



# **Title IX**

## **Sex-Based Misconduct Policy**

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## Title IX

### Terms to Know

<b>Advisor</b>	Someone who supports and advises the complainant or respondent in accessing supportive measures and in navigating a university’s grievance process. Both parties have the right to an advisor of their choosing, who may be an attorney. Advisors will conduct cross – examination in live hearings under the new regulations.
<b>Complainant</b>	According to the new rule, a complainant is “an individual alleged to be the victim of conduct that could constitute sexual harassment” including sexual assault, dating violence, domestic violence, and stalking
<b>Cross – Examination</b>	The direct questioning of a party or a witness by a party or their advisor
<b>Formal Complaint</b>	A document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment.
<b>Parties</b>	The complainant and the respondent
<b>Respondent</b>	According to the new rule, a respondent is “an individual who has been reported to be perpetrator of conduct that could constitute sexual harassment.”
<b>Sexual harassment</b>	An umbrella term that captures a variety of prohibited conduct of a sexual nature, all of which may constitute sex discrimination under Title IX. It includes sexual assault, domestic violence, dating violence, stalking, and other offenses. You should be able to find your school’s list and definitions in the student code of conduct, or in other Title IX documents
<b>Supportive Measures</b>	Individualized services reasonably available that are non – punitive, non – disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment.
<b>Title IX (Title 9)</b>	A federal law that protects people from discrimination based on sex in educational programs or activities that receive federal financial assistance



## **TITLE IX SEX-BASED MISCONDUCT POLICY**

Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq. provides in part, that 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 activities receiving Federal financial assistance.

Blue Cliff College (“BCC” or the “College”) is committed to providing an environment which is free of sexual harassment and will not tolerate harassing behavior by any BCC employee, BCC student, or third party in connection with an educational program. We will act quickly and impartially to address claims of sexual harassment and discrimination and remedy discriminatory effects of inappropriate acts of discrimination.

We encourage all individuals to inform BCC about behavior that may be inappropriate or constitute harassment promptly, and before it becomes so serious that it interferes with your work or academic environment. We will work with students and employees to review their options for addressing the harassing behavior and tailor a response appropriate to the circumstances that effectively ends, remedies, and prevents any further misconduct.

Please report any incidents of sexual misconduct immediately to the BCC Title IX Officer, Marcus Horn at [marcus.horn@bluecliffcollege.edu](mailto:marcus.horn@bluecliffcollege.edu). Incidents of misconduct can also be reported to the ethics hotline number (1-877-201-7878).

### **What is Sexual Harassment and Sex Discrimination?**

Sexual harassment is a form of sex discrimination prohibited under Title IX and will not be tolerated at Blue Cliff College.

Sexual harassment is unwelcome conduct of a sexual nature. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other unwelcome verbal, visual, or physical conduct of a sexual nature. It also includes sexual violence, which is defined as physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent due to the use of drugs or alcohol or intellectual disability. Sexual violence includes sexual assault, domestic violence, dating violence, and stalking.

Consent is informed, freely given, and mutual. If coercion, intimidation, threats, or physical force are used there is no consent. If a person is mentally or physically incapacitated or impaired so that such person cannot understand the nature or extent of the sexual situation, there is no consent; this includes impairment or incapacitation due to alcohol or drug consumption or being asleep or unconscious. There is no consent when there is force, expressed or implied, or use of duress or deception upon the victim. Silence does not necessarily constitute consent. Past consent to sexual activities does not necessarily

imply ongoing future consent. Whether an individual has taken advantage of a position of influence over an alleged victim may be a factor in determining consent.

Sexual harassment also includes quid pro quo harassment, where sexual conduct is made, either explicitly or implicitly, a term or condition of an individual's employment or academic advancement.

Title IX also prohibits gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on gender or gender-stereotyping, even if those acts do not involve conduct of a sexual nature.

Gender-based harassment or sexual harassment constitutes sex discrimination if it is sufficiently severe or pervasive and has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creates an intimidating, hostile, or offensive working or academic environment. In some cases, a single act of sexual harassment or sexual violence, such as sexual assault, may be sufficiently severe to create a hostile environment and constitute discrimination.

In determining whether harassment has created a hostile environment, consideration will be made not only as to whether the conduct was unwelcome to the person who feels harassed, but also whether a reasonable person in a similar situation would have perceived the conduct as objectively offensive. Also, the following factors will be considered:

- The degree to which the conduct affected one or more students' education or individual's employment;
- The nature, scope, frequency, duration, and location of incident or incidents; and
- The identity, number, and relationships of the persons involved.

Some examples of sexual or gender-based harassment that may constitute sexual discrimination include the following:

- suggestive or obscene letters, notes, or invitations if sufficiently severe or pervasive;
- derogatory comments, epithets, slurs, or jokes if sufficiently severe or pervasive;
- impeding or blocking movements, touching, or any physical interference with normal work or activities, if sufficiently severe or pervasive;
- sexual oriented gestures, displaying sexually suggestive or derogatory objects, pictures, cartoons, or posters (the situation will be evaluated for appropriateness related to the educational or workplace objective(s));
- unwelcome sexual flirtations, advances or propositions;
- unwelcome actions, words or comments based on an individual's gender;
- sexually suggestive or offensive personal references about an individual and subtle pressure or requests for dates or sexual activities;
- Sexually explicit or offensive jokes and references, pictures and photographs, suggestive objects, verbal comments, leering or whistling.

Conduct that occurs off campus can be the subject of a complaint or report and will be investigated to determine whether it violates this policy, e.g., if off-campus harassment has continuing effects that create a hostile environment on campus.

### **Privacy and Confidentiality**

BCC understands that claims of harassment, discrimination, or sexual violence can be sensitive. If the complainant requests confidentiality or asks that the complaint or disciplinary action not be pursued against the alleged perpetrator, BCC will take all reasonable steps to investigate and respond to the complaint consistent with the individual's request. Such steps may include, for example, contacting the complainant confidentially to discuss availability of supportive measures recommending local counseling services, offering accommodations, providing the campus with additional training on relevant issues, and implementing other measures independent of disciplinary action that could assist the complainant or address the harassment without disclosing the individual's identity.

However, confidentiality cannot be guaranteed in every situation. Following notice of an incident, BCC must weigh a request for confidentiality or request not to pursue a formal investigation and disciplinary action with its responsibility to provide a safe, non-discriminatory environment to all students and employees. Thus, in some cases, it may be necessary to explain to the individual that confidentiality may not be ensured, pursue an investigation, and take all necessary steps to end the alleged misconduct and prevent its recurrence.

The Title IX Coordinator, in consultation with the Campus Director at the location where the claim originates will be the final authority on the degree to which BCC can ensure confidentiality in a specific case. In weighing a request for confidentiality and whether to pursue a formal investigation of an incident, the Title IX Coordinator will consider the seriousness of the alleged harassment; the complainant's age; and whether there have been other harassment complaints about the same individual.

### **Reporting Suspected Sexual Harassment**

To encourage persons experiencing alleged sexual harassment to come forward, Blue Cliff College provides several channels of communication for formal or informal complaint resolution.

#### **Confidential Resources**

Individuals may contact the following resources for support in any incident without the risk of having their identity revealed.

**For Students:** WellConnect gives students access to support services provided by one of their expert, licensed counselors. WellConnect is staffed 24/7/365 with master's level clinicians who are available for free in-the-moment telephonic support and direction. You can call us at any time to talk with a counselor. During the initial call, the WellConnect counselor will help you to work through your concerns. At the end of the call, you will be offered a referral for up to four sessions of face-to-face or telephonic counseling with a dedicated clinician. If you wish to engage in face-to-face counseling, WellConnect will connect you with a provider convenient to your home or work. They assist with any challenges that may arise during a student's time at Blue Cliff College; from time management and test anxiety, to feelings of depression or the loss of a loved one.

WellConnect counselors also provide coaching support, whether to help students start a budget or find local resources to help with daily living needs such as housing, food, and childcare. WellConnect also has

attorneys and financial experts on staff to consult with the students on legal issues, such as divorce, contract language, or child custody questions. Support with a counselor is available 24/7 (<http://www.studentlifetools.com/>), and is just a phone call away at 1-866-640-4777. These services are free and confidential for students enrolled at Blue Cliff College.

**For Employees:** Blue Cliff College employees should refer to their Blue Cross Blue Shield Coverage at <http://www.bcbsla.com> for additional information regarding counseling.

**Confidential Reporting:** We encourage anyone who witnessed or has been a victim of a crime to immediately report the incident by dialing 911 or dial (877) 201-7878 which is the corporate ethics hotline. Crimes can be reported on a voluntary, confidential basis for inclusion in the Annual Security Report. The police department can file a report on the details of an incident without revealing your identity.

The purpose of a confidential report is to maintain the anonymity of the individual, yet it allows the police to take steps to ensure your future safety and that of others. With such information, the college can also keep an accurate record of the number of incidents involving students, employees, and visitors, and alert the campus community to potential danger if necessary. Reports filed on a confidential basis are counted and disclosed in the annual crime statistics for the college.

### **Blue Cliff College Grievance Procedure**

BCC has developed the following grievance procedure for individuals who have experienced sexual harassment or sexual violence, including domestic violence, dating violence, sexual assault, or stalking. The grievance procedure applies to complaints against students, employees, or third parties. The process has been designed to ensure each complaint is thoroughly investigated and a prompt and equitable resolution. All BCC employees involved in the grievance procedure will receive training annually on how to conduct a fair and impartial investigation into matters involving sexual harassment and sexual violence.

### **Filing a Complaint**

#### **I. Notify Appropriate Personnel**

A student or employee may file a Title IX complaint with their Campus Director in person, by mail, or by electronic mail. The Campus Director will then forward the complaint to the Title IX Officer. At the request of the student or employee, BCC staff members will assist the individual in contacting local police and pursuing a criminal complaint. BCC will not wait for the conclusion of a criminal investigation or criminal proceeding to begin its own investigation and if necessary, will take immediate steps to protect the student or employee in the educational or employment setting.

#### **II. Preliminary Conference, Response, and Complaint Review**

If BCC receives a complaint from a student or employee or otherwise becomes aware of conduct that may constitute sexual harassment or sex discrimination, the Title IX Officer will conduct a preliminary conference with the complainant as soon as possible and a copy of this policy will be provided to the victim. The purpose of this initial meeting is to:

- 1) Inform the individual of their options under the grievance procedure, their option to notify local law enforcement, and as well as accommodations, remedies, and counseling services available through BCC and the local community;
- 2) Address the individual's request for confidentiality, if applicable;
- 3) Understand the basic allegations or facts underlying the possible misconduct;
- 4) Ensure the victim takes immediate steps to preserve any available evidence, particularly if the allegations involve sexual assault or sexual violence;
- 5) Determine if accommodations or other interim action is necessary to protect the victim, the accused, or the BCC community; and
- 6) Assess whether the alleged misconduct could rise to the level of prohibited discrimination that warrants a Formal Investigation.

### **III. Informal Resolution**

The Complainant has the option to seek an informal resolution in certain cases and where the Complainant, Respondent, Title IX Officer, and the Title IX Coordinator all agree informal resolution should be pursued. In cases involving allegations of sexual assault, informal resolution is not appropriate, even if both the Complainant and Respondent indicate a preference for informal resolution. The Title IX Officer is available to explain the informal and formal resolution procedures.

If the Complainant, the Respondent, and the Title IX Officer all agree that an informal resolution should be pursued, the Title IX Officer shall attempt to facilitate a resolution of the conflict that is agreeable to all parties. Under the informal process the Title IX Officer shall conduct such fact-finding as is useful to resolve the conflict and as is necessary to protect the interests of the parties, the University, and the community. Typically, an informal investigation will be completed within 20 days of receipt of the complaint. If it becomes necessary to extend the process, both parties will be notified of a revised expected resolution timeframe.

A Complainant or Respondent always has the option to request a formal investigation. The Title IX Officer also always has the discretion to initiate a formal investigation. If at any point during the informal process, the Complainant, the Respondent, or the Title IX Officer wishes to cease the informal process and to proceed through formal grievance procedures, the formal process outlined below will be invoked.

The informal resolution must adequately address the concerns of the Complainant, as well as the rights of the Respondent and the overall intent of the University to stop, remedy and prevent violations of this policy. (Informal actions might include but are not limited to: providing training to a work unit; having an informal discussion with an individual whose conduct, if not stopped, could rise to the level of discrimination, or hostile environment harassment; or having a confidential conversation with a supervisor or instructor).

The Title IX Officer is responsible for assessing whether a Formal Investigation will be conducted under the BCC Grievance Procedure - that is, whether the alleged facts could rise to the level of prohibited discrimination or conduct that warrants remediation and/or disciplinary action. Incidents involving sexual assault or sexual violence are cause for a Formal Investigation, subject to the complainant's request for confidentiality or request not to pursue disciplinary action against the alleged perpetrator.

In addition, the Title IX Officer may initiate a Formal Investigation if they believe that they lack sufficient information to assess whether the misconduct could rise to the level of discrimination, or an individual may pose a threat to the BCC community.

A determination that a Formal Investigation is not necessary does not preclude BCC from taking appropriate action to eliminate, remedy, or prevent prohibited or otherwise disruptive conduct. Appropriate action may include an informal mediation involving the parties; providing training to a work unit; having an informal discussion with an individual whose conduct, if not stopped, could rise to the level of discrimination, or hostile environment harassment; or having a confidential conversation with a supervisor or instructor. In addition, the College may pursue disciplinary sanctions for any actions that violate the student and employee Code of Conduct, even if those actions do not constitute discrimination.

#### **IV. Formal Investigation and Grievance Procedure**

**Assigning an Investigator.** When a determination is made to proceed with a Formal Title IX Investigation, the Title IX Officer or their designee will be assigned to investigate the claim.

**Appropriate Notice.** Throughout the investigation, both the Complainant and the Respondent will be afforded equal reasonable notice to prepare for any meeting or interview. At the outset of the Formal Investigation, the investigator will advise the Respondent of the allegations against him or her in writing and a copy will be provided to the Complainant.

**Equal Opportunity to Participate.** Both the Respondent and the Complainant will have an equal opportunity to participate in the investigation by way of live hearing and cross examination. Both parties will have an equal opportunity to give statements, provide evidence, and request that the investigator meet with relevant witnesses. Both Parties may be accompanied by one advisor of their choosing to any meeting or proceeding during an investigation. In the event that the party does not have an advisor, one will be provided without fee or charge to that party. The advisor can be another student, an attorney, a counselor, or any other person the student chooses. The school will assign an advisor for students who do not pick their own for the purpose of conducting cross – examination. During the live hearing, the decision maker must permit each party’s advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including that challenging credibility. Such cross – examination at the live hearing must be conducted directly, orally, and in real time by the party’s advisor of choice and never by a party personally.

**Evidentiary Determinations.** The investigator has broad discretion in determining whether a witness’ statements or documentary evidence is relevant to a determination. The investigator may be asked to address why or why not certain statements or other evidence was relevant in the Investigation Report.

**Standard of Review.** The Title IX investigation procedure will determine findings of fact using the preponderance of the evidence standard. This “preponderance of the evidence” standard requires that the evidence supporting each finding be more convincing than the evidence in opposition to it, meaning it must be more likely than not that the conduct at issue occurred.

**Possible Sanctions.** Not all forms of misconduct will be deemed to be equally serious offenses, and the college reserves the right to impose different sanctions depending on the severity of the offense and/or offender history.



Any student or employee found responsible for violation this policy may receive any of the following sanctions:

- Educational Sanctions – includes but it is not limited to the completion of an education assignment (e.g., research paper, program presentation, etc.)
- Formal Written Warning
- Probation
- Revocation of admission and/or degree
- Expulsion
- Suspension
- No contact (direct or indirect) with the victim
- Banishment from all college property, functions, etc.
- Substance Abuse Assessment
- Training on sex – based misconduct
- Employee sanctions: formal written warning, suspension, and/or termination

The Title IX Officer will also evaluate any request for accommodations in light of the information available. Under appropriate circumstances accommodations may include adjusting class or work schedules or affording students the opportunity to retake tests or coursework. Accommodations may also include referral to appropriate counseling services.

**Outcome Report.** When the Title IX investigator completes an investigation, they will summarize critical evidence and outline their findings and any recommended action necessary to address and remedy the discrimination in an Outcome Report. The Campus Director will review this summary to determine any appropriate disciplinary action. A copy of the Report will be provided to both the Complainant and the Respondent along with a date that the Report will be submitted to the Campus Director for review and possible disciplinary action. Both the Complainant and Respondent will have 7 days to submit a written response to the Report to the Title IX investigator, which will be accompany the Report when submitted to Campus Director.

The Campus Director has broad discretion to request that the investigator interview additional witnesses or collect additional information. The Campus Director will issue a written Outcome Letter including the finding(s) of fact, the rationale for the decision, and if applicable, any actions the College will take to provide accommodations to the Complainant, any institution-wide remedies are being considered or implemented, along with any disciplinary action taken. An Outcome Letter will be provided to both parties, although the content of each letter may be modified subject to the limitations of FERPA and other relevant laws and considerations. Both parties will also be provided with information regarding their right to appeal the decision.

BCC will make every effort to complete a Title IX investigation in an “reasonably timeframe” after receiving notice of an allegation of harassment or discrimination. The Title IX Officer may extend this timeframe for good cause. If the timeframe is extended, the College will apprise the parties of the progress of the investigation and provide updated timeframes.

## **V. Appeal**

If the Complainant or the Respondent is dissatisfied with final determinations made under this policy, that person may file an appeal. The Appeal must be filed in writing with the Title IX Officer within 5 calendar days of the Outcome Letter. A delay in filing the Appeal may be grounds for rejection of the

Appeal. The Appeal should state the remedy sought by the appealing party.

As soon as practicable, the Title IX Officer will provide a copy of the request for an appeal to the non-appealing party, the executive committee which consist of the Director of Academics, Director of Marketing and Admissions, and the Director of Finance who may confer with the investigator and the Campus Director to review the investigation record. Upon completing their review of the record, the Executive Committee will issue a written Appeal Outcome Decision which will be made available to both the Complainant and Respondent. The Appeal Outcome Decision is BCC's final determination on a matter and cannot be further appealed.

#### **VI. Retaliation is Prohibited**

BCC strictly prohibits retaliation against any individual who brings a good faith complaint under this policy or participates in any portion of a Title IX investigation. Retaliatory conduct violates not only College policy and Title IX but may also violate state and federal law.

#### **VII. False and Malicious Accusations**

A complainant whose allegations are found to be both false and brought with malicious intent will be subject to disciplinary action, up to and including termination/dismissal from school.