

BURRIS LABORATORY SCHOOL INTERIM TITLE IX SEXUAL HARASSMENT POLICY AND PROCEDURES

I. Policy Statement

This policy pertains to sexual harassment complaints by Burris Laboratory School students against Burris Laboratory School students. Burris Laboratory School employees are subject to Ball State University's sexual harassment policy found here:

<https://www.bsu.edu/about/administrativeoffices/general-counsel/policies-and-legal-information/sexual-harassment>

In accordance with the U.S. Department of Education's implementing regulations for Title IX of the Education Amendments of 1972 ("Title IX"), Burris Laboratory School ("School") prohibits sexual harassment that occurs within its education programs and activities. An individual who is found to have committed sexual harassment in violation of this policy is subject to the full range of discipline, up to and including termination of employment or expulsion. The School will provide persons who have experienced sexual harassment with ongoing remedies as reasonably necessary to restore or preserve access to the School's education program and activities.

II. Application and Scope

This policy applies to all students (including applicants for admission) when there is an allegation of sexual harassment occurring within the School's education program or activities, and it applies regardless of the parties' sex, gender, sexual orientation, gender identity, or citizenship status. For purposes of this policy, "sexual harassment" is conduct on the basis of sex that satisfies one or more of the following:

- i. An employee of the School conditioning the provision of an aid, benefit, or service of the School on an individual's participation in unwelcome sexual conduct (often referred to as quid pro quo);
- ii. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the School's education program or activity (often referred to as hostile environment harassment); or
- iii. Sexual assault, dating violence, domestic violence, or stalking (as these terms are defined in Section III below).

Note that the School's "education programs and activities" are locations, events, or circumstances over which the School exercises substantial control over both the respondent and the context in which the sexual harassment occurs. This policy does not apply to sexual harassment that is alleged to have occurred in a private setting and outside the scope of the School's education programs and activities, or outside of the geographical boundaries of the United States. Such allegations may be processed under other School policies and procedures.

III. Definitions

- A. **Complainant** is an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

- B. Respondent** is a person alleged to have been a perpetrator of conduct that could constitute sexual harassment.
- C. Sexual assault** is any sexual act directed against another person, without the consent, including instances where the person is incapable of giving consent. When processing a complaint of sexual assault under this policy, the School will use definitions under the uniform crime reporting system of the Federal Bureau of Investigation.
- D. Dating violence** means violence committed by a person (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on consideration of the following factors: (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship.
- E. Domestic violence** includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of Indiana, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Indiana.
- F. Stalking** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress.
- G. Preponderance of the evidence** is the standard of evidence to determine if a violation of this policy has occurred. This standard of proof means people in decision-making roles must be convinced by the totality of the available, relevant evidence presented that the alleged conduct has more likely than not (greater than 50% likely) occurred in order for there to be a violation of policy.
- H. Inculpatory evidence** is evidence implies or tends to establish responsibility for a violation of this policy as alleged.
- I. Exculpatory evidence** is evidence which implies or tends to establish a lack of responsibility for a violation of this policy as alleged.

IV. Reporting Sexual Harassment

Any person may report sexual harassment to the Title IX Coordinator. Reports may be made in person, by regular mail, telephone, electronic mail, or by any other means that results in the Title IX Coordinator receiving the report. In-person reports must be made during normal business

hours, but reports can be made online or by regular mail, telephone, or electronic mail at any time, including outside normal business hours.

The name and contact information for the Title IX Coordinator is:

Ms. Stefanie Onieal, slonieal@bsu.edu, 765-285-4366

In addition to reporting to the Title IX Coordinator, any person may report sexual harassment to any employee of the School. When an employee of the School receives information about alleged sexual harassment, they are required to promptly forward all known details of the situation (including the names of the parties, and the time, date, location, and description of the alleged behavior) to the Title IX Coordinator.

V. Preliminary Matters

A. Initial Assessment by the Title IX Coordinator

Upon receiving a report of conduct that could fall under this policy, the Title IX Coordinator will conduct an initial assessment, which may include a preliminary interview with the complainant, to determine whether the conduct reported falls within the scope of this policy as described in Section II above and could constitute sexual harassment. If the Title IX Coordinator determines that the conduct reported does not fall within the scope of this policy and/or could not constitute sexual harassment, even if investigated, or there is insufficient information available to know the nature and severity of the conduct, the Title IX Coordinator will close the matter as it relates to this policy. However, the Title IX Coordinator the alleged conduct may still be processed under other School policies and procedures if deemed appropriate under the circumstances.

If the Title IX Coordinator determines that the conduct reported falls within the scope of this policy and could constitute sexual harassment, if investigated, the Title IX Coordinator will proceed to contact the complainant (if their identity is known) to discuss the availability of supportive measures, consider the complainant's wishes with respect to supportive measures, inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain the process for filing a formal complaint.

B. Supportive Measures

The School will offer and make available supportive measures to the complainant regardless of whether the complainant elects to file a formal complaint. Supportive measures are nondisciplinary, non-punitive individualized services offered, as appropriate, and reasonably available, and without fee or charge, that are designed to restore or preserve equal access to the School's education programs and activities without unreasonably burdening another party, including measures designed to protect the safety of all parties implicated by a report or the School's education environment, or to deter sexual harassment. Supportive measures may include: counseling, extensions of academic or other deadlines, course-related adjustments, modifications to work or class schedules, campus escort services, increased security and monitoring of certain areas of campus, and other similar measures.

Contemporaneously with being notified of a formal complaint, as described in Section VII.A below, the respondent will be informed of the availability of supportive measures, and the School will offer and make available supportive measures to the respondent in the same manner in which it offers and makes them available to the complainant. The School will also offer and make available supportive measures to the respondent before the respondent is notified of a formal complaint, if the respondent requests such measures.

The School will maintain as confidential any supportive measures provided to the complainant or respondent, to the extent maintaining such confidentiality would not impair the ability of the School to provide the supportive measures in question. The Title IX Coordinator is responsible for implementing any supportive measures for the parties.

C. Advisor of Choice

The complainant and respondent have the right to be accompanied by an advisor of their choice to all meetings and interviews under this policy. The advisor may be, but is not required to be, an attorney. Unless otherwise specified in this policy, the advisor will play a passive role and is not permitted to communicate on behalf of a party, insist that communication flow through the advisor, or communicate with the School about the matter without the party being included in the communication. In the event a party's advisor of choice engages in a material violation of the parameters specified in this section, the School may preclude the advisor from further participation, in which case the party may select a new advisor of their choice.

D. Deadlines

All deadlines and other time periods specified in this policy are subject to modification by the School where, in the School's sole discretion, good cause exists. Good cause may include, but is not limited to, the unavailability of parties or witnesses; the complexities of a given case; extended holidays or closures; sickness of the investigator or the parties; the need to consult with the School's legal counsel; unforeseen weather events; and the like.

Any party who wishes to seek an extension of any deadline or other time period may do so by filing a written request with the Title IX Coordinator. Whether to grant such a requested extension will be in the sole discretion of the School.

E. Notice of Meetings and Interviews

Any notice inviting or requiring a party or witness to attend a meeting or interview will be provided with sufficient time for the party to prepare for the meeting or interview, and will include relevant details such as the date, time, location, purpose, and participants.

F. Emergency Removal & Administrative Lave

At any time after receiving a report of sexual harassment, a student respondent may be removed from one or more of the School's education programs and activities on a temporary basis if an individualized safety and risk analysis determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal. If an emergency removal occurs under this section, the respondent will be

notified of such in writing and be given an opportunity to appeal the decision. The School also retains discretion to place an employee respondent on administrative leave during the pendency of the grievance process described in Section VII below.

VI. Formal Complaints

A. Filing a Formal Complaint

A complainant may file a formal complaint of sexual harassment with the Title IX Coordinator in person, by regular mail, or by email using the contact information specified in Section IV above. For purposes of this policy, a “formal complaint” means a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the School investigate the allegation of sexual harassment in accordance with this policy. The Title IX Coordinator may consolidate formal complaints involving multiple parties if the allegations arise from the same facts or circumstances.

B. Dismissal of a Formal Complaint

1. Mandatory Dismissal

Upon evaluation of a complainant’s formal complaint, or at any point during the grievance process, the Title IX Coordinator *must* dismiss the complaint if the Title IX Coordinator determines it does not fall within the scope of this policy as described in Section II above and/or could not constitute sexual harassment, even if proved.

2. Possible Dismissal

At any point during the grievance process, the School may dismiss a formal complaint if the Title IX Coordinator determines that any one or more of the following is true:

- i. The complainant provides the Title IX Coordinator with a written notice indicating that the complainant wishes to withdraw the formal complaint (or any specific allegation(s) within the complaint, in which case the specific allegation(s) may be dismissed);
- ii. The respondent is no longer enrolled at or employed by the School; or
- iii. Specific circumstances prevent the School from gathering evidence sufficient to reach a determination as to the formal complaint (or any specific allegation(s) within the complaint, in which case the specific allegation(s) may be dismissed).

3. Notification and Appeal of a Dismissal of a Formal Complaint

Upon dismissal of a formal complaint under subsection 2 or 3 above, the Title IX Coordinator will send prompt written notice of the dismissal and the reason(s) for the dismissal simultaneously to both parties. A dismissal decision may be appealed pursuant to Section VIII.E below. If a dismissal decision is upheld on appeal, or if an appeal is not timely filed, the decision is deemed final for purposes of this policy. However, the conduct at issue may still be processed under other School policies and procedures if deemed appropriate.

VII. Grievance Process Utilized After a Formal Complaint Has Been Filed

After a formal complaint has been filed, the grievance process outlined below will be utilized. This process includes notice to the parties, an investigation, an opportunity to review the investigation report and submit questions, and an opportunity for appeal, each of which is discussed in more detail in the forthcoming sections of this policy. From the time a report or formal complaint is made, a respondent is presumed not responsible for the alleged misconduct until a determination regarding responsibility is made final.

A. Notice of a Formal Complaint

As soon as practicable, but no later than five (5) days after receiving a formal complaint, the Title IX Coordinator will simultaneously provide a written notice to the complainant and respondent that includes the following information:

- i. A physical copy of or hyperlink to this policy;
- ii. Sufficient details known at the time so that the parties may prepare for an initial interview with the investigator, to include the identities of the parties involved in the incident (if known), the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident (if known);
- iii. A statement that the respondent is presumed not responsible for the alleged sexual harassment and that a determination of responsibility will not be made until the conclusion of the grievance process, including any appeal;
- iv. Notification to the parties of their right to be accompanied by an advisor of their choice.
- v. Notification to the parties of their right to inspect and review evidence.
- vi. Notification to the parties of the School's prohibitions on retaliation, as described in Section XIII below, and knowingly making false statement or knowingly submitting false information, as described in Section XII below.

If at any point during the investigation, the School decides to investigate any allegations that are materially beyond the scope of the initial written notice described above, a supplemental written notice describing the additional allegation(s) to be investigated will be simultaneously provided to both parties.

B. Investigation

After the written notice of the formal complaint is provided to the parties, an investigator designated by the Title IX Coordinator will undertake an investigation that will be conducted in accordance with the following standards:

- i. The parties will have an equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
- ii. The burden of gathering evidence sufficient to reach a determination lies with the School and not with the parties.
- iii. The School cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's

capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the School obtains that party's voluntary, written consent to do so (or the voluntary, written consent of a parent if a party is not an eligible student as defined by FERPA).

- iv. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
- v. The School will not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
- vi. The School will provide written notice of the date, time, location, participants, and purpose of all investigative interviews or other meetings with sufficient time for the party to prepare to participate.
- vii. Both parties will have an equal opportunity to inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the School does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.
- viii. Prior to completion of the investigative report, the School will send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties will have at least ten (10) days to submit a written response, which the investigator will consider prior to completion of the investigative report.
- ix. The School strives to complete each investigation in a reasonably prompt timeframe, though the exact length of each investigation may vary depending on the unique circumstances of the particular case at issue.

C. Investigation Report & Response

At the conclusion of the investigation, the investigator will create an investigation report that fairly summarizes the evidence and, at least ten (10) days prior to the finding of responsibility, the report will be sent to each party and the party's advisor, if any, in an electronic format or a hard copy, for their review and written response.

Any response to the investigation report should include any written, relevant questions that a party wants asked of any party or witness. Answers will be provided to these questions, with the opportunity for additional, limited follow-up questions from each party. An explanation will be provided to the party proposing a question that is excluded as not being relevant.

D. Written Decision Regarding Responsibility; Discipline and Remedies

The school principal, Dr. Abigail Comber, will objectively evaluate the investigation report, including relevant evidence, and the parties' responses. The school principal, Dr. Abigail Comber, will then issue a written decision of responsibility, which will include the following:

- i. Identification of the allegations potentially constituting sexual harassment made in the formal complaint;
- ii. A description of the procedural steps taken by the School upon receipt of the formal complaint, through issuance of the written decision, including notifications to the parties, interviews with the parties and witnesses, site visits, and methods used to gather evidence;
- iii. Articulate findings of fact, made under a preponderance of the evidence standard, that support the decision;
- iv. A statement of, and rationale for, each allegation that constitutes a separate potential incident of sexual harassment, including a determination regarding responsibility for each separate potential incident;
- v. The discipline determined by the appropriate School official;
- vi. Whether the complainant will receive any ongoing supportive measures or other remedies as determined by the Title IX Coordinator (but not the nature of the supportive measures or other remedies unless such remedies constitute discipline of the respondent); and
- vii. A description of the School's process and grounds for appeal.

In the event it is determined that the respondent is responsible for violating this policy, before issuing the written decision there will be a consultation with the School official with disciplinary authority over the respondent and such official will determine any discipline to be imposed. The full range of School discipline is available, including verbal reprimand; written reprimand; mandatory training, coaching, or counseling; mandatory monitoring; partial or full probation; partial or full suspension; termination or expulsion; physical restriction from School property; and any combination of the same. There will also be consultation with the Title IX Coordinator who will determine as best as is reasonably known at the time whether and to what extent ongoing supportive measures or other remedies designed to restore or preserve equal access to the School's education programs and activities will be provided to the complainant and to the respondent, as appropriate.

This written decision will be provided to the parties, and this will conclude the grievance process, subject to any appeal rights outlined Section VII.E below.

E. Appeals

Either party may appeal the written decision, or a dismissal of a formal complaint (or any specific allegations therein), on one or more of the following grounds:

- i. A procedural irregularity affected the outcome;
- ii. There is new evidence that was not reasonably available at the time the determination or dismissal was made, that could have affected the outcome; and/or

- iii. The Title IX Coordinator, investigator, or other School official involved in the proceedings had a conflict of interest or bias for or against complainants or respondents generally, or against the individual complainant or respondent, that affected the outcome.

No other grounds for appeal are permitted.

A party must file an appeal within seven (7) days of the date they receive notice of dismissal or determination. The appeal must be submitted in writing to the superintendent, Dr. Bob Marra. The written appeal must specifically identify the determination and/or dismissal that is being appealed, articulate which one or more of the three (3) grounds for appeal are being asserted, explain in detail why the appealing party believes the appeal should be granted, and articulate what specific relief the appealing party seeks.

If the appeal is not timely filed and/or does not invoke at least one of the permitted grounds for appeal, it will be dismissed and the parties will be notified of such in writing. If the appeal is timely filed and invokes at least one of the permitted grounds for appeal, the non-appealing party will be notified of the appeal and provided an opportunity to provide a written response to the appeal within seven (7) days.

After receipt of any response filed by the non-appealing party, or after the time period for submission of the response has passed without one being filed, the superintendent, Dr. Bob Marra, will promptly decide the appeal and provide a written decision simultaneously to the parties that explains the outcome of the appeal and the rationale.

The determination of a formal complaint, including any discipline, becomes final when the time for appeal has passed with no party filing an appeal or, if an appeal is filed, at the point when the superintendent, Dr. Bob Marra, has resolved all appeals, either by dismissal or by providing a written decision to the parties.

No further review beyond the appeal is permitted.

VIII. Informal Resolution

At any time after the parties are provided written notice of the formal complaint, as described in Section VII.A above, and before the completion of any appeal described in Section VII.E above, the parties may voluntarily consent, with the Title IX Coordinator's approval, to engage in informal resolution to resolve the circumstances of the complaint.

The specific process for any informal resolution will be determined by the parties and the Title IX Coordinator, in consultation together. Before commencing the informal resolution process agreed upon, the Title IX Coordinator will simultaneously provide a written notice to the parties that:

- i. Describes the parameters and requirements of the informal resolution process to be utilized;
- ii. Identifies the individual responsible for facilitating the informal resolution (who may be the Title IX Coordinator, another School official, or a suitable third-party);
- iii. Explains the effect of participating in informal resolution and/or reaching a final resolution will have on a party's ability to resume the grievance process; and

- iv. Explains any other consequence resulting from participation in the informal resolution process, including a description of records that will be generated, maintained, and/or shared.

After receiving the written notice specified above, each party must voluntarily provide written consent to participate in the informal resolution process to the Title IX Coordinator, before the informal resolution process may begin.

If the parties reach a resolution through the informal resolution process, and the Title IX Coordinator agrees that the resolution is not clearly unreasonable, the Title IX Coordinator will put the terms of the agreed resolution in writing and give them to the parties for their written signature indicating their agreement. Once both parties have signed the written resolution, the matter is deemed resolved and is not subject to an appeal.

The following standards also apply to the informal resolution process:

- i. A party may withdraw their consent to participate in informal resolution at any time before a resolution has been finalized.
- ii. During the informal resolution process, the grievance process that would otherwise occur is paused and all related deadlines are suspended.
- iii. Notwithstanding anything else in this section, informal resolution will not be allowed if the respondent is a non-student employee accused of committing sexual harassment against a student.

IX. Conflicts of Interest and Bias

The Title IX Coordinator, investigator, and any other School official involved in the administration of these procedures will be free of any material conflicts of interest or material bias. Any party who believes a School official involved in the matter has a material conflict of interest or material bias must raise the concern promptly so that the School may evaluate the concern and find a substitute, if appropriate.

X. Exercise of Rights by Parents or Legal Guardians

Nothing in this policy may be read in derogation of any legal right of a parent or guardian to act on behalf of a complainant, respondent, or other individual, including, but not limited to, filing a formal complaint.

XI. Constitutional Rights

The School will construe and apply this policy consistent with the U.S. Constitution. In no case will a respondent be found to have committed sexual harassment based on expressive conduct that is protected by the First Amendment.

XII. Bad Faith Complaints and False Information

It is a violation of School policy for any person to submit a report or formal complaint that the person knows, at the time the report or formal complaint is submitted, to be false or frivolous. It

is also a violation of School policy for any person to knowingly make a materially false statement during the course of an investigation or appeal under this policy. Violations of this section are not subject to the grievance process in this policy; instead, they will be addressed under other School policies and procedures as deemed appropriate.

XIII. Retaliation

It is a violation of this policy to engage in retaliation, which is to intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX and its implementing regulations or because an individual made a report or formal complaint, testified, assisted, or participated or refused to participate in any manner under this policy. Reports and formal complaints of retaliation may be made in the manner specified in Sections IV and VI.A above. Any report or formal complaint of retaliation will be processed under this policy in the same manner as a report or formal complaint of sexual harassment, as the case may be. The School retains discretion to consolidate a formal complaint of retaliation with a formal complaint of sexual harassment for purposes of the grievance process if the two formal complaints share a common nexus.

XIV. Confidentiality

The School will keep confidential the identity of any individual who has made a report or formal complaint of sexual harassment or retaliation including any complainant, the identity of any individual who has been reported to be a perpetrator of sexual harassment or retaliation including any respondent, and the identity of any witness. The School will also maintain the confidentiality of its various records generated in response to reports and formal complaints, including, but not limited to, information concerning supportive measures, notices, investigation materials, and appeal records. Notwithstanding the foregoing, the School may reveal the identity of any person or the contents of any record if permitted by FERPA, if necessary to carry out the School's obligations under Title IX and its implementing regulations including the conduct of any investigation or appeal under this policy or any subsequent judicial proceeding, or as otherwise required by law. Further, notwithstanding the School's general obligation to maintain confidentiality as specified in this policy, the parties to a report or formal complaint will be given access to investigation materials as provided in this policy.

XV. Outside Appointments, Dual Appointments, and Delegations

The School retains discretion to retain and appoint suitably qualified persons who are not School employees to fulfill any function of the School under this policy, including, but not limited to, the investigator, informal resolution facilitator, and/or appeal officer. The School also retains discretion to appoint two or more persons to jointly fulfill a given role. In addition, the functions assigned to a given School official under this policy may, in the School's discretion, be delegated to another qualified individual.

XVI. Training

The School will ensure that School officials acting under this policy will receive training in compliance with any applicable state and federal laws. Materials utilized for Title IX training are available on the School's website.

XVII. Recordkeeping

The School will retain records for a period of seven years as required by Title IX after which point in time they may be destroyed.