hearing panel member can also serve as an investigative authority or Appellate Authority in the same Complaint.
 - l. When a Hearing panel is being utilized to resolve a Complaint, either a voting chairperson or non-voting administrative advisor who does not serve on the panel shall oversee the live Hearing and deliberations, and assist in the development of a finding of fact, decision rationale, and, when appropriate, a Sanction rationale in consultation with the panel members.
 - m. Following the Hearing, the Hearing officer or Hearing panel will have three (3) business days to issue a decision letter. The decision letter must be sent simultaneously to both/all parties.
 - n. Decision letters must include:
 - The identification of the allegations;
 - A description of the procedural steps taken from the receipt of a Formal Complaint through determination, including any notifications to the parties, interviews with parties and Witnesses, site visits, methods used to gather other Evidence, and Hearings held if any;
 - Findings of fact supporting the determination;
 - Conclusion regarding the application of the University's Standard of Student Conduct standards to the facts;
 - A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary Sanctions the University imposes on the Respondent, and whether Remedies designed to restore or preserve equal access to the University's Education Program or Activity will be provided by the University to the Complainant, and;
 - The University's procedures and permissible bases for the Complainant and Respondent to appeal.
 - o. If for any reason there is reasonable cause for the University to delay the issuance of the decision letter, this will be communicated to the parties by the Designated Administrator or designee.
 - p. If a Student Respondent withdraws or graduates from the University pending the resolution of a Complaint, the process will continue and, the University will not issue a transcript on behalf of the Student until the conclusion of the process.

26.8. **Sanctions**

- 26.8.1. Judicial Sanctions or other actions that are not Supportive Measures may not be imposed on Respondents prior to a determination of responsibility except in cases meeting the requirements for removal on an emergency basis.
- 26.8.2. Remedies, which may be disciplinary or punitive in nature and may burden the Respondent, must be designed to restore or preserve the Complainant's equal access to the University's Education Program or Activity. The University shall describe or list the range of possible disciplinary Sanctions and Remedies that the University may implement following any determination of responsibility for any discrimination finding.
- 26.8.3. The Designated Administrator may decide Sanctions, if any, or may delegate the sanctioning decision to another authority within the University. Sanctioning decisions involving University Officials must be determined in consultation with the appropriate University Officials. The sanctioning authority may review an unredacted copy of the investigation report and exhibits.
- 26.8.4. Sanctions may have educational, restorative and rehabilitative components for University Officials and/or Students. In addition, University Official Sanctions may have punitive components. Examples of Sanctions may include, but are not limited to, written warning or reprimand, required training and/or counseling, "no contact" order, probation, suspension, and employment dismissal and/or student expulsion from an educational institution. For Students, expulsion is a disciplinary action taken to teach them that their actions and conduct have consequences, which includes ineligibility to continue as a member of the educational community.
- 26.8.5. Students found responsible for committing acts of Sexual Harassment, Sexual Assault, and Dating Violence, Domestic Violence, Stalking Based on Sex, and/or any other Sex-Based Misconduct who are allowed to return to the University after a suspension of one year or more may be ineligible to: (i) serve as a Student Leader; and/or (ii) represent the University in any way (including intercollegiate athletics or other competitions, both on and off campus) in the absence of significant mitigating factors.
- 26.8.6. A University Official found to have Sexually Harassed or engaged in Sex-Based Misconduct (as defined by this Policy) of another member of the University will be subject to discipline up to and including termination of employment.
- 26.8.7. A Student or University Official will not be subject to discipline for reporting to the University, in good faith, an incident of Sexual Harassment, Sexual Assault, Dating Violence, or Stalking Based on Sex at or near the time of the incident; regardless of where the incident occurred or the outcome of the University's disciplinary process regarding the incident, if any. This does not apply to a Student or University Official who reports their own commission or assistance in the commission of Sexual Harassment, Sexual Assault, Dating Violence, or Stalking Based on Sex.
- 26.8.8. For Sex Discrimination Complaints, both the Complainant(s) and the Respondent(s) will be informed in writing of any and all Sanctions, except when to do so would violate state or federal law (e.g., Family Educational Rights and Privacy Act).

26.9. **Appeals.**

- 26.9.1. Appeal of Decision and/or Sanctions – Allegations of Sex Discrimination. With respect to allegations of Sex Discrimination, including Sexual Harassment and Sex-Based Misconduct, the Designated Administrator's decision and the Sanction(s) imposed by the sanctioning authority can be appealed by the Complainant(s) and/or the Respondent(s) to the Student Services Committee, but only on the following bases, as applicable:
- a. New Evidence, not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome. The new Evidence must be provided at the time of filing of appeal;
 - b. 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;
 - c. The appropriateness or severity of the Sanctions.
- 26.9.2. One appeal is permitted. The Student Services Committee's decision on appeal is final.
- 26.9.3. The appeal will be confined to a review of the documentation and record of the investigation and Hearing, and pertinent documentation regarding the grounds for appeal.
- a. The appeal does not create an entitlement to a new investigation or a full re-Hearing of the Complaint.
 - b. The appeal process for both the Complainant(s) and the Respondent(s) must be equitable, but not necessarily identical. The appeal must be filed within five (5) business days of notification of the original decision.
 - c. The appeals process carries a presumption that the original decision was correct unless a Preponderance of the Evidence demonstrates that one (1) or more of the conditions of the appeal are met, and that either or both parties was deprived of a fair process.
- 26.9.4. The University will notify the other party in writing when an appeal is filed and implement appeal procedures equitably for both parties. Parties will be given three (3) business days to review the appeal and submit any written response in support of, or challenging, the outcome to the Student Services Committee.
- 26.9.5. The Student Services Committee has ten (10) business days to reach the decision and provide it to the Complainant(s), the Respondent(s), and the Title IX Coordinator simultaneously to the extent possible.

26.10. **Informal Resolution**

- 26.10.1. At any time prior to the determination of a final decision, the parties may seek Informal Resolution to resolve the Complaint. The following conditions apply to Informal Resolution:
- Informal Resolution is a voluntary process. No party may be compelled to participate in Informal Resolution. Informal Resolution shall be initiated upon the written Consent of the parties.
 - Prior to an Informal Resolution, the parties will be provided with: (a) written notice of the allegations; (b) the requirements of the Informal Resolution process, including the circumstances under which it precludes the parties from resuming a Formal Complaint arising from the same allegations; and (c) the consequences of withdrawing from the informal process and resuming the formal process, and including the records that will be maintained or could be shared.
 - Once a party agrees to participate in Informal Resolution, they may withdraw from the process at any time prior to a final agreement and resume the formal grievance process. Information shared in the Informal Resolution process may not be introduced into the formal process without independent Evidence.
 - Once a final agreement is established through Informal Resolution, the Complaint may not return to the Formal Complaint process unless one or both parties fails to abide by any conditions established in the agreement. Informal Resolution format options include mediation and restorative conferences and other forms of facilitated dialogue.
 - Mediation may not be used to resolve complaints of Rape, Statutory Rape, Dating Violence, Domestic Violence, Stalking Based on Sex, or any case in which imminent threats of harm may exist.
 - The University may not offer an Informal Resolution process in sex-based complaints unless a Formal Complaint is filed and may not offer or facilitate an Informal Resolution process to resolve allegations that a University Official Sexually Harassed a Student.

26.11. **Training**

- 26.11.1. The University will provide appropriate training to University Officials with responsibilities under this Policy, including the Title IX Coordinator, Investigators, Hearing panel members, appeal panel members, and any individual who facilitates the Informal Resolution process.
- 26.11.2. Such training will cover the definition of Title IX Sexual Harassment, the scope of the University's Education Program or Activity, how to conduct an investigation and grievance process including Hearings, appeals, and Informal Resolution processes under this policy, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.
- 26.11.3. The University will ensure that Hearing panel members receive training on any technology to be used at a Hearing and on issues of relevance of questions and Evidence, including questions and Evidence about the irrelevancy of Complainant's sexual predisposition or prior sexual behavior.
- 26.11.4. The University will ensure that Investigators receive training on issues of relevance in order to create an investigative report that fairly summarizes relevant Evidence. These training materials are publicly available on the University's Title IX website and will be made available for in-person review upon request.

26.12. **Record Retention**

- 26.12.1. The University will maintain for a period of seven (7) years records of the following:
- Each Title IX Sexual Harassment grievance process conducted under this Policy, including any determination regarding responsibility and any audio or audiovisual recording or transcript from a Hearing, any Sanction imposed on the Respondent, and Remedies provided to the Complainant designed to restore or preserve access to the University's Education Program or Activity;
 - Any appeal and the result therefrom;
 - Any Informal Resolution and the result therefrom; and
 - All materials used to train University's Title IX Coordinators, Investigators, Hearing panel members, appeal panel members, and any individual who facilitates the Informal Resolution process with regard to Title IX Sexual Harassment;

Records of any actions, including any Supportive Measures, taken in response to a report or Formal Complaint of Title IX Sexual Harassment. In each instance, the 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 the University's Education Program or Activity. If the University does not provide a Complainant with Supportive Measures, then the University will document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

26.17. **Special Provisions.**

- 26.17.1. Attempted Violations. In most circumstances, the University will treat attempts to commit any of the violations listed in this policy or in the Standard of Student Conduct as if those attempts had been completed.

- 26.17.4. Immunity for Reporting Party(ies) and Witnesses. The University community encourages the reporting of sex discrimination and Code of Conduct violations. Sometimes, Reporting Parties are hesitant to report to University Officials because they fear that they themselves may be charged with policy violations, such as underage drinking at the time of the incident. It is in the best interest of this community that as many Reporting Parties as possible choose to report to University Officials. To encourage reporting, the University pursues a policy of offering Reporting Parties of sex discrimination and sexual misconduct limited immunity from being charged with policy violations related to the particular incident. While violations to policy cannot be completely overlooked, the University will provide educational options rather than punishment, in such cases.

An individual who participates as a Reporting Party or is a Witness in an Investigation of Sexual Harassment, Sexual Assault, Dating Violence, or Stalking Based on Sex will not be subject to disciplinary Sanctions for a violation of the Standard of Student Conduct and/or employee conduct policy at or near the time of the incident, unless the University determines that the violation was egregious, including, but not limited to, an action that places the health or safety of any other person at risk or involves plagiarism, cheating, or academic honesty.

- 26.17.5. Bystander Intervention. The welfare of members of the CBU community is of paramount importance. At times, Students on- and off-campus may need assistance. The University encourages Students to offer help and assistance to others in need. Sometimes, Students are hesitant to offer assistance to others, for fear that they may get themselves in trouble (for example, a Student who has been drinking underage might hesitate to report sexual misconduct). The University pursues a policy of limited immunity for Students who offer help to others in need. While policy violations cannot be overlooked, the University will provide educational options, rather than punishment, to those who offer their assistance to others in need.

26.17.6. Parental Notification. The University reserves the right to notify parents/guardians of dependent Students regarding any health or safety emergency, change in Student status or conduct situation, particularly alcohol and other drug violations. The University may also notify parents/guardians of non-dependent Students who are under age 21 of alcohol and/or drug policy violations. When a Student is not a dependent, the University will contact parents/guardians to inform them of situations in which there is a health and/or safety risk. The University also reserves the right to designate which University Officials have a need to know about individual conduct complaints.

26.8. **Time Limitations.**

In order to pursue action through CBU's grievance procedure, an aggrieved Student or employee should meet with the Title IX Coordinator as soon as possible after the alleged act of sex discrimination, harassment, violence or retaliation occurs, to discuss the complaint. In any case, there is no time limit for a Student to make a report. Employees who have experienced or Witnessed conduct they believe is contrary to this policy have an obligation to make a report. An employee's failure to fulfill this obligation may affect personal rights in pursuing legal action. Timely reporting is necessary for employees.

26.12. **Cooperation with Law Enforcement.**

26.12.1. The University will comply with law enforcement request for cooperation and such cooperation may require the University to temporarily suspend the fact-finding aspect of a Title IX Investigation while the law enforcement agency is in the process of gathering Evidence. The University will promptly resume its Title IX Investigation as soon as notified by the law enforcement agency that it has completed the Evidence gathering process, which typically takes three (3) to ten (10) calendar days, although the delay in the University's Investigation may be longer in certain instances.

26.12. **Modification.**

California Baptist University reserves the right to modify this Policy to take into account applicable legal requirements or extraordinary circumstances. The University will review this Policy periodically to determine whether modifications should be made.