



# BENTLEY UNIVERSITY

## **Title IX and Gender-Based Harassment and Discrimination Policy**

*Effective: August 14, 2020*

**The Mission of Bentley University:** To educate creative, ethical, and socially responsible organizational leaders by creating and disseminating impactful knowledge within and across the business and the arts and sciences.

**The Mission and Purpose of this Policy:** To eliminate all barriers on Bentley University's campus that are rooted in forms of discrimination, harassment, and retaliation on the basis of an individual's sex, gender, sexual orientation, gender identity, and/or gender expression. 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.

**Questions Regarding this Policy:** Please forward any questions, complaints, or notice of alleged policy violations, or regarding this policy and procedures, to those responsible for Bentley's Title IX and Gender-Based Harassment and Discrimination Policy compliance below:

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HARASSMENT BASED ON SEXUAL ORIENTATION, GENDER, OR GENDER IDENTITY IS DEFINED AS DEROGATORY COMMENTS, ACTIONS, OR CONDUCT THAT MAY INCLUDE ACTS OF VERBAL, NONVERBAL, CYBER, OR PHYSICAL AGGRESSION, INTIMIDATION, OR HOSTILITY, EVEN IF THOSE ACTS DO NOT INVOLVE CONDUCT OF A SEXUAL NATURE. SUCH CONDUCT IS DIRECTED TOWARD AN INDIVIDUAL BY VIRTUE OF THEIR ACTUAL OR PRESUMED SEXUAL ORIENTATION, GENDER, OR GENDER IDENTITY AND: .....19

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## **Title IX and Gender-Based Harassment and Discrimination Policy**

### **I. Policy Statement and Overview**

Bentley University will always respond to complaints, reports, allegations, and information about harassment, sex-and gender-based discrimination, and retaliation regardless of how the information was brought to the University's attention. The University's response is designed to stop the prohibited conduct, prevent its recurrence, and address any lingering impact that it had on individuals, members of the campus community, and all University-related programs or activities.

Bentley University is firmly committed to establishing an environment free of harassment and discrimination on the basis of sex or gender in any of its education or employment programs and activities. This policy prohibits sexual and gender-based harassment, sexual assault (non-consensual sexual touching, forcible or not), stalking, domestic violence, and sexual exploitation, stalking, and retaliation (collectively referred to in this policy as prohibited conduct). These forms of prohibited conduct are harmful to the well-being of our campus community and its members, the learning and working environment, and collegial relationships among our students, faculty, and staff.

All violations of prohibited conduct under this policy will result in discipline, including potential separation from the University. Some forms of prohibited conduct may also violate state and federal laws, and criminal prosecution may occur independently of any disciplinary action imposed by the University.

This policy also sets forth the procedures that will be used to respond and investigate reports of prohibited conduct.

Bentley University complies with Title IX of the Education Amendments of 1972 (Title IX), which prohibits discrimination on the basis of sex in the University's programs and activities; the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), as amended by the Violence Against Women Reauthorization Act of 2013 (VAWA) as amended; Title VII of the Civil Rights Act of 1964; and its stated counterpart, M.G.L. c.151B; Section 504 of the Rehabilitation Act and the Americans with Disabilities Act, and other applicable law.

Bentley also reaffirms the rights impacted parties to decide whether they wish to be involved in any of the University's processes to address sexual harassment and sex-and gender-based harassment, discrimination, and retaliation. Bentley is also strongly committed to supporting impacted parties through the numerous support service available. All students and employees have access to confidential resources that they may use for support and guidance regardless of whether they make a report

to the University or participate in a University investigation and adjudication process, please refer to Appendix A. The University encourages those who wish to receive confidential support services regarding sex- and gender-based discrimination and harassment under these policies to seek assistance from staff in the Counseling Center, the Health Center, the Boston Area Rape Crisis Center, REACH Beyond Domestic Violence, and/or seek medical attention.

Responsible employees of the University are expected to report allegations of sexual harassment and other forms of sex- and gender-based discrimination that they observe or learn about to the Title IX Coordinator. Employees whose positions legally require confidentiality (i.e., licensed mental health counselors and health professionals) are not responsible employees. To review the full list of designations of employees at Bentley University, please refer to Appendix E. If you have a question regarding reporting responsibilities, please contact the Title IX Coordinator.

All employees of Bentley University are strongly encouraged to offer information on how to report such incidents to students and colleagues, as well as report this conduct directly to the Title IX Coordinator. Responsible employees who fail to report allegations of sexual harassment and other forms of sexual misconduct that they observe or learn about may be subject to disciplinary action. Bentley University is mandated to respond promptly and appropriately to any allegations of sexual harassment or other forms of gender-based discrimination and retaliation. Under these policies, the University will consider the effects of off-campus conduct for faculty, staff, students, visitors, and community members when evaluating whether a hostile environment was created on campus.

Any person responsible for or involved in retaliation will be subject to disciplinary action up to and including expulsion or termination.

Retaliation against anyone who reports an incident of harassment, or discrimination as defined in this policy, brings forward a complaint or participates in an investigation and adjudication process under this policy is prohibited. Retaliation is also prohibited against those who, in good faith and reasonable manner, oppose an act or policy believed to constitute sex- or gender-based discrimination and harassment. It is the responsibility of Bentley University's Title IX Coordinator to ensure that inquiries into reports of misconduct described above are made, as well as formal investigations and resolutions consistent with applicable adjudication procedures that are described in this policy.

Additionally, Bentley seeks to ensure that our campus and culture are inclusive for all students, and, as such, has committed to engaging in several preventative and proactive educational programs and initiatives. For a list of some of the programs Bentley offers, please see Section XVII of this document.

Bentley reserves the right to amend this and other policies immediately to ensure compliance with federal and state rules, regulations, and laws.

## II. Bentley's Title IX Coordinator and Title IX Staff

The Title IX Coordinator for Bentley University is responsible for providing leadership regarding Title IX and the Gender-Based Harassment and Discrimination Policy. The Title IX Coordinator has the primary responsibility for coordinating Bentley'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.

The Title IX Coordinator will also ensure that ongoing training and education regarding sex/gender-based harassment, discrimination, and retaliation take place, as well as compliance-related reporting. Additionally, the Title IX Coordinator will be responsible for:

- Tracking and monitoring incidents, including sex-based discrimination, harassment, retaliation, and other sexual misconduct outlined in this policy;
- Ensuring that the University responds effectively to each report; and
- Provides appropriate supportive measures to parties involved with or without the filing of a formal complaint

After an alleged violation of this policy is reported, the Title IX Coordinator will ensure that the appropriate measures are taken, including providing supportive measures, obtaining an external investigator, assigning advisors, and which resolution process will apply based on the allegations raised. However, the Title IX coordinator **will not** participate in the investigation, the resolution process, or decision making regarding the investigation report (see Appendices C and D for more information on investigation procedures and protocols).

Bentley University also has three **Deputy Title IX Coordinators**. These individuals can offer further information to those who may have questions about these policies, and formal reports can be submitted to them. The Deputy Title IX Coordinators will also keep individuals involved in the formal investigations process and provide updates regarding its progress. Similar to the Title IX Coordinator, the Deputy Title IX Coordinators **will not** participate in the investigation, the hearing panel, or in the deliberations regarding the investigation report. The Title IX Coordinator and Deputy Title IX Coordinators will act with independence and authority free from bias and conflicts of interest.

The Title IX Coordinator and Deputy Title IX Coordinators are knowledgeable about and will provide information on all options for report resolution. Both the Title IX Coordinator and the Deputy Title IX Coordinators can assist in providing supportive measures to remedy the impact of an incident.

In addition to the Title IX Team members listed above, Bentley has determined administrators as Officials with Authority to address and correct harassment, discrimination, and retaliation. These Officials with Authority listed below may also accept notice or complaints on behalf of the Bentley.

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### **III. Scope of this Policy**

The federal mandates established by Title IX and the Clery Act reaffirm that students, staff, faculty, and third parties (i.e., non-members of the University community, such as vendors, alumni/ae, and visitors) have the right to be free from discrimination based on their gender, sex, sexual orientation, and gender appearance/expression.

Third parties are both protected by and subject to this policy. A third party may report potential policy violations committed by a member of the University community, and the University will take appropriate steps to investigate and respond to the conduct consistent with the authority granted by the University's jurisdiction, if any, over the respondent. A third party who is accused of violating University policy may be permanently barred from the University or subject to other restrictions for failing to comply with this policy and may not be granted the full rights and processes afforded to Bentley community members through the provisions of this policy.

All procedures regarding incidents involving students can be found in Appendix C of this policy, while all procedures for incidents involving employees are found in Appendix D of this policy.

### **IV. Jurisdiction of this Policy**

This policy applies to the education program and activities of the University, to any behaviors or conduct that takes place on the campus or property owned or controlled



by the University, at University-sponsored events, or in buildings owned or controlled by student organizations that are recognized by the University.

This policy can also apply to the effects of off-campus misconduct. Thus, the policy applies to any behaviors involving community members both on and off-campus.

The University may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the behavior affects a substantial University interest.

Regardless of where the conduct occurred, Bentley will address any complaints and 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. The alleged violations and/or the location (jurisdiction) of where the alleged behavior took place, will determine which adjudication process is applied: the Title IX Adjudication Process or the Gender-Based Harassment & Discrimination Adjudication (GBHD) Process. Examples of off-campus coverage of this policy include incidents that occur on faculty-led study abroad trips, the Commencement Week trip for graduating seniors, internship programs/sites, service-learning sites, and off-campus residences of students.

The Respondent must be a member of the University community in order for its policies to apply. However, if the Respondent is unknown or is not a member of the University's community, the Title IX Coordinator 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.

Furthermore, even when the Respondent is not a member of the Bentley community (where the University does not have disciplinary authority over the Respondent), the Title IX Coordinator will still take reasonably-available steps to support a Complainant through supportive measures, remedies, and resources.

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator 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 Title IX Coordinator may be able to assist a student or employee Complainant who experiences discrimination in an externship, study abroad program, or other environments external to the University (whereas the facilitating or

host organization may give recourse to the Complainant through its policies and procedures of sexual harassment, non-discrimination, and retaliation).

## **V. Coordination with Other Bentley University Policies**

This policy addresses sexual and gender-based harassment, sexual assault (non-consensual sexual touching, forcible or not), stalking, domestic violence, and sexual exploitation, stalking, and retaliation (collectively referred to in this policy as prohibited conduct and defined in more detail below).

Other forms of sex discrimination (not based on harassment or violence), and discrimination and harassment based on race, color, nationality or ethnic origin, sex, age, or disability are governed by the University's Non-Discrimination Policy

In addition, the conduct of students, employees, and faculty is governed by the following policies:

1. [Student Code of Conduct](#)
  - Applies to all other forms of student misconduct (e.g., alcohol, drug use, threats or physical abuse, possession of firearms, etc.)
  - Overseen by Student Conduct System
2. [Employment Policies and Practices](#)
  - Set the standards of personal conduct for employees
  - Include the staff disciplinary and adjudication policies
  - Overseen by Vice President and Chief Human Resources Officer
3. [Faculty Handbook](#)
  - Sets the standards of personal conduct for faculty members
  - Includes the statement of academic freedom (See Also Academic Freedom and Freedom of Speech, below)
  - Consists of the University's adjudicatory policy
  - Overseen by Vice President and Chief Human Resources Officer
4. [University Policy on Consensual Relationships](#)
  - Prohibits romantic and/or sexual relationships between employees and students (undergraduate, graduate or doctoral), and employees and any individual whom that person supervises or evaluates in any way

Where conduct involves the potential violation of both this policy and another University policy, the University may choose to investigate other potential misconduct under the procedures outlined in this policy, instead of the procedures ordinarily used to address potential violations of such other University policies, provided that it does not unduly delay a prompt or equitable resolution of the report.

## **VI. Academic Freedom and Harassment**

Bentley University is committed to principles of free speech and upholding the

tradition of academic freedom. This policy is not intended to restrict teaching methods or freedom of expression, nor will it be permitted to do so. Harassment or discrimination prohibited by this policy is not a proper exercise of academic freedom.

## **VII. Accommodations for Students with Disabilities:**

Bentley is committed to 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.

By federal law, a person with a disability is any person who: 1) has a physical or mental impairment; 2) has a record of such impairment; or 3) is regarded as having such an impairment, which substantially limits one or more major life activities such as self-care, walking, seeing, hearing, speaking, breathing, or learning. A student requesting an accommodation regarding a Title IX investigation/adjudication process must follow the appropriate procedure for requesting an accommodation through the Office of Disability Services (located in Jennison Hall). Additionally, the Office of Disability Services can provide students with a comprehensive list of off-campus resources.

The Office of Disability Services will make a determination regarding the request and notify the appropriate parties. Reasonable accommodations depend upon the nature and degree of severity of the documented disability. While the ADA requires that priority consideration be given to the specific methods requested by the student, it does not imply that a particular accommodation must be granted if it is deemed not reasonable and other suitable techniques are available. For more information regarding options for assistance, regarding both immediate and ongoing concerns, please see Appendices A and B.

## **VIII. Resources for Information and Assistance**

Bentley University offers various resources for students, staff, and faculty seeking information or support under Title IX and Gender-Based Discrimination and Harassment Policy. Bentley also acknowledges that each person experiences and responds in differing ways and there are a variety of formal and informal options for support. Please review the information regarding your options for support, assistance, and reporting so that you can make an informed decision based on personal needs. Your needs may change over time, so please also know that you may choose to utilize different forms of response at different times.

Any member of the Bentley community (including visitors) is welcome to contact the Title IX Coordinator for information regarding these policies or the procedures

outlined within it. The resources highlighted in Appendix A and B also provide information, assistance, and support to those who seek it.

## **IX. Confidentiality, Privacy, and Reporting Responsibilities of Bentley Employees**

Issues of privacy and confidentiality play important roles in this policy and may affect individuals differently. While they are closely related, the concepts of privacy and confidentiality are distinct terms that are defined below.

### **A. Confidentiality**

Confidentiality refers to the protection of information disclosed to individuals such as licensed professional mental health counselors, licensed medical professionals, and ordained clergy. When an individual shares information with a confidential resource (on campus or in the community), that is a confidential communication that will not be reported to the Title IX Coordinator under this policy.

At Bentley, complete confidentiality can only be guaranteed when a concern is shared with staff in the Health Center, the Counseling Center, and Spiritual Life Staff, and when the concern does not involve a continuing threat of serious harm to self or others. A list of Confidential Resources on and off-campus is available in Appendix E Confidential Resources submit non-personally-identifying information about Clery-reportable crimes to the Bentley University Police Department for purposes of anonymous statistical reporting under the Clery Act.

### **B. Privacy**

Privacy refers to the discretion that will be exercised by the University in the course of any investigation or other processes under this policy. Bentley understands that breaches of privacy compromise the ability of the University to investigate and resolve claims of prohibited harassment, discrimination, and retaliation. The Title IX Coordinators will attempt to protect the privacy of all reports and proceedings to the extent reasonably possible. Information related to a report of prohibited conduct will be shared in the most limited manner possible with University employees who need to know in order to assist in the assessment, investigation, and resolution of the report and related issues. Additionally, in order to comply with its obligations regarding campus safety and Title IX. The University employees receive training in how to safeguard private information. The University will make reasonable efforts to investigate and address reports of prohibited conduct under this policy, and information may be disclosed to participants in an investigation as necessary to facilitate the thoroughness and integrity of the investigation. In all such proceedings, the University will take into consideration the privacy of the parties to the extent reasonably possible. The privacy of student education records is governed by the [Family Educational Privacy Act](#) (FERPA).

### **C. Disclosures and Reporting Responsibilities of Bentley Employees**

All involved parties have many options, including seeking counseling or assistance from a Confidential Resource, making a report under this policy, and/or making a report to law enforcement. The University recognizes that deciding among these options can be difficult and is an intensely personal decision. Individuals are encouraged to seek assistance and to explore all potential reporting and support options.

Please note that faculty and staff members on campus have different roles and responsibilities for reporting information should a student disclose any prohibited conduct under this policy.

It is important to understand the different responsibilities of Bentley's employees. Every employee is designated as either a Confidential Employee, a Responsible Employee, and all Other Employees.

**Confidential Employees:** This is an employee who may talk to a student in confidence, and generally only report to the University that an incident occurred without revealing any personally identifying information. Disclosures to these employees (e.g., physicians, nurses, professional counselors, clergy) will not trigger an investigation into an incident against the student's wishes.

**Responsible Employees:** Include faculty and staff, who are encouraged to call the Title IX Coordinator when an incident of sexual violence, misconduct, gender-based harassment, discrimination and/or retaliation is reported to them, especially if there is cause for fear of a person's safety. The disclosure includes the identities of both the Complainant and Respondent to the Title IX Coordinator. A report to responsible employees constitutes a report to Bentley and obligates the University to respond to the incident and take appropriate steps to address the situation.

**All Other Employee:** Include faculty members and other Bentley staff employees who do not fall under the categories of Confidential Employees or Responsible Employees. While these employees do not have any obligation to keep shared concerns confidential and are not required to report those concerns, the University encourages them to assist an individual who shares concerns. Individuals may seek advice from any other these employees on campus after an incident occurs. If you are unsure of someone's duties and ability to maintain your privacy, ask them before you talk with them.

This policy is intended to make members of the community aware of the various reporting and confidential disclosure options available to them. Ideally, this information will inform individuals so they can make deliberate choices about where to turn should they experience sexual misconduct, gender-based harassment, discrimination, and/or retaliation. Bentley encourages impacted parties to talk to someone identified in one or more of these groups. For more information on which employees serve in each of these capacities, please see Appendix E.

## **X. Supportive Measures**

One way in which Bentley will support those who bring forward claims of sexual misconduct, sex-or gender-based discrimination, harassment, and retaliation is to offer individualized supportive measures, without any fee or charge. Supportive measures are non-disciplinary, non-punitive personalized services offered to parties. The goal of supportive measures is to provide support to remedy the impact of the alleged misconduct, preserve equal access to education, and protect safety. Supportive measures are available with or without the filing of a formal complaint.

Examples of supportive measures include:

- Implement contact limitations (“University No Contact Orders”) to all parties involved
- Changes in housing assignment or room combination
- Assistance from support staff
- Academic support services
- Help in rescheduling exams; extensions of a deadline; and other course-or program-related adjustments
- Limiting access to University facilities and activities pending resolution of the matter
- Change in class schedule, withdrawals, or leave of absence
- Change in work schedule or job assignment
- Arrangements for counseling, medical, and/or other health services
- Safety planning
- Providing campus security escorts
- Provide transportation accommodations
- Increased security and monitoring of certain areas of the campus

These are just some examples of the supportive measures that the University may take to support individuals involved in an incident of sexual misconduct, sex-or gender-based discrimination, harassment, and retaliation. As each individual will have their own needs and requests, the University is committed to tailoring supportive measures to the specifics of each incident, in a fair and equitable manner (without unreasonably burdening the other party). Individuals seeking to access supportive measures can contact the Title IX Coordinator or the Deputy Title IX Coordinators. The decision to

impose supportive measures is made at the discretion of the Title IX Coordinator. The University will also enforce any orders that are issued by the Courts of the Commonwealth of Massachusetts.

## **XI. Emergency Removal**

Bentley can act to remove a Respondent entirely or partially from its education program or activity on an emergency basis after an individualized safety and risk analysis, it is determined that such a removal is justified because the Respondent poses an immediate threat to the physical health or safety of any student or other individuals arising from the report or prohibited conduct under this policy. The risk analysis is performed by Senior Level Administrators, including the Title IX Coordinator, the Bentley University Police Department, and Student Affairs Staff Members using its standard objective violence risk assessment procedures. Under these circumstances, the Respondent will be notified in writing of the emergency removal from the University's education program or activity, and the Respondent will have an opportunity to immediately challenge the decision following the emergency removal.

## **XII. Defining and Recognizing Prohibited Conduct**

Conduct that is prohibited and encompassed by the Title IX policy includes sexual harassment, as an umbrella category, includes the offense of sexual harassment, sexual assault, dating violence, domestic violence, and stalking. It is a violation of this policy to either commit these acts or attempt to commit them. These acts are also a violation of federal and state law (including Title IX, the Clery Act, and the Violence Against Women Act). These acts are prohibited in any sex or gender configuration (i.e., between the same or differing genders), regardless of sex and gender identity. Individuals found responsible for violating these policies will face sanctions that are commensurate with the severity of the policy violation, ranging from probation through expulsion.

### **A. Definition of the Prohibited Conduct Under the Title IX Policy:**

- 1. Sexual Harassment:** Bentley University adheres to the following definition of sexual harassment as an umbrella category, which includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking.

Generally, this umbrella category prohibits unwanted conduct of a sexual nature that may take the form of sexual advances, inappropriate sexual or suggestive comments, inquiry, sounds or jokes; unsolicited touching or fondling; unwanted intercourse, or assault.

**Sexual Harassment** is defined as follows:

- i. Unwelcome requests for sexual favors; and/or
- ii. Other behavior of a sexual nature where:
  - a. Submission to such conduct is made either explicitly or implicitly as a term or condition of an individual's employment or participation in a university-sponsored educational program or activity. Submission to or rejection of such conduct by an individual is used as the basis for academic or employment decisions affecting that individual (often referred to as *quid pro quo harassment*); or
  - b. Such conduct has the purpose or effect of unreasonably interfering with an individual's academic or work performance, as well as creating an intimidating or offensive educational, social, living, or working environment.
- iii. Harassing conduct that is sufficiently severe, pervasive, and objectively offensive (often referred to as *hostile environment*). Such conduct denies, limits, or interferes with the ability to participate in, or benefit from:
  - a. Educational programs, services, opportunities, or activities; or
  - b. Employment access, benefits, or opportunities.

**2. Sexual Assault** is a form of sexual misconduct that is a violation of University policy as well as federal and state statutes. The Commonwealth of Massachusetts defines sexual assault as "any sexual activity that is forced, coerced, or unwanted" and refers to the crimes of rape and indecent assault and battery. Bentley University adheres to the following definitions of rape and indecent assault and battery:

- i. **Rape** includes penetration (oral, anal, or vaginal) no matter how slight, of any orifice with a body part or any object without effective consent.
- ii. **Indecent Assault and Battery** includes non-consensual sexual contact without penetration.
- iii. **Incest** sexual activity between family members or close relatives.
- iv. **Statutory rape**, which in Massachusetts is when a person has sexual intercourse with an individual under age 16.

The severity of the violation is the same whether the Respondent is a stranger or known to the Complainant. All students, faculty, and staff should be aware that the University is prepared to respond to any incidents of sexual assault. Individuals found



responsible for violating this policy will face sanctions that are commensurate with the severity of the violation, including University expulsion.

**3. Relationship Violence:** At Bentley, relationship violence encompasses dating violence and domestic violence and can involve current or former intimate partners, spouses, social or dating relationships.

- i **Dating Violence and Domestic Violence** is any act of violence or pattern of abusive behavior in a relationship. The acts of violence or abuse can be but are not limited to actual or threatened physical, sexual, verbal, emotional, financial, or digital. It is unwanted and causes physical or emotional harm. Relationship violence occurs in both same-sex and opposite-sex relationships. The determination of the existence of a relationship is based on the following factors: the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. All students, faculty, and staff should be aware that the University is prepared to respond to any incidents of dating violence and domestic violence. Individuals found responsible for violating this policy will face sanctions that are commensurate with the severity of the violation, including University expulsion.

Examples of relationship violence include, but are not limited to:

- Physical abuse: hitting, slapping, shoving, grabbing, pinching, biting, hair pulling, or throwing objects at a person.
- Sexual abuse: attacks on sexual parts of the body, forcing sex after physical violence, treating one in a sexually demeaning manner, coercing or attempting to coerce any sexual contact or behavior without consent, or marital rape.
- Psychological or emotional abuse: a pattern of behavior undermining a person's sense of self-worth or self-esteem, constant criticism, possessiveness, damaging possessions, threats, intimidation, diminishing a person's abilities, name-calling, public humiliation, and damaging a person's relationship with their friends or family.
- Financial abuse: Taking money from or prohibiting access to bank accounts.
- Digital abuse: Controlling social media accounts, or harassment through social media or other forms of technology.

**4. Stalking:** is a course of conduct directed at a specific person that is unwelcome and would cause a reasonable person to fear for their safety, fear for the safety of others, or suffer emotional distress. Stalking can occur between strangers,

individuals who know each other, or individuals who are or were previously in a relationship. Stalking behaviors may include unwanted following or watching, unwelcome gifts, or communications in person, in writing, or through the use of technology. It also includes accessing personal information to monitor a person's activity. Any stalking behavior can be done directly, indirectly, or through a third-party. For purposes of this definition, a reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant . Individuals found responsible for violating this policy will face sanctions that are commensurate with the severity of the violation, including University expulsion.

## **B. Other Prohibited Conduct – Gender-Based Harassment and Discrimination**

In addition to the forms of sexual harassment described above, which fall within the coverage of Title IX, Bentley 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.

### **1. Sexual Exploitation**

Sexual exploitation occurs when a person takes non-consensual, unjust, or abusive sexual advantage of another for their own advantage or benefit, or for the benefit or advantage of anyone other than the one being exploited. This behavior may not fall within the definition of non-consensual sexual contact/activity or sexual harassment, but it is still a violation of policy.

There are many degrees and types of sexual exploitation, including, but not limited to:

*i. **Photographing or Video/Audio Taping Sexual Contact or Activity***

Photographing or taping someone (via audio or video) involved in sexual activity, or in a state of undress without their consent or knowledge constitutes prohibited sexual exploitation. Even if a person consented to the sexual activity or intercourse, photographing or taping someone without their knowledge goes beyond the boundaries of that consent.

*ii. **Disseminating Photographs or Video/Audio Tapes of Sexual Contact or Activity***

The dissemination of photographs or video/audio of someone involved in sexual activity, or in a state of undress without their

knowledge or consent constitutes a separate and additional act prohibited by this policy.

**iii. Voyeurism**

Voyeurism is the act of observing, spying on, or listening to a person involved in sexual contact/activity, or in a state of undress without their knowledge or consent.

**iv. Inducing Intoxication/Incapacitation for the Purpose of Sexual Activity**

Offering drugs, alcohol, or other substances to a person with or without their knowledge with the intent to impair their ability to withhold consent or their ability to knowingly consent to sexual activity is a violation of this policy. This type of conduct constitutes sexual exploitation, regardless of whether any sexual activity takes place.

**2. Harassment Based on Sexual Orientation, Gender, or Gender Identity**

Harassment based on sexual orientation, gender, or gender identity is defined as derogatory comments, actions, or conduct that may include acts of verbal, nonverbal, cyber, or physical aggression, intimidation, or hostility, even if those acts do not involve conduct of a sexual nature. Such conduct is directed toward an individual by virtue of their actual or presumed sexual orientation, gender, or gender identity and:

- i Humiliates or intimidates an individual;
- ii Impedes academic or work performance; and/or
- iii Interferes with university life.

**3. Online Misconduct**

The University's harassment policies are written and interpreted broadly to include online and virtual conduct that have an effect on its education program and activities. Any behavior that is prohibited by the policy is also prohibited in cyber-forms through the use of technology, networks, or equipment.

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

Bentley encourages members of the community to be good digital citizens and to refrain from online misconduct. Examples of online misconduct include but not limited to: feeding anonymous gossip sites, sharing inappropriate content via web/video conferencing, text messages, emails, chats, instant messaging, screensavers, blog, or other social media sites, 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 the campus community.

#### **4. Complicity**

Complicity is any act taken with the purpose of aiding, facilitating, promoting, or encouraging the commission of an act of prohibited conduct by another person.

#### **5. Retaliation**

Retaliation occurs when an adverse action is taken against an individual for raising concerns about conduct which is prohibited by law or policy. All members of the Bentley community have the right to raise concerns or file a complaint through the student conduct system without fear of retaliation. Additionally, it is both unlawful and a violation of University policy to retaliate against an individual for filing a report of sexual misconduct, gender-based discrimination, or harassment. Retaliation is also prohibited against anyone who participates, assisted, or refused to participate in an investigation or adjudication of sexual misconduct, gender-based discrimination, and harassment. Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. Bentley is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation. Examples of retaliation can include hostility, intimidation, threats, coercion, exclusion, or discrimination directly or indirectly. Individuals found responsible for violating this policy will face sanctions that are commensurate with the severity of the violation, including University expulsion.

### **XIII. Definition of Consent**

- A.** Bentley's University's definition of consent applies to all of the acts listed above as prohibited conduct under this policy. Bentley University adheres to the following definition of consent:

**Consent** is a clear and voluntary agreement to engage in specific acts of sexual contact or activity, communicated through mutually understandable words or actions. Consent is always freely informed and actively given. Consent is an affirmative process. It is the responsibility of the person who wants to engage in sexual activity to make sure that they have received consent. If an individual initiating sexual activity

is not sure if they have received consent, they have an obligation to seek additional clarification, as consent cannot be based on assumption. The existence of a dating relationship does not imply consent, and even once consent has been given, it can be withdrawn at any time. If consent is withdrawn, that sexual activity should cease immediately.

**Consent** can never be assumed or implied. The absence of “No” or silence does not mean that consent has been given. Additionally, consent to one form of sexual activity does not imply consent to other forms of sexual activity.

**Consent** is not present and may never be obtained:

- i. Through the use of coercion, manipulation, intimidation, or force;
- ii. From an individual who is incapacitated; or
- iii. From an individual who is under the legal age of consent (16 in the state of Massachusetts).
- iv. Definitions of coercion, force, and incapacitation are included below:

**B. Coercion** is unreasonable pressure for sexual activity. Coercion can include the use of verbal or physical conduct such as manipulation, intimidation, isolation, force, or threats. Coercion includes continued pressure after an individual has made it clear that they do not want to engage in the behavior. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you 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.

**C. Force** is not only limited to physical violence but also includes threats, intimidation, abuse of power, coercion, duress, or any combination of these behaviors to overcome an individual’s freedom to choose whether to engage in sexual activity. Sexual activity that is forced is, by definition, non-consensual. 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.

**D. Incapacitation** consent is not present when an individual is incapacitated. An Incapacitated individual is someone who cannot make rational, reasonable decisions because they lack the capacity to understand the “who, what, when, where, why, or how” of sexual interaction. This includes a person whose incapacity results from mental disability, sleep, involuntary physical restraint, unconsciousness, or use of alcohol or other drugs. Incapacitation is a state

beyond drunkenness or intoxication. A person is not necessarily incapacitated merely as a result of drinking or using drugs. The impact of alcohol and other drugs varies from person to person, and if there is any doubt as to the level or extent of the other person's intoxication or impairment, the prudent course of action is to forgo or cease any sexual contact or activity.

- a. **In evaluating consent in cases of alleged incapacitation**, the University asks two questions: (1) *Did the person initiating sexual activity know that the other party was incapacitated?* and if not, (2) *Should a sober, reasonable person in the same situation have known that the other party was incapacitated?* If the answer to either of these questions is "Yes," consent was absent, and the conduct is likely a violation of this policy.

**E. Under legal age**, consent is never present if an individual is under the legal age of consent (16 in the state of Massachusetts).

#### **XIV. Additional Provisions, Definitions, and Clarifications**

##### **A. Complainant**

An individual bringing forth a report that they have experienced one or more alleged policy violations that could constitute harassment, discrimination, and/or retaliation under these policies.

##### **B. Respondent**

An individual who is alleged to have carried out one or more of the prohibited acts or conduct defined in these policies.

##### **C. Advisor**

An Advisor (support person) is a party chosen by an involved individual or appointed by the University to accompany the party to meetings, related to the resolution or adjudication process, to advise the party on that process, and to ask questions of the party and witnesses at the hearing, if necessary. The Advisor can be a faculty member, staff member, coach, attorney, parents, friend, community advocate, or a labor union representative.

##### **D. Leniency (Amnesty)**

Students may be concerned about reporting sexual misconduct and gender-based harassment and discrimination, believing that their own behavior might subject them to disciplinary action (e.g., a Complainant or witness is underage and was using alcohol or drugs at the time of the incident). Witnesses and Complainants should be assured that the focus in matters of sexual misconduct, harassment, and discrimination is always

on the reported behavior, not on whether someone was, for example, using alcohol or drugs at the time. Individuals are encouraged to come forward and report such conduct regardless of the surrounding circumstances. This is also in keeping with Bentley's medical amnesty and medical assistance policies.

In situations involving allegations of sexual misconduct, Bentley University will seek to make the sexual misconduct allegation the primary focus of any investigation or disciplinary action. In such circumstances, the University will exercise leniency regarding secondary conduct violations (e.g., underage drinking), and those issues will not be subjected to adjudication. It should be noted that the use of alcohol or drugs does not excuse sexual misconduct, and a person who has been incapacitated through the use of alcohol or drugs (or by any other means) cannot give effective consent to sexual activity.

**E. Use of Alcohol or Drugs:** A person who has consumed alcohol and/or drugs still has a responsibility to obtain ongoing consent for any sexual activity with another person. The use of alcohol or other drugs by the person initiating sexual activity will never be accepted as an excuse for failing to obtain consent. Please see Bentley's definition of Consent, in Section XIII of this document, for more information.

**F. Preserving Evidence:** All parties involved in a matter under the Title IX and Gender-Based Harassment and Discrimination policy should preserve as much evidence as possible. In addition to any physical evidence that may be preserved, the following may also be helpful to an investigation and adjudication process:

- Any letters,
- Notes,
- Emails,
- Phone calls,
- Videos,
- Photos,
- Text Messages,
- Social media postings (Facebook, Instagram, Twitter, Snaps, etc.),
- Computer and Phone screenshots,
- Voicemails, or any other form of evidence that may be helpful.
- Chat room, message boards, blogs

## **XV. Reporting an Incident**

All involved parties have many options, including seeking counseling or assistance from a Confidential Resource, making a Formal Report under this policy, and/or making a report to law enforcement. The University recognizes that deciding among these options can be difficult and is an intensely personal decision. Individuals are encouraged to seek assistance and to explore all potential reporting and support options.

Individuals may choose to seek action or assistance both on campus as well as through the surrounding community. Additional or supportive measures may be provided to remedy the impact of the alleged misconduct as well as an investigation and adjudication process. The following situations are an example of reasons why you might choose to report an incident of misconduct:

- To seek formal action against someone, such as removing them from a class or campus
- To educate the person about their behavior through the use of the University's processes and procedures
- To make Bentley aware of the behavior in case, it is part of a larger pattern
- To help prevent similar incidents happening again in the future
- To confront the individual and make your voice heard about how you feel about what happened
- To receive supportive measures such as assistance in changing classes or other on-campus arrangements
- To receive support in coping with an incident

### **A. Reporting Confidentially**

If you are seeking support but want to maintain confidentiality, the best on-campus resources for you include the Health Center, staff in the Counseling Center, and the Spiritual Life staff. All of these resources are included in the cost of attendance for students, and the clinicians in the Health Center and Counseling Center staff can be seen on an emergency basis. The off-campus resources listed in Appendix E are also confidential resources. You may consider a confidential option if you:

- Would like to know about support and assistance but are not sure if you want to pursue formal action against the individual;
- Have questions or would like to process what happened with someone without involving police or Title IX procedures/Gender-Based Harassment and Discrimination procedures; and/or
- Do not want the Respondent (i.e., alleged violator) to know that you are seeking help or support



Please be aware that confidential resources have some obligations to report, **notably when the individual is in imminent danger or posing imminent danger to others.** There are also obligations to report situations involving the abuse of a minor.

## **B. Informal Resolution**

Individuals may seek an informal resolution in place of a formal report and investigation. In order to initiate informal resolution, a Complainant needs to submit a formal complaint. The University, however, has the discretion to determine whether the nature of the reported conduct is appropriate for an informal resolution, to determine the type of informal resolution that may be appropriate in a specific case, and to refer a report for formal investigation at any time.

Participation in an informal resolution process is voluntary and requires written consent from all involved parties. The University will not compel a complaining party or Respondent to engage in an informal resolution, will not compel a Complainant to directly confront the Respondent, and will allow a Complainant or Respondent to withdraw from the informal resolution process at any time. The University may decline the request for informal resolution in any particular case and may terminate an ongoing informal resolution process at any time. Pursuing an informal resolution does not preclude later use of a formal investigation if the informal resolution fails to achieve a resolution acceptable to the parties and the University. When the Complainant or the Respondent withdraws from an informal resolution process, or when an informal resolution is otherwise terminated for any reason, any statements or disclosures made by the parties during the course of the informal resolution may be considered in a subsequent formal investigation.

With any informal resolution, each party has the right to choose and consult with a support person. The support person may be any person, including an attorney, who is not otherwise a party or witness to the reported incident(s). The parties may be accompanied by their respective support persons at any meeting or proceeding held as part of the informal resolution. While the support persons may provide support and advice to the parties at any meeting and/or proceeding, they may not speak on behalf of the parties or otherwise participate in, or in any manner disrupt, such meetings and/or proceedings. Informal resolutions may include:

- i **Resolution with the Assistance of a Neutral Party:** A Complainant may seek assistance in informally resolving a report of prohibited conduct from the Title IX Coordinator, who can arrange to have a trained, neutral party facilitate a meeting or meetings between the parties. The availability of this informal resolution is subject to the

agreement of the Title IX Coordinator, the Complainant , and the Respondent.

- ii **Interventions and Remedies:** Informal resolution agreements may involve a host of interventions and remedies, such as actions designed to maximize the complaining party's access to educational, extracurricular, and/or University employment activities; increased monitoring, supervision, and/or security at locations or activities where the prohibited conduct occurred or is likely to reoccur; targeted or broad-based educational programming or training for relevant individuals or groups; academic and/or University housing modifications for involved parties; workplace modifications; and/or any other remedial or protective measures that can be tailored to the involved individuals to achieve the goals of the Policy.

Any form of informal resolution and any combination of interventions and remedies may be utilized. If an agreement acceptable to the University, the Complainant , and the Respondent is reached through an informal resolution process, the terms of the agreement are implemented, and the matter is resolved and closed. If an agreement is not reached, and the Title IX Coordinator determines that further action is necessary, or if a Respondent fails to comply with the terms of the informal resolution, the matter may be referred for a formal investigation. The Title IX Coordinator will maintain records of all reports and conduct referred for informal resolutions. The Complainant and Responding parties should also know that the Complainant has the option to bring criminal or civil actions against the Respondent.

### **C. Formal Reporting Options**

Bentley University encourages all students, faculty, and staff to file a formal report of an incident to designated campus officials. A list of all responsible employees (those designated officials who have a duty to report incidents of misconduct to the Title IX Coordinator) can be found in Appendix E of this policy. Reporting to any of these individuals is considered official notice to the University. After you filed a report and requested an investigation, you should expect the University to investigate and properly resolve the incident through administrative procedures. Information disclosed in a formal report will be shared only with individuals who need to know of the incident, including the incident investigator, Respondent, witness(es), and Title IX Coordinators.

Please note that separate protocols exist for criminal reports. If you would like to file a criminal report, please contact University Police at 781-891-2201. Please

note: University Police will meet with members outside of the Bentley Police station if requested.

Please note, privacy provisions in Section IX shall apply to a Formal Report.

You may consider filing a report if you:

- Would like formal action taken. Formal action can include assistance in obtaining a restraining order or University “No Contact” order, filing criminal charges, or conduct or employment action for the Respondent if they are found responsible for violating University policy.
- Would like the University to be aware of the situation in case it happens again.

For more information on Title IX and the Gender-Based Harassment and Discrimination procedures (including investigations and hearings), please contact the Title IX Coordinator or Deputy Title IX Coordinators. You can also review the full policy and appendices [here](#).

## **XVI. Investigation and Adjudication Procedures and Protocols**

For information regarding investigation and adjudication procedures and protocols for reports involving students, please see Appendix C of this policy. For procedures and protocols for reports involving only faculty and staff, please see Appendix D of this policy.

## **XVII. Prevention and Education**

Bentley University prides itself on being a leader in providing ongoing educational programs, annual training, lectures, and initiatives for its community related to sex/gender-based discrimination risk reduction and bystander intervention. Examples of these educational efforts include:

- HAVEN (a mandatory online training that educates and raises awareness regarding sexual assault for both undergraduate and graduate students)
- AlcoholEdu (a mandatory online training that inspires students to reflect on and consider changing their drinking behaviors)
- Consent Day
- White Ribbon Campaign
- Walk a Mile in Her Shoes
- Guess the Straight Person
- Bystander training

- One Love Foundation's Escalation workshop
- Hook up culture panels
- Ally training
- Documentaries and guest speakers

#### **XVIII. Training of Title IX Coordinators, Investigators, Hearing Officers, Appellate Authorities, Faculty and Staff**

The University will provide appropriate training to all Title IX-related personnel with responsibilities under this policy, including the Title IX Coordinators, Deputy Coordinators, Investigators, and those with authority over University Adjudication Processes, and Appeals. The training will be conducted each academic year and will cover the University's applicable prohibited conduct, adjudication processes, due process, and applicable federal and state laws and regulations. The annual training will also ensure that all Title IX-related personnel will be able to appropriately address allegations, provide accurate information to members of the community, protect the safety, and promote accountability. These training materials are publicly available on the University's Title IX website and will be made available for in-person review upon request.

#### **XIX. Annual Review**

This policy is maintained by the Title IX Office. The University will review this policy on at least an annual basis. The review will capture evolving legal requirements, evaluate the supports and resources available to the parties, and assess the effectiveness of the resolution processes (including the fairness of the process, the time needed to complete the process, and the sanctions imposed). The review may incorporate feedback from parties and an aggregate view of reports, resolution, and climate.