

# Title IX Panelist Training

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# The Actual Title IX Law

20 U.S.C. § 1681 & 34 C.F.R. Part 106 (1972)

***“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 educational program or activity receiving federal financial assistance.”***

***IX***

# Our Policy

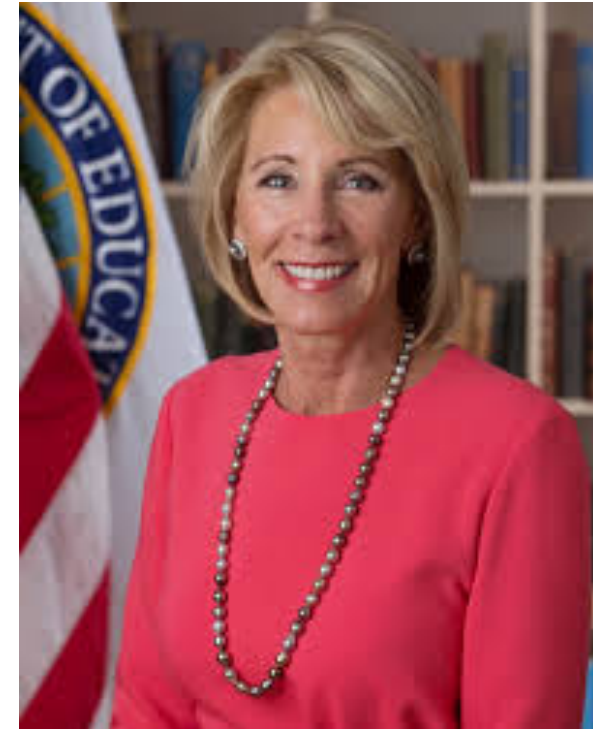
- Seeks to comply with new regulations
- Took effect August 14, 2020
- Similar in general form to previous ones
- Some very different details
- We have not had a formal complaint yet

# Our Task Today

- Outline CBU's processes for handling Sexual Misconduct
- Scheduling follow up training times for monthly topics
- Train the Pool members (that's y'all!) to be panelists, aka "Decision-makers" by:
  - Reviewing our specific policy in light of the modules
  - Learning our protocols
  - Answering questions
  - Addressing concerns

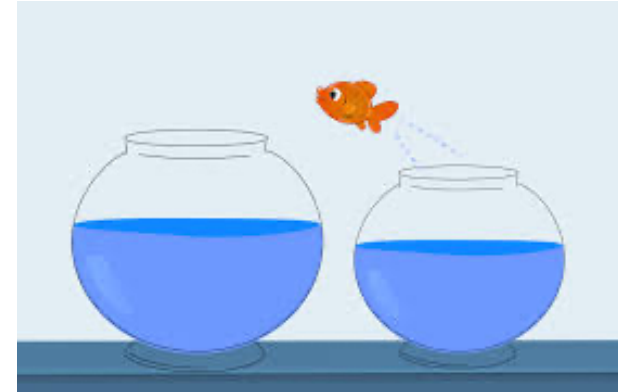
# Mandated New Regulations

- **The DeVos Administration** requires:
  - Formal **written** complaints
  - Offering “**informal resolution**”
  - A **formal hearing** if not mutually settled
  - Trained **advisor** provided
  - **Cross examination** in hearing
  - Posting all investigator’s training
- “**Severe, Persistent, and Objectively Offensive**” as a standard

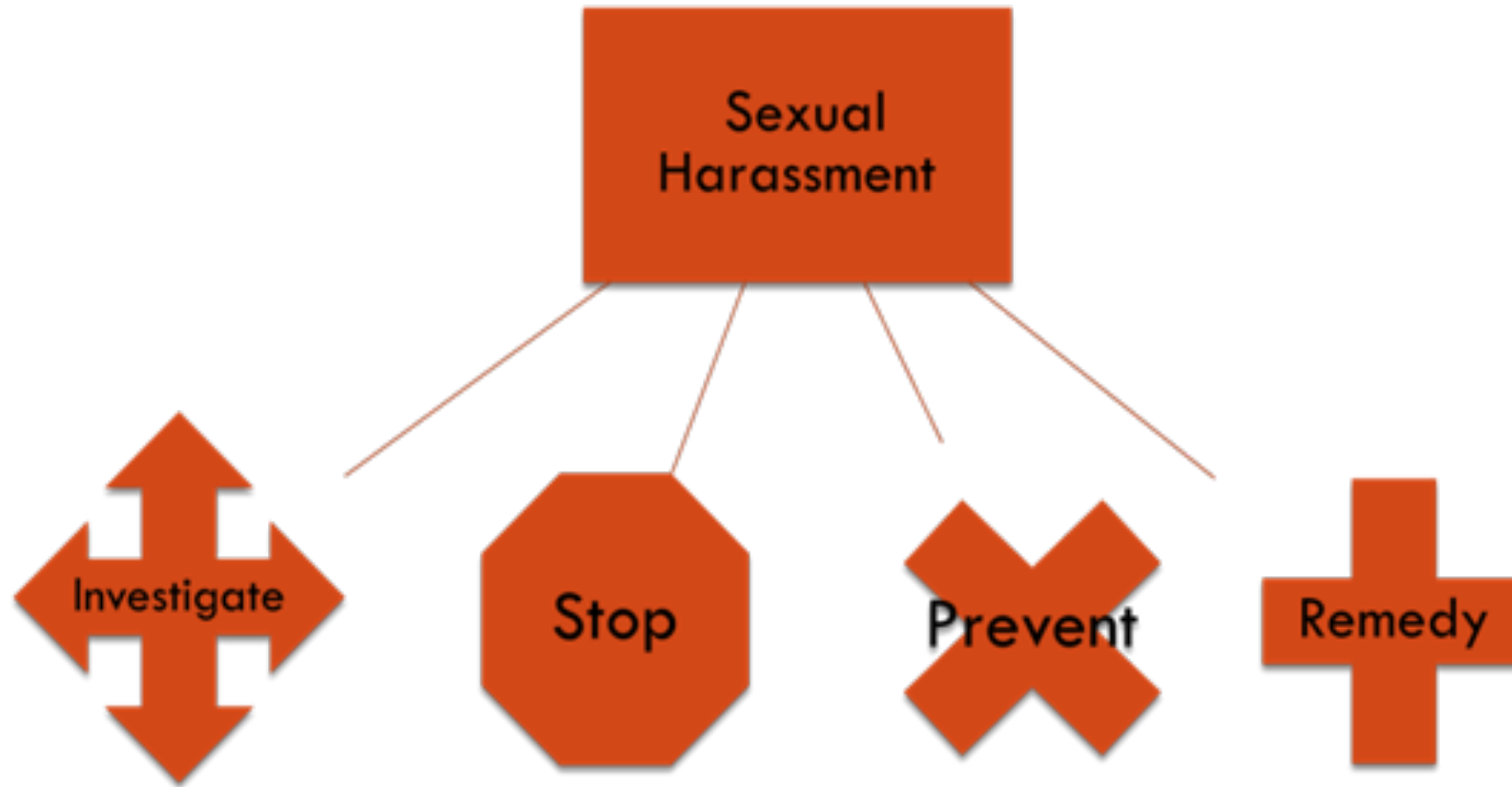


# Major Changes Include

- Two Processes (“A” and “B”)
- CBU must have **effective control** over involved parties for a formal process
- Only can happen in the USA
- “Quid pro quo” is **only possible for an employee** as the respondent
- **Failure to be cross-examined** means all participation is dismissed from consideration



# All Educational Institutions' Duty



# INTRODUCTION: 1

Members of the Christian Brothers University community, guests and visitors have the right to be free from all forms of gender and sex-based discrimination, examples of which can include acts of sexual violence, sexual harassment, domestic violence, dating violence, and stalking.



# INTRODUCTION: 2

All members of the campus community are expected to conduct themselves in a manner that does not infringe upon the rights of others. When an allegation of misconduct is brought to an appropriate administration's attention, and a respondent is found to have violated this policy, serious sanctions will be used to reasonably ensure that such actions are never repeated.

# INTRODUCTION: 3

This policy has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated. This policy is intended to define community expectations and to establish a mechanism for determining when those expectations have been violated.

# INTRODUCTION: 4

These policies are adopted in good faith in an attempt to meet or exceed federal law and regulations (often referred to as “Title IX”) and appropriate laws and regulations for the state of Tennessee and Shelby County

# RATIONALE FOR POLICY 1

Christian Brothers University is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities that are free from sexual harassment and retaliation. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, Christian Brothers University has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation sexual harassment or retaliation.

# RATIONALE FOR POLICY 2

Christian Brothers University values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all those involved.

# APPLICABLE SCOPE

The core purpose of this policy is the prohibition of sexual harassment and retaliation. When an alleged violation of this policy is reported, the allegations are subject to resolution using Christian Brothers University's "Process A" or "Process B," as determined by the Title IX Coordinator, and as detailed below. When the Respondent is a member of Christian Brothers University's community, a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the Christian Brothers University community. This community includes, but is not limited to, students, student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, invitees, and campers. The procedures below may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this policy.

# PROMPTNESS

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

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

# PRIVACY

Every effort is made by Christian Brothers University to preserve the privacy of reports. Christian Brothers University will not share the identity of any individual who has made a report or complaint of harassment or retaliation; any Complainant, any individual who has been reported to be the perpetrator of sexual harassment or retaliation, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures.



# PRIVACY

Christian Brothers University reserves the right to determine which Christian Brothers University officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

Only a small group of officials who need to know will typically be told about the complaint, including but not limited to: Division of Student Development & Campus Life, Christian Brothers University's Police, and the Behavioral Intervention/Threat Assessment Team.

# PRIVACY

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

Christian Brothers University may contact parents/guardians to inform them of situations in which there is a significant and articulable health and/or safety risk but will usually consult with the student first before doing so. Confidentiality and mandated reporting are addressed more specifically below

# TIME LIMITS ON REPORTING

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

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

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

# ONLINE SEXUAL HARASSMENT AND/OR RETALIATION

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

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

# ONLINE SEXUAL HARASSMENT AND/OR RETALIATION

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

# POLICY ON NONDISCRIMINATION

Christian Brothers University prohibits discrimination and harassment of any type and affords equal opportunities to students, employees and applicants without regard to race, color, sex, sexual orientation, age, mental or physical disability, national origin, genetic information, or any other protected status, and any categories protected by state and local law in its educational programs or activities, including employment and admissions.

# DEFINITION OF SEXUAL HARASSMENT

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

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

# DEFINITION OF SEXUAL HARASSMENT

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved. Sexual Harassment, as an umbrella category, includes the actual or attempted offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

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



# DEFINITION OF SEXUAL HARASSMENT

1) Quid Pro Quo:

- a. an employee of Christian Brothers University,
- b. conditions the provision of an aid, benefit, or service of Christian Brothers University,
- c. on an individual's participation in unwelcome sexual conduct.

# DEFINITION OF SEXUAL HARASSMENT

2) Sexual Harassment:

a. unwelcome conduct,

b. determined by a reasonable person,

c. to be so severe, and

d. pervasive, and,

e. objectively offensive,

f. that it effectively denies a person equal access to Christian Brothers University's educational program or .activity

# DEFINITION OF SEXUAL HARASSMENT

3) Sexual assault, defined as:

a. Sex Offenses, Forcible:

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

# DEFINITION OF SEXUAL HARASSMENT

## b. Sex Offenses, Non-forcible:

### o Incest:

- 1) Non-forcible sexual intercourse,
- 2) between persons who are related to each other,
- 3) within the degrees wherein marriage is prohibited by Tennessee law.

# DEFINITION OF SEXUAL HARASSMENT

o Statutory Rape (Tennessee 39-13-506) :

(a) Mitigated statutory rape is the unlawful sexual penetration of a victim by the defendant, or of the defendant by the victim when the victim is at least fifteen (15) but less than eighteen (18) years of age and the defendant is at least four (4) but not more than five (5) years older than the victim.

(b) Statutory rape is the unlawful sexual penetration of a victim by the defendant or of the defendant by the victim when:

(1) The victim is at least thirteen (13) but less than fifteen (15) years of age and the defendant is at least four (4) years but less than ten (10) years older than the victim; or

(2) The victim is at least fifteen (15) but less than eighteen (18) years of age and the defendant is more than five (5) but less than ten (10) years older than the victim.

# DEFINITION OF SEXUAL HARASSMENT

(c) Aggravated statutory rape is the unlawful sexual penetration of a victim by the defendant, or of the defendant by the victim when the victim is at least thirteen (13) but less than eighteen (18) years of age and the defendant is at least ten (10) years older than the victim.

# DEFINITION OF SEXUAL HARASSMENT

(d)

(1) Mitigated statutory rape is a Class E felony. (2)

(2) (A) Statutory rape is a Class E felony.

(B) In addition to the punishment provided for a person who commits statutory rape for the first time, the trial judge may order, after taking into account the facts and circumstances surrounding the offense, including the offense for which the person was originally charged and whether the conviction was the result of a plea bargain agreement, that the person be required to register as a sexual offender pursuant to title 40, chapter 39, part 2.

(3) Aggravated statutory rape is a Class D felony.

# DEFINITION OF SEXUAL HARASSMENT

4) Dating Violence, defined as:

a) violence,

b) on the basis of sex,

c) committed by a person,

d) who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.



# DEFINITION OF SEXUAL HARASSMENT

- i. The existence of such a relationship shall 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—
- ii. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
- iii. Dating violence does not include acts covered under the definition of domestic violence.

# DEFINITION OF SEXUAL HARASSMENT

5) Domestic Violence, defined as:

a) violence,

b) on the basis of sex,

c) committed by a current or former spouse or intimate partner of the Complainant,

d) by a person with whom the Complainant shares a child in common, or

e) by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or

f) by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Tennessee or

g) 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 Tennessee.

# DEFINITION OF SEXUAL HARASSMENT

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

# DEFINITION OF SEXUAL HARASSMENT

6) Stalking, defined as:

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

For the purposes of this definition—

i.) Course of conduct means two or more acts, including, but not limited to,

ii.) acts in which the Respondent 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.

iii.) Reasonable person means a reasonable person under similar circumstances

iv.) and with similar identities to the Complainant.

v.) Substantial emotional distress means significant mental suffering or

vi.) anguish that may but does not necessarily require medical or other professional treatment or counseling.

# DEFINITION OF SEXUAL HARASSMENT

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

# DEFINITION OF SEXUAL HARASSMENT

## c. Force, Coercion, Consent, and Incapacitation

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

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

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

# DEFINITION OF SEXUAL HARASSMENT

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

# DEFINITION OF SEXUAL HARASSMENT

Consent is:

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



# DEFINITION OF SEXUAL HARASSMENT

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

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

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain their consent to being kissed back.

# DEFINITION OF SEXUAL HARASSMENT

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

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

# DEFINITION OF SEXUAL HARASSMENT

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

# DEFINITION OF SEXUAL HARASSMENT

Consent in relationships must also be considered in context. When parties consent to BDSM or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, so Christian Brothers University’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.

# DEFINITION OF SEXUAL HARASSMENT

Incapacitation: A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent.

# DEFINITION OF SEXUAL HARASSMENT

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

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

# DEFINITION OF SEXUAL HARASSMENT

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

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

# DEFINITION OF SEXUAL HARASSMENT

## *Consent under Tennessee Criminal Law*

The definition of Consent for the purposes of criminal law in the State of Tennessee:

In Tennessee, with respect to most criminal offenses relating to sexual activity, sexual activity is criminal if: (1) the activity was accomplished without the consent of the victim and the defendant knows or has reason to know at the time of the activity that the victim did not consent; (2) force or coercion is used to accomplish the activity; (3) the defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless; or (4) the sexual activity is accomplished by fraud.



# DEFINITION OF SEXUAL HARASSMENT

“Consent” is not explicitly defined in Tennessee statutory law, for purposes of criminal offenses relating to sexual activity.

“Coercion” means a threat of kidnapping, extortion, force, or violence to be performed immediately or in the future. (Tennessee Code Annotated § 39-13-501(1))

“Mentally defective” means that a person suffers from a mental disease or defect which renders that person temporarily or permanently incapable of appraising the nature of the person's conduct. (Tennessee Code Annotated § 39-13-501(3))

# DEFINITION OF SEXUAL HARASSMENT

“Mentally incapacitated” means that a person is rendered temporarily incapable of appraising or controlling the person's conduct due to the influence of a narcotic, anesthetic or other substance administered to that person without the person's consent, or due to any other act committed upon that person without the person's consent. (Tennessee Code Annotated § 39-13-501(4))

“Physically helpless” means that a person is unconscious, asleep or for any other reason physically or verbally unable to communicate unwillingness to do an act. (Tennessee Code Annotated § 39-13-501(5))

# DEFINITION OF SEXUAL HARASSMENT

With respect to criminal offenses relating to sexual activity with a person under the age of eighteen (18) years of age, consent is irrelevant because Tennessee law deems a minor as incapable of consenting to sexual activity. However, Tennessee law provides a close-in-age exception to that general rule that allows minors who are at least the age of thirteen (13) and less than the age of eighteen (18) to give Consent to sexual acts with another person who is less than four (4) years older than the minor.

# RETALIATION

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

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

# RETALIATION

Christian Brothers University and any member of Christian Brothers University's community are prohibited from taking materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy and procedure.

# RETALIATION

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

# RETALIATION

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

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

# AMNESTY FOR COMPLAINANTS AND WITNESSES

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



# AMNESTY FOR COMPLAINANTS AND WITNESSES

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

To encourage reporting and participation in the process, Christian Brothers University maintains a policy of offering parties and witnesses amnesty from minor policy violations – such as underage consumption of alcohol or the use of illicit drugs – related to the incident.

# AMNESTY FOR COMPLAINANTS AND WITNESSES

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

# AMNESTY FOR COMPLAINANTS AND WITNESSES

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

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

# AMNESTY FOR COMPLAINANTS AND WITNESSES

Employees: Sometimes, employees are hesitant to report sexual harassment or retaliation they have experienced for fear that they may get in trouble themselves. For example, an employee who has violated the consensual relationship policy and is then assaulted in the course of that relationship might hesitate to report the incident to Christian Brothers University officials.

Christian Brothers University may, at its discretion, offer employee Complainants amnesty from such policy violations (typically more minor policy violations) related to the incident. Amnesty may also be granted to Respondents and witnesses on a case-by-case basis.

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

## ***OVERVIEW***

Christian Brothers University will act on any formal or informal notice/complaint of violation of the Policy that is received by the Title IX Coordinator or any other Official with Authority by applying these procedures, known as “Process A.” The procedures below apply to all allegations of sexual harassment or retaliation involving students, staff, administrators, or faculty members. A set of technical dismissal requirements within the Title IX regulations may apply as described below, but when a technical dismissal under the Title IX allegations is required, any remaining allegations will proceed using these same grievance procedures, clarifying which policies above are applicable. Although the effect of the Title IX regulations can be confusing, these grievance procedures apply to all policies above.

# PROCESS "A"

## ***NOTICE/COMPLAINT***

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

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

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

# PROCESS “A”

## ***NOTICE/COMPLAINT***

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

# PROCESS “A”

## ***INITIAL ASSESSMENT***

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

- If notice is given, the Title IX Coordinator seeks to determine if the person impacted wishes to make a formal complaint, and will assist them to do so, if desired.
  - o If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint because a violence risk assessment indicates a compelling threat to health and/or safety.



# PROCESS “A”

## ***INITIAL ASSESSMENT***

- If a formal complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.

# PROCESS “A”

## ***INITIAL ASSESSMENT***

- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an informal resolution option, or a formal investigation and grievance process.
  - o If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes, assesses the request, and implements accordingly. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.

# PROCESS “A”

## ***INITIAL ASSESSMENT***

- If an informal resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for informal resolution, [which informal mechanism may serve the situation best or is available] and may seek to determine if the Respondent is also willing to engage in informal resolution

# PROCESS “A”

## ***INITIAL ASSESSMENT***

- o If a Formal Grievance Process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX:
- o If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address:
  - an incident, and/or
  - a pattern of alleged misconduct, and/or
  - a culture/climate concern, based on the nature of the complaint.

# PROCESS “A”

## ***INITIAL ASSESSMENT***

- If it does not, the Title IX Coordinator determines that Title IX does not apply (and will “dismiss” that aspect of the complaint, if any), assesses which policies may apply and refers the matter for resolution under Process B. Please note that dismissing a complaint under Title IX is solely a procedural requirement under Title IX and does not limit Christian Brothers University’s authority to address a complaint with an appropriate process and remedies.

# PROCESS “A”

## ***a. Violence Risk Assessment***

In many cases, the Title IX Coordinator may determine that a Violence Risk Assessment (VRA) should be conducted by the Behavioral Intervention Team as part of the initial assessment. A VRA can aid in ten critical and/or required determinations, including:

1. Emergency removal of a Respondent on the basis of immediate threat to physical health/safety;
2. Whether the Title IX Coordinator should pursue/sign a formal complaint absent a willing/able Complainant;
3. Whether to put the investigation on the footing of incident and/or pattern and/or climate;

# PROCESS “A”

4. To help identify potential predatory conduct;
  5. To help assess/identify grooming behaviors;
  6. Whether it is reasonable to try to resolve a complaint through informal resolution, and what modality may be most successful;
  7. Whether to permit a voluntary withdrawal by the Respondent;
  8. Whether to impose transcript notation or communicate with a transfer Recipient about a Respondent;
  9. Assessment of appropriate sanctions/remedies (to be applied post-hearing);
- and/or
10. Whether a Clery Act Timely Warning/Trespass order is needed

# PROCESS “A”

## ***a. Violence Risk Assessment***

Threat assessment is the process of evaluating the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A VRA is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

VRAs require specific training and are typically conducted by psychologists, clinical counselors, social workers, case managers, law enforcement officers, student conduct officers, or other Behavioral Intervention Team (BIT)/CARE team members.



# PROCESS “A”

## ***a. Violence Risk Assessment***

A VRA authorized by the Title IX Coordinator should occur in collaboration with the BIT/CARE or threat assessment team. Where a VRA is required by the Title IX Coordinator, a Respondent refusing to cooperate may result in a charge of failure to comply within the appropriate student or employee conduct process.

A VRA is not an evaluation for an involuntary behavioral health hospitalization (e.g., 5150 in California, Section XII in Massachusetts, Baker Act in Florida), nor is it a psychological or mental health assessment. A VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

# PROCESS “A”

## ***b. Dismissal (Mandatory and Discretionary)***

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

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

# PROCESS “A”

## ***b. Dismissal (Mandatory and Discretionary)***

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

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

# PROCESS “A”

## ***b. Dismissal (Mandatory and Discretionary)***

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

This dismissal decision is appealable by any party under the procedures for appeal below. The decision not to dismiss is also appealable by any party claiming that a dismissal is required or appropriate. A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it.

# PROCESS “A”

## ***4. COUNTERCLAIMS***

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

# PROCESS “A”

## ***4. COUNTERCLAIMS***

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

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

# PROCESS “A”

## ***7. GRIEVANCE PROCESS POOL***

The Formal Grievance Process relies on a pool of administrators (“the Pool”) to carry out the process. Members of the Pool are announced in an annual distribution of this policy to all students, parents/guardians of students, employees, prospective students, and prospective employees. They are also listed in the Annual Title IX Report published by the Title IX Office. The list of Pool members and a description of the Pool can be found at [www.cbu.edu/Pool](http://www.cbu.edu/Pool).

# PROCESS “A”

## ***7. GRIEVANCE PROCESS POOL***

### ***a. Pool Member Roles***

Members of the Pool are trained annually, and can serve in in the following roles, at the direction of the Title IX Coordinator and Pool member’s consent:

- To provide appropriate intake of and initial guidance pertaining to complaints
- To act as an Advisor to the parties
- To serve as a Panelist regarding the complaint
- To serve as an Appeal Decision-maker



# PROCESS “A”

## **7. GRIEVANCE PROCESS POOL**

### ***b. Pool Member Appointment***

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

# PROCESS “A”

## ***7. GRIEVANCE PROCESS POOL***

### ***c. Pool Member Training***

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

- The scope of Christian Brothers University’s Sexual Harassment Policy and Procedures
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents, and promote accountability
- Implicit bias
- Disparate treatment and impact

# PROCESS “A”

## ***7. GRIEVANCE PROCESS POOL***

### ***c. Pool Member Training***

- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, and impartial manner
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
-

# PROCESS “A”

## ***7. GRIEVANCE PROCESS POOL***

### ***c. Pool Member Training***

- How to assess credibility
- Impartiality and objectivity
- How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- How to apply definitions used by Christian Brothers University with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy

# PROCESS “A”

## ***7. GRIEVANCE PROCESS POOL***

### ***c. Pool Member Training***

- How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes
- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- Any technology to be used at a live hearing
- Issues of relevance of questions and evidence
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence

# PROCESS “A”

## ***7. GRIEVANCE PROCESS POOL***

### ***c. Pool Member Training***

- How to determine appropriate sanctions in reference to all forms of harassment and/or retaliation allegations
- Recordkeeping

Specific training is also provided for Appeal Decision-makers, intake personnel, Advisors (who are Christian Brothers University employees), and Chairs. All Pool members are required to attend these trainings annually. The materials used to train all members of the Pool are publicly posted here: [insert link].\*\*

# PROCESS “A”

## ***7. GRIEVANCE PROCESS POOL***

### ***d. Pool Membership***

The Pool includes:

- 6 or more members of the faculty, with at least one from each school
- 6 or more administrators/staff members Pool members are usually appointed to three-year terms.

Individuals who are interested in serving in the Pool are encouraged to contact the Title IX Coordinator.

# FORMAL GRIEVANCE PROCESS “A”

## ***EVIDENTIARY CONSIDERATIONS IN THE INVESTIGATION***

The investigation does not consider:

- 1) incidents not directly related to the possible violation, unless they evidence a pattern;
- 2) the character of the parties; or
- 3) questions and evidence about the Complainant’s sexual predisposition or prior sexual behavior, 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.



# FORMAL GRIEVANCE PROCESS “A”

## ***REFERRAL FOR HEARING***

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

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

The Title IX Coordinator will select Decision-makers from the Pool depending on whether the Respondent is an employee or a student. Allegations involving student-employees in the context of their employment will be directed to the appropriate Decision-makers depending on the context and nature of the alleged misconduct.

# FORMAL GRIEVANCE PROCESS “A”

## ***HEARING DECISION-MAKER COMPOSITION***

Christian Brothers University will designate a three-member panel from the Pool, at the discretion of the Title IX Coordinator. One of the three members will be appointed as Chair by the Title IX Coordinator.

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

# FORMAL GRIEVANCE PROCESS “A”

## ***HEARING DECISION-MAKER COMPOSITION***

Those who have served as Investigators will be witnesses in the hearing and therefore may not serve as Decision-makers. Those who are serving as Advisors for any party may not serve as Decision-makers in that matter.

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

# FORMAL GRIEVANCE PROCESS “A”

## ***EVIDENTIARY CONSIDERATIONS IN THE HEARING***

Any evidence that the Decision-makers determine is relevant and credible may be considered. The hearing does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) the character of the parties; or 3) questions and evidence about the Complainant’s sexual predisposition or prior sexual behavior, 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.

# FORMAL GRIEVANCE PROCESS “A”

## ***EVIDENTIARY CONSIDERATIONS IN THE HEARING***

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility, assuming Christian Brothers University uses a progressive discipline system. This information is only considered at the sanction stage of the process and is not shared until then.

The parties may each submit a written impact statement prior to the hearing for the consideration of the Decision-maker(s) at the sanction stage of the process when a determination of responsibility is reached.

After post-hearing deliberation, the Decision-makers render a determination based on the preponderance of the evidence; whether it is more likely than not that the Respondent violated the Policy as alleged.

# FORMAL GRIEVANCE PROCESS “A”

## ***NOTICE OF HEARING***

No less than ten (10) business days prior to the hearing, the Title IX Coordinator or the Chair will send notice of the hearing to the parties. Once mailed, emailed, and/or received in person, notice will be presumptively delivered.

The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.
- Any technology that will be used to facilitate the hearing.

# FORMAL GRIEVANCE PROCESS “A”

- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Decision-maker(s) and parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator at least five (5) business days prior to the hearing.
- A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker on the basis of demonstrated bias. This must be raised with the Title IX Coordinator at least two (2) business days prior to the hearing.
- Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.

# FORMAL GRIEVANCE PROCESS “A”

- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the party’s or witness’s testimony and any statements given prior to the hearing will not be considered by the Decision-maker(s). For compelling reasons, the Chair may reschedule the hearing.
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they do not have an Advisor, and Christian Brothers University will appoint one. Each party must have an Advisor present. There are no exceptions.



# FORMAL GRIEVANCE PROCESS “A”

- A copy of all the materials provided to the Decision-maker(s) about the matter, unless they have been provided already.
- An invitation to each party to submit to the Chair an impact statement pre-hearing that the Decision-maker will review during any sanction determination.
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.
- Whether parties can/cannot bring mobile phones/devices into the hearing.

# FORMAL GRIEVANCE PROCESS “A”

## ***NOTICE OF HEARING***

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

In these cases, if the Respondent is a graduating student, a hold may be placed on graduation and/or official transcripts until the matter is fully resolved (including any appeal). A student facing charges under this Policy is not in good standing to graduate.

# FORMAL GRIEVANCE PROCESS “A”

## ***ALTERNATIVE HEARING PARTICIPATION OPTIONS***

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

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

# FORMAL GRIEVANCE PROCESS “A”

## ***PRE-HEARING PREPARATION***

The Chair or hearing facilitator after any necessary consultation with the parties, Investigator(s) and/or Title IX Coordinator, will provide the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days prior to the hearing.

# FORMAL GRIEVANCE PROCESS “A”

## ***PRE-HEARING PREPARATION***

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

# FORMAL GRIEVANCE PROCESS “A”

## ***PRE-HEARING PREPARATION***

The parties will be given a list of the names of the Decision-maker(s) at least five (5) business days in advance of the hearing. All objections to any Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than one day prior to the hearing. Decisionmakers will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

# FORMAL GRIEVANCE PROCESS “A”

## ***PRE-HEARING PREPARATION***

The Title IX Coordinator will give the Decision-maker(s) a list of the names of all parties, witnesses, and Advisors at least five (5) business days in advance of the hearing. Any Decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible. 56 During the ten (10) business day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Chair at the pre-hearing meeting or at the hearing and will be exchanged between each party by the Chair.

# FORMAL GRIEVANCE PROCESS “A”

## ***HEARING PROCEDURES***

At the hearing, the Decision-maker(s) has the authority to hear and make determinations on all allegations of sexual harassment and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the sexual harassment and/or retaliation, even though those collateral allegations may not specifically fall within the Policy.

Participants at the hearing will include the Chair, any additional panelists, the hearing facilitator (may be the Title IX Coordinator), the Investigator(s) who conducted the investigation, the parties, Advisors to the parties, any called witnesses, and anyone providing authorized accommodations or assistive services.



# FORMAL GRIEVANCE PROCESS “A”

## ***HEARING PROCEDURES***

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

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

# FORMAL GRIEVANCE PROCESS “A”

## ***JOINT HEARINGS***

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

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

# FORMAL GRIEVANCE PROCESS “A”

## ***THE ORDER OF THE HEARING –***

### ***INTRODUCTIONS AND EXPLANATION OF PROCEDURE***

The Chair explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of the Decision-makers on the basis of bias or conflict of interest. The Chair will rule on any such challenge unless the Chair is the individual who is the subject of the challenge, in which case the Title IX Coordinator will review and decide the challenge. The Chair then conducts the hearing according to the hearing script.

# FORMAL GRIEVANCE PROCESS “A”

## ***THE ORDER OF THE HEARING –***

### ***INTRODUCTIONS AND EXPLANATION OF PROCEDURE***

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

# FORMAL GRIEVANCE PROCESS “A”

## ***INVESTIGATOR PRESENTS THE FINAL INVESTIGATION REPORT***

The Investigator(s) will then present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-makers and the parties (through their Advisors). The Investigator(s) will be present during the entire hearing process, but not during deliberations.

Neither the parties nor the Decision-makers should ask the Investigators their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

# FORMAL GRIEVANCE PROCESS “A”

## ***TESTIMONY AND QUESTIONING***

Once the Investigator(s) present their report and are questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The parties/witnesses will submit to questioning by the Decision-maker(s) and then by the parties through their Advisors (“cross-examination”).

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

# FORMAL GRIEVANCE PROCESS “A”

## ***TESTIMONY AND QUESTIONING***

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

# FORMAL GRIEVANCE PROCESS “A”

## ***TESTIMONY AND QUESTIONING***

The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair has final say on all questions and determinations of relevance. The Chair may consult with legal counsel on any questions of admissibility. The Chair may ask Advisors to frame why a question is or is not relevant from 59 their perspective but will not entertain argument from the Advisors on relevance once the Chair has ruled on a question.

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



# FORMAL GRIEVANCE PROCESS “A”

## ***REFUSAL TO SUBMIT TO CROSS-EXAMINATION AND INFERENCES***

If a party or witness chooses not to submit to cross-examination at the hearing, either because they do not attend the meeting, or they attend but refuse to participate in questioning, then the Decision-makers may not rely on any prior statement made by that party or witness at the hearing (including those contained in the investigation report) in the ultimate determination of responsibility. The Decision-makers must disregard that statement. Evidence provided that is something other than a statement by the party or witness may be considered

# FORMAL GRIEVANCE PROCESS “A”

## ***REFUSAL TO SUBMIT TO CROSS-EXAMINATION AND INFERENCES***

If the party or witness attends the hearing and answers some cross-examination questions, only statements related to the cross-examination questions they refuse to answer cannot be relied upon. However, if the statements of the party who is refusing to submit to cross examination or refuses to attend the hearing are the subject of the allegation itself (e.g., the case is about verbal harassment or a quid pro quo offer), then those statements are not precluded from admission. Similarly, statements can be relied upon when questions are posed by the Decision-makers, as distinguished from questions posed by Advisors through cross-examination.

# FORMAL GRIEVANCE PROCESS “A”

## ***REFUSAL TO SUBMIT TO CROSS-EXAMINATION AND INFERENCES***

The Decision-makers may not draw any inference solely from a party’s or witness’s absence from the hearing or refusal to answer cross-examination or other questions.

If charges of policy violations other than sexual harassment are considered at the same hearing, the Decision-makers may consider all evidence it deems relevant, may rely on any relevant statement as long as the opportunity for cross-examination is afforded to all parties through their Advisors, and may draw reasonable inferences from any decision by any party or witness not to participate or respond to questions.

# FORMAL GRIEVANCE PROCESS “A”

## ***REFUSAL TO SUBMIT TO CROSS-EXAMINATION AND INFERENCES***

If a party’s Advisor of choice refuses to comply with the Christian Brothers University’s established rules of decorum for the hearing, Christian Brothers University may require the party to use a different Advisor. If a Christian Brothers University-provided Advisor refuses to 60 comply with the rules of decorum, Christian Brothers University may provide that party with a different Advisor to conduct cross-examination on behalf of that party.

# FORMAL GRIEVANCE PROCESS “A”

## ***RECORDING HEARINGS***

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

The Decision-makers, the parties, their Advisors, and appropriate administrators of Christian Brothers University will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

# FORMAL GRIEVANCE PROCESS “A”

## ***DELIBERATION, DECISION-MAKING, AND STANDARD OF PROOF***

The Decision-makers will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. If a panel is used, a simple majority vote is required to determine the finding. The preponderance of the evidence standard of proof is used. The hearing facilitator may be invited to attend the deliberation by the Chair, but is there only to facilitate procedurally, not to address the substance of the allegations.

# FORMAL GRIEVANCE PROCESS “A”

## ***DELIBERATION, DECISION-MAKING, AND STANDARD OF PROOF***

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

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

# FORMAL GRIEVANCE PROCESS “A”

## ***DELIBERATION, DECISION-MAKING, AND STANDARD OF PROOF***

The Decision-makers will review the statements and any pertinent conduct history provided by the Title IX Coordinator and will determine the appropriate sanction(s).

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

This report is typically three (3) to five (5) pages in length and must be submitted to the Title IX Coordinator within two (2) business days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.



# FORMAL GRIEVANCE PROCESS “A”

## ***SANCTIONS***

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

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

# FORMAL GRIEVANCE PROCESS “A”

## ***SANCTIONS***

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

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

# FORMAL GRIEVANCE PROCESS “A”

## ***SANCTIONS: a. Student Sanctions***

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

- **Warning:** A formal statement that the conduct was unacceptable and a warning that further violation of any Christian Brothers University policy, procedure, or directive will result in more severe sanctions/responsive actions.
- **Required Counseling:** A mandate to meet with and engage in either Christian Brothers University-sponsored or external counseling to better comprehend the misconduct and its effects.

# FORMAL GRIEVANCE PROCESS “A”

## ***SANCTIONS: a. Student Sanctions***

- Probation: A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.

# FORMAL GRIEVANCE PROCESS “A”

## ***SANCTIONS: a. Student Sanctions***

- Suspension: Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at Christian Brothers University. Transcript will be noted: “Non-academic suspension. Eligible for readmission after [designated time].”
- Expulsion: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend Christian Brothers University-sponsored events. This sanction will be noted permanently as a “Non-academic dismissal, ineligible for readmission” on the student’s official transcript.

# FORMAL GRIEVANCE PROCESS “A”

## ***SANCTIONS: a. Student Sanctions***

- **Withholding Diploma:** Christian Brothers University may withhold a student’s diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending or as a sanction if the student is found responsible for an alleged violation.
- **Revocation of Degree:** Christian Brothers University reserves the right to revoke a degree previously awarded from Christian Brothers University for fraud, misrepresentation, and/or other violation of Christian Brothers University policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.

# FORMAL GRIEVANCE PROCESS “A”

## ***SANCTIONS: a. Student Sanctions***

- Organizational Sanctions: Deactivation, loss of recognition, loss of some or all privileges (including Christian Brothers University registration) for a specified period of time.
- Other Actions: In addition to or in place of the above sanctions, Christian Brothers University may assign any other sanctions as deemed appropriate.

# FORMAL GRIEVANCE PROCESS “A”

## ***b. Employee Sanctions/Responsive Actions***

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

- Warning – Verbal or Written
- Performance Improvement Plan/Management Process
- Enhanced supervision, observation, or review
- Required Counseling
- Required Training or Education
- Probation
- Denial of Pay Increase/Pay Grade
- Loss of Oversight or Supervisory Responsibility



# FORMAL GRIEVANCE PROCESS “A”

## *b. Employee Sanctions/Responsive Actions*

- Demotion
- Transfer
- Reassignment
- Delay of tenure track progress
- Assignment to new supervisor
- Restriction of stipends, research, and/or professional development resources
- Suspension with pay
- Suspension without pay
- Termination
- Other Actions: In addition to or in place of the above sanctions/responsive actions, Christian Brothers University may assign any other responsive actions as deemed appropriate.

# FORMAL GRIEVANCE PROCESS “A”

## ***DISABILITIES ACCOMMODATIONS IN THE RESOLUTION PROCESS***

Christian Brothers University is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to the Christian Brothers University’s resolution process.

Anyone needing such accommodations or support should contact the Disability Services Coordinator, who will review the request and, in consultation with the person requesting the accommodation and the Title IX Coordinator, determine which accommodations are appropriate and necessary for full participation in the process

# That's It!

- Questions?
- Comments?
- Concerns?
  
- THANK YOU







