



# **Bellarmino University's Sexual Misconduct and Nondiscrimination Policy**

**2025 - 2026 ACADEMIC YEAR**

**BASED IN PART ON THE ATIXA 2020 ONE POLICY, TWO PROCEDURES (1P2P) MODEL.  
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## ***BELLARMINE UNIVERSITY'S SEXUAL MISCONDUCT AND NONDISCRIMINATION POLICY: EQUAL OPPORTUNITY, HARASSMENT, AND NONDISCRIMINATION***

We are an inclusive Catholic university that educates students – mind, body, and spirit – for meaningful lives, rewarding careers, ethical leadership, and service to improve the human condition.

### **1. Definitions**

- **Advisor** means a person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.
- **Complainant** means an individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected class, or retaliation for engaging in a protected activity.
- **Complaint** (formal) means a document filed/signed by a Complainant or signed by the Chief Title IX Officer alleging harassment or discrimination based on a protected class or retaliation for engaging in a protected activity against a Respondent and requesting that Bellarmine University investigate the allegation.
- **Confidential Resource** means an employee who is not a Mandated Reporter of notice of harassment, discrimination, and/or retaliation (irrespective of Clery Act Campus Security Authority status).
- **Day** means a business day when Bellarmine University is in normal operation.
- **Education program or activity** means locations, events, or circumstances where Bellarmine University exercises substantial control over both the Respondent and the context in which the sexual harassment or discrimination occurs, and also includes any building owned or controlled by a student organization that is officially recognized by Bellarmine University.
- **Final Determination:** A conclusion by the standard of proof that the alleged conduct occurred and whether it did or did not violate policy.
- **Finding:** A conclusion by the standard of proof that the conduct did or did not occur as alleged.
- **Formal Grievance Process** means a method of formal resolution designated by Bellarmine University to address conduct that falls within the policies included below, and which complies with the requirements of 34 CFR Part 106.45.
- **Grievance Process Pool** includes any investigators, hearing officers, appeal officers, and advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).
- **Hearing Decision-Maker or Panel** refers to those who have decision-making and sanctioning authority within Bellarmine University's Formal Grievance process.
- **Investigator** means the person or persons charged by Bellarmine University with gathering facts about an alleged violation of this Policy, assessing relevance and/or credibility, synthesizing the evidence, and compiling this information into an investigation report and/or file of directly related evidence.
- **Mandated Reporter** means an employee of Bellarmine University who is obligated by policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Chief Title IX Officer, Deputy Coordinators [and/or their supervisor].

- **Notice** means that an employee, student, or third-party informs the Chief Title IX Officer or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- **Official with Authority (OWA)** means an employee of Bellarmine University explicitly vested with the responsibility to implement corrective measures for harassment, discrimination, and/or retaliation on behalf of Bellarmine University.
- **Parties** include the Complainant(s) and Respondent(s), collectively.
- **Recipient** means a postsecondary education program that is a recipient of federal funding.
- **Remedies** are post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to Bellarmine University's educational program.
- **Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected class, or retaliation for engaging in a protected activity.
- **Resolution** means the result of an informal or formal grievance process.
- **Sanction** means a consequence imposed by Bellarmine University on a Respondent who is found to have violated this policy.
- **Sexual Harassment** is the umbrella category including the offenses of sexual harassment, sexual assault, stalking, and dating violence and domestic violence. See Section 17.b., for greater detail.
- **The Chief Title IX Officer** is at least one official designated by Bellarmine University to ensure compliance with Title IX and Bellarmine University's Title IX program. References to the Coordinator throughout this policy may also encompass a designee of the Chief Title IX Officer for specific tasks, such as the Deputy Coordinator.
- **Title IX Team** refers to the Chief Title IX Officer, the Deputy Coordinators, and any member of the Grievance Process Pool.

## 2. **Rationale for Policy**

Bellarmino University is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from discrimination, 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, Bellarmine University has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of discrimination or harassment on the basis of sex, and for allegations of retaliation. Bellarmine 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.

## 3. **Applicable Scope**

The core purpose of this policy is the prohibition of discrimination on the basis of sex. Sometimes, discrimination involves exclusion from activities, such as admission, athletics, or employment. Other times, discrimination takes the form of harassment or, in the case of sex-based discrimination, can encompass sexual harassment, sexual assault, stalking, sexual exploitation, dating violence, or domestic violence. When an alleged violation of this anti-discrimination policy is reported, the allegations are subject to

resolution using Bellarmine University's process within this policy, the Non-Academic Grievance Policy, or appropriate employee disciplinary procedures, as determined by the Chief Title IX Officer, and as detailed below.

When the Respondent is a member of the Bellarmine University community, a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the Bellarmine University community. When the Respondent is not a member of the Bellarmine University community, supportive measures may still be available to the Complainant. 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.

#### **4. Chief Title IX Officer**

Desiree Isaac serves as the Chief Title IX Officer and oversees the implementation of Bellarmine University's Sexual Misconduct and Title IX Policy. The Chief Title IX Officer has the primary responsibility for coordinating Bellarmine University's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent discrimination, harassment, and retaliation prohibited under this policy.

#### **5. Independence and Conflict-of-Interest**

The Chief Title IX Officer manages the Title IX Team and acts with independence and authority, free from bias and conflicts of interest. The Chief Title IX Officer oversees all resolutions under this policy and these procedures. The members of the Title IX Team are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally.

To raise any concern involving bias or conflict of interest by the Chief Title IX Officer, contact the Chief Human Resources Officer. Concerns of bias or a potential conflict of interest by any other Title IX Team member should be raised with the Chief Title IX Officer. Reports of misconduct or discrimination committed by the Chief Title IX Officer should be reported to the Chief Human Resources Officer. Reports of misconduct or discrimination committed by any other Title IX Team member should be reported to the Chief Title IX Officer.

#### **6. Administrative Contact Information**

Complaints or notice of alleged policy violations, or inquiries about or concerns regarding this policy and procedures, may be made internally to:

**Desiree Isaac**, Institutional Chief Title IX Officer

Centro, McGowan Hall Room 280B | (502) 272-7337 | [disaac@bellarmine.edu](mailto:disaac@bellarmine.edu)

**Lea Bottorff**, Deputy Title IX Officer, Director of Human Resources

Centro, Horrigan Hall Room 202B | (502) 272-7232 | [lbottorff2@bellarmine.edu](mailto:lbottorff2@bellarmine.edu)

**Tony Brosky**, Deputy Title IX Officer, Dean, School of Movement and Rehab Services,  
Allen Hall Room 112 (502) 272-8375 | [jbrosky@bellarmine.edu](mailto:jbrosky@bellarmine.edu)

**Annie Coryell**, Deputy Title IX Officer

Knights Hall Room 022D | (502) 272-8408 | [bcoryell@bellarmine.edu](mailto:bcoryell@bellarmine.edu)

Bellarmino University has determined that the following administrators are Officials with the Authority to address and correct harassment, discrimination, and/or retaliation. In addition to the Title IX Team members listed above, these Officials with Authority listed below may also accept notice or complaints on behalf of Bellarmine University

- Denise Brown-Cornelius, Vice President for Finance
- Dr. Mark Wiegand, Vice President for Academic Affairs and Provost
- Lauren Keeling, Vice President for Enrollment and Marketing
- Dr. Leslie Maxie, Dean of Students
- Dr. Helen Grace Ryan, Vice President for Student Affairs

Bellarmino University has also classified all employees (including residence life student staff) as Mandated Reporters of any knowledge they have that a member of the community is experiencing harassment, discrimination, and/or retaliation.

**Inquiries may be made externally to:**

Office for Civil Rights (OCR)

U.S. Department of Education 400 Maryland Avenue, SW Washington, D.C. 20202-1100

Customer Service Hotline #: (800) 421-3481

Facsimile: (202) 453-6012

TDD#: (877) 521-2172

Email: OCR@ed.gov

Web: <http://www.ed.gov/ocr>

For complaints by employees involving the terms and conditions of employment, the Equal Employment Opportunity Commission.

**7. Notice/Complaints of Discrimination, Harassment, and/or Retaliation**

Notice or complaints of discrimination, harassment, and/or retaliation may be made using any of the following options:

- i. File a complaint with, or give verbal notice to, the Chief Title IX Officer (or Deputy). Such a report may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office address listed for the Chief Title IX Officer and Deputy Coordinators.
- ii. To file a report online, students are encouraged to utilize the following form: <https://www.bellarmino.edu/studentaffairs/dean/student-concern-report/>. To file a report online, employees are encouraged to utilize the form found here: <https://www.bellarmino.edu/hr/>. Anonymous reports are accepted. The university may be required to conduct an inquiry and investigation into any report that is filed, given the context and nature of the report. Filing an anonymous report may drastically reduce the university's ability to respond to the report. Anonymous reports cannot result in formal grievance procedures under the Title IX regulations.

Bellarmino University tries to provide supportive measures to all Complainants, which is impossible with an anonymous report. Because reporting carries no obligation to initiate a formal response, and as Bellarmine University respects Complainant requests to dismiss complaints unless there is a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of privacy by making a report that allows Bellarmine University to discuss and/or provide supportive measures.

A Formal Complaint means a document filed/signed by the Complainant or signed by the Chief Title IX Officer (or Deputy) alleging a policy violation by a Respondent and requesting that Bellarmine University investigate the allegation(s). A complaint may be filed with the Chief Title IX Officer (or Deputy) in person, by mail, or by electronic mail, by using the contact information in the section immediately above. As used in this paragraph, the phrase "document filed by a Complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by Bellarmine University) that contains the Complainant's physical or digital signature or otherwise indicates that the Complainant is the person filing the complaint.

If notice is submitted in a form that does not meet this standard, the Chief Title IX Officer will contact the Complainant to ensure that it is filed correctly.

## **8. Supportive Measures**

Bellarmino University will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged harassment, discrimination, and/or retaliation.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to Bellarmine University's education program or activity, including measures designed to protect the safety of all parties or Bellarmine University's educational environment, and/or deter harassment, discrimination, and/or retaliation.

The Chief Title IX Officer (or Deputy) promptly makes supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, Bellarmine University will inform the Complainant, in writing, that they may file a formal complaint with Bellarmine University either at that time or in the future, if they have not done so already. The Chief Title IX Officer works with the Complainant to ensure that their wishes are taken into account with respect to the supportive measures that are planned and implemented.

Bellarmino University will maintain the privacy of the supportive measures, provided that privacy does not impair Bellarmine University's ability to provide the supportive measures. Bellarmine University will act to ensure as minimal an academic impact on the parties as possible. Bellarmine University will implement measures in a way that does not unreasonably burden the other party.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program
- Referral to community-based service providers
- Visa and immigration assistance
- Student financial aid counseling
- Education to the community or community subgroup(s)

- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Providing transportation accommodations
- Implementing contact limitations (no contact directives) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Campus Ban Issuance
- Timely Warnings to the university community
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Chief Title IX Officer

Violations of no contact orders will be referred to appropriate student or employee conduct processes for enforcement and/ or adjudication.

## 9. **Risk Analysis**

Bellarmino University can act to remove a Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Chief Title IX Officer (or Deputy) in conjunction with the Care Team (for students) and a trained outside consultant (for employees) using a standard objective violence risk assessment procedures.

In all cases in which an emergency removal is imposed, the student, employee, or two (2) representatives from a student organization will be given notice of the action and the option to request to meet with the Chief Title IX Officer (or Deputy) prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested in a timely manner, objections to the emergency removal will be deemed waived. A Complainant and their Advisor may be permitted to participate in this meeting if the Chief Title IX Officer determines it is equitable to do so. This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to a Title IX proceeding. There is no appeal process for emergency removal decisions.

A Respondent may be accompanied by an advisor of their choice when meeting with the Chief Title IX Officer (or Deputy) for this meeting. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

The Chief Title IX Officer has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion or termination.

Bellarmino University will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Chief Title IX Officer, these actions could include, but are not limited to: removing a student from a residence hall, temporarily re-assigning an employee, restricting a student's or employee's access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, authorizing an administrative leave, suspension of specific duties, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics.

At the discretion of the Chief Title IX Officer, alternative coursework or work options may be pursued to ensure as minimal an academic or employment impact as possible on the parties.

#### **10. Promptness**

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

Any time the general timeframes for resolution outlined in Bellarmine University procedures will be delayed, Bellarmine 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.

#### **11. Privacy**

Every effort is made by Bellarmine University to preserve the privacy of reports. Bellarmine University will not share the identity of any individual who has made a report or complaint of harassment, discrimination, or retaliation; any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, 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.

Bellarmino University reserves the right to designate which Bellarmine 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 informed about the complaint, including but not limited to: Human Resources, Division of Student Affairs, Public Safety, and the Bellarmine University Care Team.

Bellarmino 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.

#### **12. Jurisdiction of Bellarmine University**

This policy applies to the education program and activities of Bellarmine University, including those that take place on the campus or on property owned or controlled by Bellarmine University, at Bellarmine University-sponsored events, or in buildings owned or controlled by Bellarmine University's recognized



student organizations. The Respondent must be a member of the university community in order for the full procedures to apply. This policy can also be applicable to the effects of off-campus misconduct that effectively deprives someone of access to Bellarmine University's educational program. Bellarmine University may also extend jurisdiction to off-campus and/or to online conduct when the Chief Title IX Officer determines that the conduct affects a substantial Bellarmine University interest. Regardless of where the conduct occurred, Bellarmine University will address notice/complaints to determine whether the conduct occurred in the context of its employment or educational program or activity, and/or has continuing effects on campus or in an off-campus sponsored program or activity. A substantial Bellarmine University interest includes:

- a. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;
- b. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual on Bellarmine's campus;
- c. Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
- d. Any situation that is detrimental to the educational interests or mission of Bellarmine University.

If the Respondent is unknown or is not a member of the Bellarmine University community, the Chief Title IX Officer will assist the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report.

Further, even when the Respondent is not a member of Bellarmine University's community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Chief Title IX Officer or Deputy Coordinator.

In addition, Bellarmine University may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from Bellarmine University property and/or events.

All vendors serving Bellarmine University through third-party contracts are subject to the policies and procedures of their employers or to these policies and procedures to which their employer has agreed to be bound by their contracts.

When the Respondent is enrolled in or employed by another institution, the Chief Title IX Officer (or Deputy) can assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to allege violations through that institution's policies.

Similarly, the Chief Title IX Officer (or Deputy) may be able to advocate for a student or employee Complainant who experiences discrimination in an externship, study abroad program, or other environment external to Bellarmine University where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give recourse to the Complainant.

### **13. Time Limits on Reporting**

There is no time limitation on providing notice/complaints to the Chief Title IX Officer. However, if the Respondent is no longer subject to Bellarmine 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 Chief Title IX Officer, who may document

allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

When a notice/complaint is affected by a significant time delay, Bellarmine 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.

#### **14. Online Harassment and Misconduct**

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

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

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as submitting to anonymous gossip sites, sharing inappropriate content via Snaps or other social media, unwelcome sexting, revenge porn, breaches of privacy, or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of Bellarmine University community.

#### **15. Policy on Nondiscrimination**

Bellarmino University adheres to all federal and state civil rights laws and regulations prohibiting discrimination in private institutions of higher education.

Bellarmino University does not discriminate against any employee, applicant for employment, student, or applicant for admission on the basis of:

- Race,
- Religion,
- Color,
- Sex,
- Pregnancy,
- Religion,
- Creed,
- Ethnicity,
- National origin (including ancestry),
- Citizenship status,
- Physical or mental disability (including perceived disability),
- Age,
- Sexual orientation,
- Gender identity,

- Veteran or military status (including disabled veteran, recently separated veteran, active duty wartime or campaign badge veteran, and Armed Forces Service Medal veteran),
- or any other protected category under applicable local, state, or federal law, including protections for those opposing discrimination or participating in any grievance process on campus, with the Equal Employment Opportunity Commission, or other human rights agencies.

This policy covers nondiscrimination in both employment and access to educational opportunities. Therefore, any member of Bellarmine University community whose acts deny, deprive, or limit the educational or employment or residential and/or social access, benefits, and/or opportunities of any member of Bellarmine University community, guest, or visitor on the basis of that person's actual or perceived membership in the protected classes listed above is in violation of Bellarmine University policy on nondiscrimination.

When brought to the attention of Bellarmine University, any such discrimination will be promptly and fairly addressed by Bellarmine University according to the Student Non-Academic Grievance Policy or the appropriate employee disciplinary procedure(s).

## 16. **Policy on Disability Discrimination and Accommodation**

Bellarmino University is committed to full compliance with the Americans with Disabilities Act of 1990 (ADA), as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws and regulations pertaining to individuals with disabilities.

Under the ADA and its amendments, a person has a disability if they have a physical or mental impairment that substantially limits a major life activity.

The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by Bellarmine University, regardless of whether they currently have a disability. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking, or caring for oneself.

The Director of the Accessibility Resources Center and the Chief Human Resources Officer have been designated as Bellarmine University's ADA Coordinators responsible for overseeing efforts to comply with these disability laws, including responding to grievances and conducting investigations of any allegation of noncompliance or discrimination based on disability. Grievances related to disability status and/or accommodations will be addressed using the procedures either through the Student Grievance Process or through Human Resources.

### a. **Students with Disabilities**

Bellarmino University is committed to providing qualified students with disabilities with reasonable accommodations and support needed to ensure equal access to the academic programs, facilities, and activities of Bellarmine University. All accommodations are made on an individualized basis. A student requesting any accommodation should first contact the Director of the Accessibility Resource Center, who coordinates services for students with disabilities. The Director of the Accessibility Resource Center reviews documentation provided by the student and, in consultation with the student, determines which accommodations are appropriate for the student's particular needs and academic program(s).

### b. **Employees with Disabilities**

Pursuant to the ADA, Bellarmine University will provide reasonable accommodation(s) to all qualified employees with known disabilities when their disability affects the performance of their essential job functions, except when doing so would be unduly disruptive or would result in undue hardship to Bellarmine University. An employee with a disability is responsible for submitting a request for an accommodation to Human Resources and providing necessary documentation. Human Resources will work with the employee's supervisor to identify which essential functions of the position are affected by the employee's disability and what reasonable accommodations could enable the employee to perform those duties.

## **17. Policy on Discriminatory Harassment**

Students, staff, administrators, and faculty members are entitled to an employment and educational environment that is free of discriminatory harassment. Bellarmine University's harassment policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane but controversial or sensitive subject matters protected by academic freedom.

The sections below describe the specific forms of legally prohibited harassment that are also prohibited under Bellarmine University policy. When speech or conduct is protected by academic freedom, it will not be considered a violation of Bellarmine University policy, though supportive measures will be offered to those impacted.

### **a. Discriminatory Harassment**

Discriminatory harassment constitutes a form of discrimination that is prohibited by Bellarmine University policy. Discriminatory harassment is defined as unwelcome conduct by any member or group of the community on the basis of actual or perceived membership in a class protected by policy or law. Bellarmine University does not tolerate discriminatory harassment of any employee, student, visitor, or guest. Bellarmine University will address all forms of harassment when reported, whether or not the harassment rises to the level of creating a "hostile environment." A hostile environment is one that, based on the totality of the circumstances, is subjectively and objectively offensive, and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from Bellarmine's educational or employment programs or activities.

When discriminatory harassment rises to the level of creating a hostile environment, Bellarmine University may also impose sanctions through the application of the grievance processes noted within this policy. Bellarmine University reserves the right to address offensive conduct and/or harassment that 1) does not rise to the level of creating a hostile environment, or 2) that is of a generic nature and not based on a protected status. Addressing such conduct may result in the imposition of discipline under Bellarmine University policy, but may be addressed through respectful conversation, remedial actions, education, effective Alternate Resolution, and/or other informal resolution mechanisms. For assistance with Alternate Resolution and other informal resolution techniques and approaches, employees should contact the Director of Human Resources, and students should contact the Chief Title IX Officer or a Deputy Title IX Officer.

### **b. Sexual Harassment**

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the Commonwealth of Kentucky regard Sexual Harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice. Bellarmine University has adopted the

following definition of Sexual Harassment in order to address the unique environment of an academic community, which consists not only of employers and employees, but of students as well. 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 offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

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

1. **Quid Pro Quo:**

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

2. **Unwelcome Conduct:**

- a. conduct 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 Bellarmine University's education program or activity.

3. **Sexual assault, defined as:**

a. **Sex Offenses, Forcible:**

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

b. **Forcible Rape:**

- i. Penetration,
- ii. no matter how slight,
- iii. of the vagina or anus with any body part or object, or
- iv. oral penetration by a sex organ of another person,
- v. without the consent of the Complainant.

c. **Forcible Sodomy:**

- i. Oral or anal sexual intercourse with another person,
- ii. forcibly,
- iii. and/or against that person's will (non-consensually), or
- iv. not forcibly or against the person's will in instances in which the Complainant is capable of giving consent because of age or because of temporary or permanent mental or physical incapacity

d. **Sexual Assault with an Object:**

- i. The use of an object or instrument to penetrate,
- ii. however slightly,
- iii. the genital or anal opening of the body of another person,
- iv. forcibly,
- v. and/or against that person's will (non-consensually),
- vi. or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- e. **Forcible Fondling:**
  - i. The touching of the private body parts of another person (buttocks, groin, breasts),
  - ii. for the purpose of sexual gratification,
  - iii. forcibly,
  - iv. and/or against that person's will (non-consensually),
  - v. or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- f. **Sex Offenses, Non-forcible:**
  - i. **Incest:**
    - 1. Non-forcible sexual intercourse,
    - 2. between persons who are related to each other,
    - 3. within the degrees wherein marriage is prohibited by the Kentucky State law.
  - ii. **Statutory Rape:**
    - 1. Non-forcible sexual intercourse,
    - 2. with a person who is under the statutory age of consent of Kentucky.
- 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.
    - 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.
- 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 Kentucky, 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 Kentucky.

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.

**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, 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.
    - ii. Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
    - iii. Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

**7. Employee Relationships**

The employment of relatives or individuals involved in a dating relationship in the same area of the University may cause serious conflicts and problems with favoritism and employee morale. In addition to claims of partiality in treatment at work, personal conflicts from outside the work environment can be carried over into day-to-day working relationships.

Although Bellarmine has no prohibition against employing relatives of current employees or individuals involved in a dating relationship with current employees, it is strongly discouraged. Bellarmine is committed to monitoring situations in which such relationships exist in the same area. In case of actual or potential problems, Bellarmine will take prompt action to avoid favoritism or inequitable treatment of other employees. This can include reassignment or, if necessary, termination of employment for one or both of the individuals involved.

Because the University views it as professionally unethical, because the potential for abuse or the appearance of abuse is so great, and because of the inherent differential in authority, the University prohibits the following relationships and acts, whether they are consensual or not:

- Every non-student member of the University Community is prohibited from engaging in romantic or sexual relationships or in romantic or sexual conduct with any student currently enrolled as an undergraduate at the University.
- Every member of the University Community is prohibited from engaging in romantic or sexual relationships or in romantic or sexual conduct with anyone whom he or she educates, counsels, coaches, supervises, or evaluates in any way.

Even when both parties have consented at the outset to the development of such a relationship, it is the officer, instructor, or other person in the relative position of power who, by reason of authority conferred by the University, bears the burden of accountability. In extraordinary situations, exceptions to this policy might be granted. [For this, one should confer with the Chief Title IX Officer.] Some examples of possible exceptions may include:

- A recent Bellarmine graduate, hired by the University, continuing a relationship that began while both individuals were students.
- An employee's spouse enrolling as a graduate or nontraditional undergraduate student.

Exceptions are considered on a case-by-case basis. Similarity to one of the examples cited above does not automatically make the relationship acceptable. If you have any questions about the application or the effect of this policy on an existing or potential relationship, it is your duty to consult with your supervisor or the Chief Title IX Officer.

In keeping with this University policy, if charges of harassment are made, the existence of a consensual relationship in any of the contexts stated above shall not be a defense. Disciplinary penalties for individuals who violate these provisions may include written reprimand, formal warning, suspension, termination or dismissal, or such other penalties as the University deems appropriate and consistent with the gravity of the offense. In the case of faculty, violation of these prohibitions may constitute "serious misconduct...or neglect of professional duties and responsibilities, or moral turpitude," and can therefore constitute grounds for dismissal of a tenured or untenured faculty member.

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

### **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.

**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.

**Consent is permission that is:**

- knowing, and
- voluntary, and
- clearly expressed
- by word or action
- prior to engaging in sexual activity.

Since individuals may experience the same interaction in different ways, 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.

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.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on Bellarmine 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.

Consent in relationships must also be considered in context. When parties consent to BDSM<sup>7</sup> 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 Bellarmine 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.

**Incapacitation:**

A person cannot consent if they are unable to understand what is happening or are 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.

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).

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.

## **Other Civil Rights Offenses**

In addition to the forms of sexual harassment described above, which fall within the coverage of Title IX, Bellarmine University additionally prohibits the following offenses as forms of discrimination outside of Title IX when the act is based upon the Complainant's actual or perceived membership in a protected class.

» Sexual exploitation, defined as: taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute sexual harassment under this policy. Examples of Sexual Exploitation include, but are not limited to:

» Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)

» Invasion of sexual privacy

» Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent), including the making or posting of revenge pornography

» Prostituting another person

» Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually-transmitted disease (STD) or infection (STI), without informing the other person of the infection

» Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity

» Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections

» Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity

» Knowingly soliciting a minor for sexual activity

» Engaging in sex trafficking

» Creation, possession, or dissemination of child pornography

- Threatening or causing physical harm, extreme verbal, emotional, or psychological abuse, or other conduct which threatens or endangers the health or safety of any person;

- Discrimination, defined as actions that deprive, limit, or deny other members of the community of educational or employment access, benefits, or opportunities;
- Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm to another;
- Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the Bellarmine University community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity.

Violation of any other Bellarmine University policies may constitute a Civil Rights Offense when a violation is motivated by actual or perceived membership in a protected class, and the result is a discriminatory limitation or denial of employment or educational access, benefits, or opportunities.

Sanctions for the above-listed Civil Rights Offenses range from reprimand to expulsion/termination.

## 18. **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 Chief Title IX Officer (or Deputy) and will be promptly investigated. Bellarmine University is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

It is prohibited for Bellarmine University or any member of Bellarmine University's community to take 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.

Charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by Title IX, 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.

## 19. **Mandated Reporting**

All Bellarmine University employees (faculty, staff, administrators) are expected to report actual or suspected discrimination or harassment to appropriate officials immediately, though there are some limited exceptions.

In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality and are not required to report actual or suspected discrimination or harassment. They may offer options and resources without any obligation to inform an outside agency or campus official unless a Complainant has requested the information be shared.

If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter will immediately pass reports to the Chief Title IX Officer or Deputy (and/or police, if desired by the Complainant), who will take action when an incident is reported to them.

The following sections describe the reporting options at Bellarmine University for a Complainant or third-party (including parents/guardians when appropriate):

a. **Confidential Resources**

If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with:

- On-campus licensed mental health counselors through the Bellarmine Counseling Center
- On-campus health service providers
- On-campus members of the clergy/chaplains working within Campus Ministry
- Off-campus Employee Assistance Program (for employees)
- Off-campus (non-employees):
  - » Center for Women and Families
  - » Local or state counseling agencies
  - » Local or state health care staff
  - » Local or state assistance agencies
  - » Clergy/Chaplains
  - » Attorneys

All of the above-listed individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, and/or professional credentials, except in extreme cases of immediacy of threat or danger or abuse of a minor/individual with a disability, or when required to disclose by law or court order.

Campus counselors and the Employee Assistance Program are available to help free of charge and may be consulted on an emergency basis during normal business hours.

b. **Mandated Reporters and Formal Notice/Complaints**

All employees of Bellarmine University (including residence life student staff), with the exception of those who are designated as Confidential Resources, are Mandated Reporters and must promptly share with the Chief Title IX Officer (or Deputy) all known details of a report made to them in the course of their employment. Employees must also promptly share all details of behaviors under this policy that they observe or have knowledge of, even if not reported to them by a Complainant or third party. Complainants may want to carefully consider whether they share personally identifiable details with non-confidential Mandated Reporters, as those details must be shared with the Chief Title IX Officer. Supportive measures may be offered as a result of such disclosures without formal action by Bellarmine University. Failure of a Mandated Reporter, as described above in this section, to report an incident of harassment or discrimination of which they become aware is a violation of Bellarmine University policy and can be subject to disciplinary action for failure to comply.

Though this may seem obvious, when a Mandated Reporter is engaged in harassment or other violations of this policy, they still have a duty to report their own misconduct, though Bellarmine University is technically not on notice when a harasser is also a Mandated Reporter unless the harasser does in fact report themselves. Finally, it is important to clarify that a Mandated Reporter who is themselves a target of harassment or other misconduct under this policy is not required to report their own experience, though they are, of course, encouraged to do so.

## **20. When a Complainant Does Not Wish to Proceed**

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Chief Title IX Officer, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law.

The Chief Title IX Officer has ultimate discretion over whether Bellarmine University proceeds when the Complainant does not wish to do so, and the Chief Title IX Officer may sign a formal complaint to initiate a grievance process upon completion of an appropriate violence risk assessment. The Chief Title IX Officer's decision should be based on the results of the violence risk assessment that show a compelling risk to health and/or safety that requires Bellarmine University to pursue formal action to protect the community. A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. Bellarmine University may be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes. The Chief Title IX Officer must also consider the effect that non-participation by the Complainant may have on the availability of evidence and Bellarmine University's ability to pursue a Formal Grievance Process fairly and effectively. When the Chief Title IX Officer executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this policy.

When Bellarmine University proceeds, the Complainant (or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation. Typically, when the Complainant chooses not to participate, the Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant.

Note that Bellarmine University's ability to remedy and respond to notice may be limited if the Complainant does not want Bellarmine University to proceed with an investigation and/or grievance process. The goal is to provide the Complainant with as much control over the process as possible, while balancing Bellarmine University's obligation to protect its community.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow Bellarmine University to honor that request, Bellarmine University will offer informal resolution options (see below), supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint at a later date. Upon making a formal complaint, a Complainant has the right, and can expect, to have allegations taken seriously by Bellarmine University, and to have the incidents investigated and properly resolved through these procedures.

## **21. Federal Timely Warning Obligations**

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, Bellarmine University must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

Bellarmino University will ensure that a Complainant's name and other identifying information are not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

## **22. False Allegations and Evidence**

Deliberately false and/or malicious accusations under this policy, as opposed to allegations which, even if erroneous, are made in good faith, are a serious offense and will be subject to appropriate disciplinary action.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence after being directed to preserve such evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under Bellarmine University policy.

## **23. Amnesty for Complainants and Witnesses**

The Bellarmine University community encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to Bellarmine 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.

It is in the best interests of the Bellarmine University community that Complainants choose to report misconduct to Bellarmine 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, Bellarmine 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 does not apply to more serious allegations, such as physical abuse of another or illicit drug distribution. The decision not to offer amnesty to a Respondent 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 Respondents with respect to a Complainant.

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 misconduct to Public Safety).

Bellarmino University maintains a policy of amnesty for students who offer help to others in need. While policy violations cannot be overlooked, Bellarmine 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.

## 24. **Federal Statistical Reporting Obligations**

Certain campus officials – those deemed Campus Security Authorities – have a duty to report the following for federal statistical reporting purposes (Clery Act):

- a. All "primary crimes," which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
- b. Hate crimes, which include any bias-motivated primary crime as well as any bias-motivated larceny or theft, simple assault, intimidation, or destruction/damage/ vandalism of property;
- c. VAWA-based crimes, which include sexual assault, domestic violence, dating violence, and stalking;
- d. Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations; and
- e. Hazing.

All personally identifiable information is kept private, but statistical information must be passed along to the Office of Public Safety regarding the type of incident and its general location (on or off-campus or in the surrounding area, but no addresses are given, for publication in the Annual Security Report and daily campus crime log.

Campus Security Authorities include: student affairs staff, public safety, local police, coaches, athletic directors, residence life staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities.

## ***PROCESS FOR ALLEGED VIOLATIONS OF THE SEXUAL MISCONDUCT POLICY***

### 1. **Overview**

Bellarmine University will act on any formal or informal notice/complaint of violation of the Sexual Misconduct Policy that is received by the Chief Title IX Officer or any other Official with Authority by applying these procedures.

The procedures below apply only to qualifying allegations of sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) involving students, staff, administrators, or faculty members.

Employees are subject to the terms of their agreements/employees' rights to the extent those agreements do not conflict with federal or state compliance obligations.

The procedures below may be used to address collateral misconduct arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another). All other allegations of misconduct unrelated to incidents covered by the Policy will be addressed through procedures elaborated in the Student Handbook and Employee Handbook.

### 2. **Notice/Complaint**

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

Bellarmino University will initiate at least one of three responses:

- i. Offering supportive measures because the Complainant does not want to proceed formally; and/or
- ii. An informal resolution; and/or
- iii. A Formal Grievance Process, including an investigation and a hearing.

The investigation and grievance process will determine whether or not the Policy has been violated. If so, Bellarmine University will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to harassment or discrimination, their potential recurrence, or their effects.

### 3. **Initial Assessment**

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

- If notice is given, the Chief Title IX Officer seeks to determine if the person impacted wishes to make a formal complaint, and will assist them to do so, if desired.
  - » If they do not wish to do so, the Chief Title IX Officer determines whether to initiate a complaint because a violence risk assessment indicates a compelling threat to health and/or safety.
- If a formal complaint is received, the Chief Title IX Officer assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- The Chief Title IX Officer reaches out to the Complainant to offer supportive measures.
- The Chief Title IX Officer works with the Complainant to ensure they are aware of the right to have an Advisor.
- The Chief Title IX Officer 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.
  - » If a supportive and remedial response is preferred, the Chief Title IX Officer works with the Complainant to identify their wishes and then seeks to facilitate implementation. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.
  - » If an informal resolution option is preferred, the Chief Title IX Officer assesses whether the complaint is suitable for informal resolution and may seek to determine if the Respondent is also willing to engage in informal resolution.
  - » If a Formal Grievance Process is preferred, the Chief Title IX Officer determines if the misconduct alleged falls within the scope of Title IX:
    - › If it does, the Chief Title IX Officer will initiate the formal notice to both parties, and 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 issue, based on the nature of the complaint.
    - › If it does not, the Chief Title IX Officer determines that Title IX does not apply (and will "dismiss" that aspect of the complaint, if any), and assesses which policies may apply. Please note that dismissing a



complaint under Title IX is just procedural and does not limit Bellarmine University's authority to address a complaint with an appropriate process and remedies.

a. **Violence Risk Assessment**

In many cases, the Chief Title IX Officer may determine that a Violence Risk Assessment (VRA) should be conducted by the Care Team for student concerns and by trained staff within Human Resources for employee concerns as part of the initial assessment. A VRA may also be conducted by an external third party who is trained in such matters. A VRA can aid in ten critical and/or required determinations, including:

- Emergency removal of a Respondent on the basis of an immediate threat to physical health/safety;
- No contact directives between the parties;
- Whether the Chief Title IX Officer should pursue/sign a formal complaint absent a willing/able Complainant;
- Whether to put the investigation on the footing of incident and/, pattern, and/or climate;
- To help identify potential predatory conduct;
- To help assess/identify grooming behaviors;
- Whether it is reasonable to try to resolve a complaint through informal resolution, and what modality may be most successful;
- Whether to permit a voluntary withdrawal by the Respondent;
- Whether to impose transcript notation or communicate with a transfer university about a Respondent;
- Assessment of appropriate sanctions/remedies (to be applied post-hearing);
- Whether a Clery Act Timely Warning should be issued;
- Issuing a campus ban.

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, or other Care Team members. A VRA authorized by the Chief Title IX Officer should occur in collaboration with the Care Team (for students) or a trained consultant (for employees). When a VRA is required by the Chief Title IX Officer, a Respondent's refusal 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, 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.

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

Bellarmino 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 in the Policy hereinabove, even if proved; and/or
2. The conduct did not occur in an educational program or activity controlled by Bellarmine University (including buildings or property controlled by recognized student organizations), and/or Bellarmine 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 Bellarmine University.

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

- a. A Complainant notifies the Chief Title IX Officer in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; or
- b. The Respondent is no longer enrolled in or employed by Bellarmine University; or
- c. Specific circumstances prevent Bellarmine University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein. Upon any dismissal, Bellarmine 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.

#### 4. **Counterclaims**

Bellarmino University is obligated to ensure that the grievance process is not abused for retaliatory purposes. Bellarmine 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 will be assessed for retaliatory intent, and those deemed retaliatory in nature will not be permitted.

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 Chief Title IX Officer.

#### 5. **Right to an Advisor**

6. The parties may each have an Advisor of their choice present with them for all meetings and interviews within the resolution process, if they so choose. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available.

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict of interest. A party that chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the hearing Decision-maker(s).

a. **Who Can Serve as an Advisor**

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside the Bellarmine University community.

The Chief Title IX Officer will also offer to assign a trained Advisor for any party if the party so chooses. If the parties choose an Advisor from the pool available from Bellarmine University, the Advisor will be trained by Bellarmine University and be familiar with Bellarmine University's resolution process. If the parties choose an Advisor from outside the pool of those identified by Bellarmine University, the Advisor may not have been trained by Bellarmine University and may not be familiar with Bellarmine University's policies and procedures.

Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing.

b. **Advisors in Hearings/Bellarmino University- Appointed Advisor**

Under U.S. Department of Education regulations applicable to Title IX, cross-examination is permitted during the hearing, but must be conducted by the parties' Advisors. The parties are not permitted to directly cross-examine each other or any witnesses. If a party does not have an Advisor for a hearing, Bellarmine University will appoint a trained Advisor for the limited purpose of conducting any cross-examination.

A party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor. If the party's Advisor will not conduct cross-examination, Bellarmine University will appoint an Advisor who will do so thoroughly, regardless of the participation or non-participation of the advised party in the hearing itself. Questioning of the parties and witnesses will also be conducted by the Decision-maker(s) during the hearing.

c. **Advisor's Role**

The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

Bellarmino University cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, Bellarmine University is not obligated to provide an attorney.

d. **Pre-Interview Meetings**

Advisors may request to meet with the administrative officials conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and Bellarmine University's policies and procedures.

e. **Advisor Violations of Bellarmine University Policy**

All Advisors are subject to the same Bellarmine University policies and procedures, whether they are attorneys or not. Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address Bellarmine University officials in a meeting or interview unless invited to (e.g., asking procedural questions). The Advisor may not make a presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Decision-maker(s) except during a hearing proceeding, during cross-examination.

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee privately as needed. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

Any Advisor who oversteps their role as defined by this policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures will be implemented. Subsequently, the Chief Title IX Officer will determine how to address the Advisor's non-compliance and future role.

f. **Sharing Information with the Advisor**

Bellarmino University expects that the parties may wish to have Bellarmine University share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process.

Bellarmino University also provides a consent form that authorizes Bellarmine University to share such information directly with the Advisor. The parties must complete and submit this form to the Chief Title IX Officer (or Deputy).

g. **Privacy of Records Shared with Advisor**

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by Bellarmine University. Bellarmine University may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by Bellarmine University's privacy expectations.

h. **Expectations of an Advisor**

Bellarmino University generally expects an Advisor to adjust their schedule to allow them to attend meetings when planned, but may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

Bellarmino University may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

i. **Expectations of the Parties with Respect to Advisors**

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Chief Title IX Officer if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous

Advisor is terminated, and a release for the new Advisor must be secured. Parties are expected to inform the Chief Title IX Officer of the identity of their hearing Advisor at least two (2) business days before the hearing.

## **6. Resolution Processes**

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with Bellarmine University policy. No recordings (either video or audio) of meetings or hearings are allowed by any party other than Bellarmine University. While there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose. Bellarmine University encourages parties to discuss this with their Advisors before doing so.

### **a. Informal Resolution**

To initiate Informal Resolution, a Complainant needs to submit a formal complaint, as defined above. If a Respondent wishes to initiate Informal Resolution, they should contact the Chief Title IX Officer to so indicate. It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process.

Prior to implementing Informal Resolution, Bellarmine University will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by Bellarmine University.

Bellarmino University will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

### **b. Alternate Resolution**

Alternate Resolution is an informal process, including mediation or restorative practices, etc., by which a mutually agreed upon resolution of an allegation is reached. All parties must consent to the use of Alternate Resolution. The Chief Title IX Officer may look to the following factors to assess whether Alternate Resolution is appropriate, or which form of Alternate Resolution may be most successful for the parties:

- The parties' amenability to Alternate Resolution;
- Likelihood of potential resolution, taking into account any power dynamics between the parties;
- The parties' motivation to participate;
- Civility of the parties;
- Cleared violence risk assessment/ongoing risk analysis;
- Disciplinary history;
- Whether an emergency removal is needed;
- Skill of the Alternate Resolution facilitator with this type of complaint;
- Complaint complexity;
- Emotional investment/intelligence of the parties;
- Rationality of the parties;
- Goals of the parties;

- Adequate resources to invest in Alternate Resolution (time, staff, etc.)

The ultimate determination of whether Alternate Resolution is available or successful is to be made by the Chief Title IX Officer. The Chief Title IX Officer maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions. Results of complaints resolved by Informal Resolution or Alternate Resolution are not appealable.

c. **Respondent Accepts Responsibility for Alleged Violations**

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the formal process will be paused, and the Chief Title IX Officer will determine whether Informal Resolution can be used according to the criteria in the above section. If Informal Resolution is applicable, the Chief Title IX Officer will determine whether all parties and Bellarmine University are able to agree on responsibility, sanctions, and/or remedies. If so, the Chief Title IX Officer implements the accepted finding that the Respondent is in violation of Bellarmine University policy and implements agreed-upon sanctions and/or remedies, in coordination with other appropriate administrator(s), as necessary. This result is not subject to appeal once all parties indicate their written assent to all agreed-upon terms of resolution. When the parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused. When a resolution is accomplished, the appropriate sanction or responsive actions are promptly implemented in order to effectively stop the harassment or discrimination, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

d. **Negotiated Resolution**

The Chief Title IX Officer (or Deputy) with the consent of the parties, may negotiate and implement an agreement to resolve the allegations that satisfies all parties and Bellarmine University. Negotiated Resolutions are not appealable.

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.

The list of Pool members and a description of the Pool can be found at <https://www.bellarmino.edu/title-ix/>.

a. **Pool Member Roles**

Members of the Pool are trained annually and can serve in the following roles, at the direction of the Chief Title IX Officer:

- To act as an Advisor to the parties
- To serve in a facilitation role in informal resolution or Alternate Resolution if appropriately trained in appropriate resolution modalities (e.g., mediation, restorative practices)
- To investigate complaints
- To serve as a hearing facilitator (process administrator, no decision-making role)
- To serve as a Decision-maker regarding the complaint
- To serve as an Appeal Decision-maker

**b. Pool Member Roles**

The Chief Title IX Officer appoints the Pool, which acts with independence and impartiality. While 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, Bellarmine 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.

**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 Bellarmine University's Discrimination and 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
- 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
- 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 Bellarmine University with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy
- 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
- How to determine appropriate sanctions in reference to all forms of harassment, discrimination, and/or retaliation allegations

Specific training is also provided for Appeal Decision-makers, Advisors (who are Bellarmine 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.

**d. Pool Membership**

The Pool includes representation from across the university, including Student Affairs, Enrollment, Academic Affairs, faculty, Human Resources, and Athletics.

Pool members may be outside contracted personnel who are trained in Title IX. This option can be utilized due to internal pool capacity, case complexity, or significant potential for conflict of interest.

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

**8. Formal Grievance Process: Notice of Investigation and Allegations**

The Chief Title IX Officer (or Deputy) will provide written notice of the investigation and allegations (the "NOIA") to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent's ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

- A meaningful summary of all of the allegations,
- The identity of the involved parties (if known),
- The precise misconduct being alleged,
- The date and location of the alleged incident(s) (if known),
- The specific policies implicated,
- A description of the applicable procedures,
- A statement of the potential sanctions/responsive actions that could result,
- A statement that Bellarmine University presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,
- A statement about Bellarmine University's policy on retaliation,
- Information about the privacy of the process,
- Information on the need for each party to have an Advisor of their choosing,
- A statement informing the parties that Bellarmine University's Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process.
- Detail on how the party may request disability accommodations during the interview process,
- A link to Bellarmine University's VAWA Brochure,
- The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Chief Title IX Officer any conflict of interest that the Investigator(s) may have, and
- An instruction to preserve any evidence that is directly related to the allegations.



Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges.

Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address(es) of the parties as indicated in official Bellarmine University records, or emailed to the parties' Bellarmine University-issued email or designated accounts. Once mailed, emailed, and/or received in person, notice will be presumptively delivered.

#### **9. Resolution Timeline**

Bellarmino University will make a good faith effort to complete the resolution process within a sixty-to-ninety (60-90) business day time period, including appeal, which can be extended as necessary for appropriate cause by the Chief Title IX Officer, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

#### **10. Appointment of Investigators**

Once the decision to commence a formal investigation is made, the Chief Title IX Officer appoints Pool members to conduct the investigation (typically using a team of two Investigators), usually within two (2) business days of determining that an investigation should proceed. When utilizing outside contracted Investigators, a one-person model may be used with consideration given to the level of training and expertise of the individual selected.

#### **11. Ensuring Impartiality**

Any individual materially involved in the administration of the resolution process (including the Chief Title IX Officer, Investigator(s), and Decision-maker(s)) may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Chief Title IX Officer will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Chief Title IX Officer will determine whether the concern is reasonable and supportable. If so, another Pool member will be assigned, and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Chief Title IX Officer, concerns should be raised with the Executive Director of Human Resources.

The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence that supports that the Respondent engaged in a policy violation and evidence that supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

Bellarmino University operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the preponderance of the evidence

#### **12. Investigation Timeline**

Investigations are completed expeditiously, normally within thirty (30) business days, though some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

Bellarmino University will make a good-faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

### **13. Delays in the Investigation Process and Interactions with Law Enforcement**

Bellarmino University may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions.

Bellarmino University will communicate in writing the anticipated duration of the delay and the reason to the parties and provide the parties with status updates if necessary. Bellarmine University will promptly resume its investigation and resolution process as soon as feasible. During such a delay, Bellarmine University will implement supportive measures as deemed appropriate.

Bellarmino University action(s) are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

### **14. Steps in the Investigation Process**

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary. All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

The Investigator(s) typically take the following steps, if not already completed (not necessarily in this order):

- Determine the identity and contact information of the Complainant
- In coordination with campus partners (e.g., the Chief Title IX Officer), initiate or assist with any necessary supportive measures
- Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the parties
- Meet with the Complainant to finalize their interview/statement, if necessary
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings

- When the participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of the other party and witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions.
- Complete the investigation promptly and without unreasonable deviation from the intended timeline
- Provide regular status updates to the parties throughout the investigation.
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices, including relevant physical or documentary evidence, will be included
- The Investigator(s) gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which Bellarmine University does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten days.
- The Investigator(s) may elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses
- The Investigator(s) will incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report.
- The Investigator(s) shares the report with the Chief Title IX Officer and/or legal counsel for their review and feedback
- The Investigator will incorporate any relevant feedback, and the final report is then shared with all parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing.

## 15. **Role and Participation of Witnesses in the Investigation**

Witnesses (as distinguished from the parties) who are employees of Bellarmine University are expected to cooperate with and participate in Bellarmine University's investigation and resolution process. Failure of such witnesses to cooperate with and/or participate in the investigation or resolution process constitutes a violation of policy and may warrant discipline.

While in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely.

Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. Bellarmine University will take appropriate steps to reasonably ensure the security/privacy of remote interviews reasonably.

#### **16. Recording of Interviews**

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If Investigator(s) elect to audio and/or video record interviews, all involved parties must be made aware of audio and/or video recording.

#### **17. 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.

#### **18. Referral for Hearing**

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Chief Title IX Officer will refer the matter for a hearing, unless the information found warrants a dismissal from the Chief Title IX Officer.

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 Chief Title IX Officer will select an appropriate Decision-maker from the Pool.

#### **19. Hearing Decision-maker Composition**

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

The Decision-maker(s) will not have had any previous involvement with the investigation. The Chief Title IX Officer may elect to have an alternate from the Pool sit in throughout the resolution process in the event that a substitute is needed for any reason.

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.

The Chief Title IX Officer may not serve as a decision-maker or Chair in the matter, but may serve as an administrative facilitator of the hearing. The hearing will convene at a time determined by the Chief Title IX Officer or Chair.

#### **20. Evidentiary Considerations in the Hearing**

Any evidence that the Decision-maker(s) determine(s) 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. Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility. This information is only considered at the sanction stage of the process.

The parties may each submit a written impact statement prior to the hearing for consideration by the decision-maker(s) at the sanction stage of the process, when a determination of responsibility is reached. The impact statement should be provided to the Chief Title IX Officer. The Chief Title IX Officer will only provide the impact statement(s) to the Decision-maker(s) in the event that a finding of responsibility is made.

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

## **21. Notice of Hearing**

No less than ten (10) business days prior to the hearing, the Chief Title IX Officer 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.
- Any technology that will be used to facilitate the hearing.
- 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 Chief Title IX Officer 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 Chief Title IX Officer at least five (5) business days prior to the hearing.
- Information on how the hearing will be recorded, and that all non-university recordings are prohibited.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence. 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 Chief Title IX Officer if they do not have an Advisor, and Bellarmine University will appoint one. Each party must have an Advisor present. There are no exceptions.
- A copy of all the materials provided to the Decision-maker (s) about the matter, unless they have been provided already.

- An invitation to contact the Chief Title IX Officer 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.

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 Bellarmine 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 until the matter is fully resolved (including any appeal). A student facing charges under this Policy is not in good standing to graduate.

## **22. 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 Chief Title IX Officer or the Chair at least five (5) business days prior to the hearing.

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

## **23. Pre-Hearing Preparation**

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s) 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 reopened to consider that evidence.

The parties will be given a list of the names of the Decision-maker(s) at least ten (10) 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 Chief Title IX Officer as soon as possible and no later than five (5) business days prior to the hearing. Decision-makers will only be removed if the Chief Title IX Officer concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

The Chief Title IX Officer 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 Chief Title IX Officer as soon as possible. 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.

## **24. Pre-Hearing Meetings**

The Chair may convene a pre-hearing meeting(s) with the parties and/or their Advisors to invite them to submit the questions or topics they (the parties and/or their Advisors) wish to ask or discuss at the hearing, so that the Chair can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or provide recommendations for more appropriate phrasing. However, this advance review opportunity does not preclude the Advisors from asking at the hearing for a reconsideration based on any new information or testimony offered at the hearing. The Chair must document and share their rationale for any exclusion or inclusion at this pre-hearing meeting.

At each pre-hearing meeting with a party and their Advisor, the Chair will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant. The Chair may rule on these arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing. The Chair may consult with legal counsel and/or the Chief Title IX Officer, or ask either or both to attend pre-hearing meetings.

The pre-hearing meeting(s) will not be recorded.

## **25. Hearing Procedures**

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

Participants at the hearing will include the Chair, any additional panelists, the hearing facilitator, the Investigator(s) who conducted the investigation, the parties (or up to three (3) organizational representatives when an organization is the Respondent), Advisors to the parties, any called witnesses, the Chief Title IX Officer (or Deputy), and anyone providing authorized accommodations or assistive services.

The Chair or Chief Title IX Officer 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-maker(s) and the parties' Advisors, and will then be excused.

## **26. 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 Chief Title IX Officer reserves the right to proceed with a joint investigation and hearing.

However, the Chief Title IX Officer 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.

## **27. 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-maker(s) 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 Chief Title IX Officer will review and decide the challenge.

The Chair then conducts the hearing according to the hearing script. 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 a non-voting hearing facilitator. The hearing 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.

## **28. Investigator Presents the Final Investigation Report**

The Investigator(s) will then present a summary of the final investigation report and will be subject to questioning by the Decision-maker(s) 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-maker(s) should ask the Investigator(s) 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.

## **29. Testimony and Questioning**

Once the Investigator(s) present their report and are questioned, the parties and witnesses will be questioned in turn by the Decision-maker(s) and the parties' Advisors, beginning with the Complainant, and then in the order determined by the Chair.

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 or agreed to by the parties and the Chair), the proceeding will pause to allow the Chair to consider it, and the Chair will determine whether the question will be permitted, disallowed, or rephrased.

The Chair may explore arguments 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.

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, subject to any appeal. 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 their perspective, but will not entertain arguments 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 Chief Title IX Officer, 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.

## **30. 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-maker(s) may use their discretion 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.

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), those statements are not precluded from admission.

The Decision-maker(s) 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-maker(s) 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. If a party's Advisor of choice refuses to comply with Bellarmine University's established rules of decorum for the hearing, Bellarmine University may require the party to use a different Advisor. If a Bellarmine University-provided Advisor refuses to comply with the rules of decorum, Bellarmine University may provide that party with a different Advisor to conduct cross-examination on behalf of that party.

### **31. Recording Hearings**

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

The Decision-maker(s), the parties, their Advisors, and appropriate administrators of Bellarmine University will be permitted to listen to the recording in a controlled environment determined by the Chief Title IX Officer. No person will be given or be allowed to make a copy of the recording without the permission of the Chief Title IX Officer.

### **32. Deliberation, Decision-making, and Standard of Proof**

The Decision-maker(s) 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 their role is only to facilitate the procedural aspects, not to address the substance of the allegations.

When there is a finding of responsibility on one or more of the allegations, the Decision-maker(s) 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-maker(s) may, at their discretion, consider the statements, but they are not binding. The Decision-maker(s) will review the statements and any pertinent conduct history provided by the Dean of Students Office and will determine the appropriate sanction(s) in consultation with other appropriate administrators, as needed.

### **33. Notice of Outcome**

The Chair will work with the hearing panel to prepare a Notice of Outcome. The Notice of Outcome may be reviewed by legal counsel. The Chief Title IX Officer will then share the letter, including the final determination, rationale, and any applicable sanction(s) with the parties and their Advisors simultaneously.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official Bellarmine University records, or emailed to the parties' Bellarmine University-issued email or otherwise approved account. Once mailed, emailed, and/ or received in person, notice will be presumptively delivered. The Notice of Outcome will identify the specific policy(ies) reported to have been violated, including the relevant policy section, and will contain a description of the procedural steps taken by Bellarmine University from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Notice of Outcome will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent Bellarmine University is permitted to share such information under state or federal law; any sanctions issued which Bellarmine University is permitted to share according to state or federal law; and any remedies provided to the Complainant designed to ensure access to Bellarmine University's educational or employment program or activity, to the extent Bellarmine University is permitted to share such information under state or federal law (this detail is not typically shared with the Respondent unless the remedy directly relates to the Respondent).

The Notice of Outcome will also include information on when the results are considered by Bellarmine University to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

#### **34. Statement of the Rights of the Parties (see Appendix A)**

#### **35. 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
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, 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)

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.

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 Bellarmine University policy, procedure, or directive will result in more severe sanctions/responsive actions.
- **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.
- **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 Bellarmine University.
- **Expulsion:** Permanent termination of student status and revocation of rights to be on campus for any reason or to attend Bellarmine University-sponsored events. This sanction will be noted permanently as a Conduct Expulsion on the student's official transcript.
- **Withholding Diploma:** Bellarmine 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.
- **Organizational Sanctions:** Deactivation, loss of recognition, loss of some or all privileges (including Bellarmine University registration) for a specified period of time.
- **Other Actions:** In addition to or in place of the above sanctions, Bellarmine University may assign any other sanctions as deemed appropriate.

b. **Employee Sanctions**

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

- Warning – Verbal or Written
- Performance Improvement/Management Process
- Required Counseling
- Required Training or Education
- Probation
- Loss of Annual Pay Increase
- Loss of Oversight or Supervisory Responsibility
- Demotion
- Suspension with pay
- Suspension without pay
- Termination

- Other Actions: In addition to or in place of the above sanctions, Bellarmine University may assign any other sanctions as deemed appropriate.

### 36. **Withdrawal or Resignation While Charges Pending**

Students: If a student has an allegation pending for violation of the Sexual Discrimination and Misconduct Policy, Bellarmine University may place a hold on a student's ability to graduate and/or to receive a diploma.

Should a student decide not to participate in the resolution process, the process proceeds without their participation to a reasonable resolution. Should a student respond by permanently withdrawing from Bellarmine University, the resolution process ends, as Bellarmine University no longer has disciplinary jurisdiction over the withdrawn student.

However, Bellarmine University will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation. The student who withdraws or leaves while the process is pending may not return to Bellarmine University. Such exclusion applies to all campuses of Bellarmine University. A hold will be placed on their ability to be readmitted. They may also be barred from Bellarmine University property and/or events. If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely, and that student is not permitted to return to Bellarmine University unless and until all sanctions have been satisfied.

During the resolution process, Bellarmine University may put a hold on a responding student's transcript or place a notation on a responding student's transcript or dean's disciplinary certification that a disciplinary matter is pending.

Employees: Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as Bellarmine University no longer has disciplinary jurisdiction over the resigned employee.

However, Bellarmine University will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or discrimination.

The employee who resigns with unresolved allegations pending is not eligible for rehire with Bellarmine University, and the records retained by the Chief Title IX Officer will reflect that status.

All Bellarmine University responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

### 37. **Appeals**

Any party may file a request for appeal ("Request for Appeal"), but it must be submitted in writing to the Chief Title IX Officer within five business days of the delivery of the Notice of Outcome. A 3-member Appeal Panel will be appointed. The appeal panel will have one Chair who will oversee the review process. No appeal Decision-maker will have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process.

The Request for Appeal will be forwarded to the Appeal Chair for consideration to determine if the request meets the grounds for appeal (a Review for Standing).

This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed. If it meets the grounds for appeal, the Appeal Panel will then review the appeal and all information regarding the case.

a. **Grounds for Appeal**

Appeals are limited to the following grounds:

- A. Procedural irregularity that affected the outcome of the matter;
- B. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- C. The Chief Title IX Officer, Investigator(s), or Decision-maker (s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter; and
- D. Sanction Proportionality –when either party does not agree that the level of sanctions given matches the level of severity of the behavior for which the Respondent was found responsible. There must be a finding of responsibility for sanction proportionality to be considered.

If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied by the Chair, and the parties and their Advisors will be notified in writing of the denial and the rationale. If any of the grounds in the Request for Appeal meet the grounds in this Policy, then the Appeal Chair will notify the Appeal Panel and the Chief Title IX Officer. The Chief Title IX Officer will notify the party(ies) and their Advisors, and, when appropriate, the Investigators and/or the original Decision-maker(s).

The other party(ies) and their Advisors, the Chief Title IX Officer, and, when appropriate, the Investigators and/or the original Decision-maker(s) will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and then be given five business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Chair to all parties for review and comment.

Neither party may submit any new requests for appeal after this time period. The Appeal Chair will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses, and the Appeal Panel will render a decision in no more than ten (10) business days, barring exigent circumstances. All decisions will apply the preponderance of the evidence standard.

A Notice of Appeal Outcome will be sent to all parties simultaneously, including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result, which Bellarmine University is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent Bellarmine University is permitted to share under state or federal law.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official institutional records, or emailed to the parties' Bellarmine University-issued email or otherwise approved account. Once mailed, emailed, and/or received in person, notice will be presumptively delivered.

b. **Sanctions Status During the Appeal**

Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

If any of the sanctions are to be implemented immediately post-hearing, then emergency removal procedures (detailed above) for a hearing on the justification for doing so must be permitted within 48 hours of implementation. Bellarmine University may still place holds on diplomas, graduations, and course registration pending the outcome of an appeal when the original sanctions included separation.

c. **Appeal Considerations**

- Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so.
- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- An appeal is not an opportunity for Appeal Decision-makers to substitute their judgment for that of the original Decision-maker(s) merely because they disagree with the finding and/or sanction(s).
- The Appeal Chair/Panel may consult with the Chief Title IX Officer on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultations will be maintained.
- Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Decision-maker(s) for reconsideration. Other appeals may be remanded at the discretion of the Chief Title IX Officer or, in limited circumstances, decided on appeal.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing). When appeals result in no change to the finding or sanction, that decision is final. When an appeal results in a new finding or sanction, that finding or sanction can be appealed one final time on the grounds listed above and in accordance with these procedures.
- In rare cases where a procedural error cannot be cured by the original Decision-maker(s) (as in cases of bias), the appeal may order a new hearing with a new Decision-maker(s).
- The results of a remand to a Decision-maker(s) cannot be appealed. The results of a new hearing can be appealed once, on any of the three available appeal grounds.
- In cases in which the appeal results in reinstatement to Bellarmine University or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

38. **Long-Term Remedies/Other Actions**

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Chief Title IX Officer may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the harassment, discrimination, and/or retaliation, remedy the effects, and prevent reoccurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys

- Policy modification and/or training
- Provision of transportation accommodations
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Chief Title IX Officer, certain long-term support or measures may also be provided to the parties even if no policy violation is found.

When no policy violation is found, the Chief Title IX Officer will address any remedies owed by Bellarmine University to the Respondent to ensure no effective denial of educational access.

Bellarmino University will maintain the privacy of any long-term remedies/actions/measures, provided privacy does not impair Bellarmine University's ability to provide these services.

### **39. Failure to Comply with Sanctions and/or Interim and Long-term Remedies and/or Responsive Actions**

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-maker(s) (including the Appeal Chair/Panel).

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from Bellarmine University and may be noted on a student's official transcript.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Chief Title IX Officer.

### **40. Recordkeeping**

Bellarmino University will maintain for a period of seven years records of:

- Each sexual harassment investigation, including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
- Any disciplinary sanctions imposed on the Respondent;
- Any remedies provided to the Complainant are designed to restore or preserve equal access to Bellarmine University's education program or activity;
- Any appeal and the result therefrom;
- Any Informal Resolution and the result therefrom;
- All materials used to train Chief Title IX Officers, Investigators, Decision-makers, and any person who facilitates an Informal Resolution process. Bellarmine University will make these training materials publicly available on Bellarmine University's website.
- Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment, including:
  - The basis for all conclusions that the response was not deliberately indifferent;
  - Any measures designed to restore or preserve equal access to Bellarmine University's education program or activity; and
  - If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

Bellarmino University will also maintain any and all records in accordance with state and federal laws.

#### **41. Disability Accommodations in the Resolution Process**

Bellarmino University is committed to providing reasonable accommodations and support to qualified students, employees, or others with disabilities to ensure equal access to Bellarmine University's resolution process.

Anyone needing such accommodations or support should contact the Director of the Accessibility Resource Center or Human Resources, who will review the request and, in consultation with the person requesting the accommodation and the Chief Title IX Officer, determine which accommodations are appropriate and necessary for full participation in the process.

#### **42. Revision of this Policy and Procedures**

This Policy and procedures supersede any previous policy(s) addressing harassment, sexual misconduct, discrimination, and/or retaliation and will be reviewed and updated annually by the Chief Title IX Officer. Bellarmine University reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect. During the resolution process, the Chief Title IX Officer may make minor modifications to procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules. The Chief Title IX Officer may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this Policy and procedures.

If government laws or regulations change — or court decisions alter — the requirements in a way that impact this document, this document will be construed to comply with the most recent government regulations or holdings.

This document does not create legally enforceable protections beyond the protection of the background state and federal laws that frame such policies and codes, generally.

This Policy and these procedures are effective August 1, 2025.

### ***APPENDIX A: STATEMENT OF RIGHTS OF THE PARTIES***

- The right to an equitable investigation and resolution of all credible allegations of prohibited harassment or discrimination made in good faith to Bellarmine University officials.
- The right to timely written notice of all alleged violations, including the identity of the parties involved (if known), the precise misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated policies and procedures, and possible sanctions.
- The right to timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants, unsubstantiated allegations) and any attendant adjustments needed to clarify potentially implicated policy violations.
- The right to be informed in advance of any public release of information regarding the allegation(s) or underlying incident(s), whenever possible.
- The right not to have any personally identifiable information released to the public without consent, except to the extent permitted by law.



- The right to be treated with respect by Bellarmine University officials.
- The right to have Bellarmine University policies and procedures followed without material deviation.
- The right not to be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence.
- The right not to be discouraged by Bellarmine University officials from reporting sexual misconduct or discrimination to both on-campus and off-campus authorities.
- The right to be informed by Bellarmine University officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option(s) to be assisted by Bellarmine University authorities in notifying such authorities, if the party so chooses. This also includes the right not to be pressured to report, as well.
- The right to have allegations of violations of this Policy responded to promptly and with sensitivity by Bellarmine University law enforcement and/or other Bellarmine University officials.
- The right to be informed of available interim actions and supportive measures, such as counseling, advocacy, health care, legal, student financial aid, visa, and immigration assistance, or other services, both on campus and in the community.
- The right to a Bellarmine University-implemented no-contact directive or a no-trespass order against a non-affiliated third party, when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct that presents a danger to the welfare of the party or others.
- The right to be informed of available assistance in changing academic, living, and/or working situations after an alleged incident of discrimination, harassment, and/or retaliation, if such changes are reasonably available. No formal report or investigation, either campus or criminal, needs to occur before this option is available. Such actions may include, but are not limited to:
  - » Relocating a residential student's housing to a different on-campus location and assistance from Bellarmine University staff in completing the relocation
  - » Changing an employee's work environment (e.g., reporting structure, office/workspace relocation)
  - » Transportation accommodations
  - » Visa/immigration assistance
  - » Arranging to dissolve a housing contract and a prorated refund
  - » Exam, paper, and/or assignment rescheduling or adjustment
  - » Receiving an incomplete in, or a withdrawal from, a class (may be retroactive)
  - » Transferring class sections
  - » Temporary withdrawal/leave of absence (may be retroactive)
  - » Campus safety escorts
  - » Alternative course completion options.
- The right to have Bellarmine University maintain such actions for as long as necessary and for supportive measures to remain private, provided privacy does not impair Bellarmine University's ability to provide the supportive measures.

- The right to receive sufficiently advanced, written notice of any meeting or interview involving the other party, when possible.
- The right to ask the Investigator(s) and Decision-maker(s) to identify and question relevant witnesses, including expert witnesses.
- The right to provide the Investigator(s)/Decision-maker(s) with a list of questions that, if deemed relevant by the Investigator(s)/Chair, may be asked of any party or witness.
- The right not to have irrelevant prior sexual history or character admitted as evidence.
- The right to know the relevant and directly related evidence obtained and to respond to that evidence.
- The right to a fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record.
- The right to receive a copy of the investigation report, including all factual, policy, and/or credibility analyses performed, and all relevant and directly related evidence available and used to produce the investigation report, subject to the privacy limitations imposed by state and federal law, prior to the hearing, and the right to have at least ten (10) business days to review the report prior to the hearing.
- The right to respond to the investigation report, including comments providing any additional relevant evidence after the opportunity to review the investigation report, and to have that response on the record.
- The right to be informed of the names of all witnesses whose information will be used to make a finding, in advance of that finding, when relevant.
- The right to regular updates on the status of the investigation and/or resolution.
- The right to have reports of alleged Policy violations addressed by Investigators, Chief Title IX Officers, and decision-makers who have received relevant annual training.
- The right to a Hearing Panel that is not single sex in its composition, if a panel is used.
- The right to preservation of privacy, to the extent possible and permitted by law.
- The right to meetings, interviews, and/or hearings that are closed to the public.
- The right to petition that any Bellarmine University representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.
- The right to have an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the resolution process.
- The right to the use of the appropriate standard of evidence, preponderance of the evidence, to make a finding after an objective evaluation of all relevant evidence.
- The right to be present, including presence via remote technology, during all testimony given and evidence presented during any formal grievance hearing.
- The right to have an impact statement considered by the Decision-maker(s) following a determination of responsibility for any allegation, but prior to sanctioning.
- The right to be promptly informed in a written Notice of Outcome letter of the finding(s) and sanction(s) of the resolution process and a detailed rationale therefor (including an explanation of how credibility was assessed), delivered simultaneously (without undue delay) to the parties.

- The right to be informed in writing of when a decision by Bellarmine University is considered final and any changes to the sanction(s) that occur before the decision is finalized.
- The right to be informed of the opportunity to appeal the finding(s) and sanction(s) of the resolution process, and the procedures for doing so in accordance with the standards for appeal established by Bellarmine University.
- The right to a fundamentally fair resolution as defined in these procedures.

## ***APPENDIX B: VIOLENCE RISK ASSESSMENT (VRA)***

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

The implementation of VRAs requires specific training and is typically conducted by student conduct officers, and/or other Care Team members if conducted with a student. In the case of an employee, the VRA would be conducted by a trained consultant.

A VRA occurs in collaboration with the Care Team (or consultant) and must be understood as an ongoing process, rather than a singular evaluation or meeting. A VRA is not an evaluation for an involuntary behavioral health hospitalization, 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.

When conducting a VRA, the assessor(s) use an evidence-based process consisting of:

1. An appraisal of risk factors that escalate the potential for violence;
2. A determination of stabilizing influences that reduce the risk of violence;
3. A contextual analysis of violence risk by considering environmental circumstances, hopelessness, and suicidality; catalyst events; nature and actionability of threat; fixation and focus on target; grievance collection; and action and time imperative for violence; and
4. The application of intervention and management approaches to reduce the risk of violence.

To assess an individual's level of violence risk, the Chief Title IX Officer will initiate the violence risk assessment process through the Care Team or an outside consultant. The Care Team will assign a trained individual(s) to perform the assessment, according to the specific nature of the Title IX case.

The assessor will follow the process for conducting a violence risk assessment and will rely on a consistent, research-based, reliable system that allows for the operationalization of the risk levels.

Some examples of formalized approaches to the VRA process include: The NaBITA Risk Rubric, The Structured Interview for Violence Risk Assessment (SIVRA-35), Workplace Assessment of Violence Risk (WAVR-21).

The VRA is conducted independently from the Title IX process, free from outcome pressure, but is informed by it. The individual(s) conducting the assessment will be trained to mitigate any bias and provide the analysis and findings in a fair and equitable manner.

The assigned individual conducts a VRA process and makes a recommendation to the Chief Title IX Officer as to whether the VRA indicates there is a substantial, compelling, and/ or immediate risk to the health and/or safety of an individual or the community.