

# **Bard College Berlin**

## **Sexual Violence and Gender-Based Misconduct Policy**

(Provisional Document;

Revised August 2023 and in force until September 2023)

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## **1. Notice of Nondiscrimination**

Bard College Berlin is committed to ensuring equal access to its educational programs and equal employment without regard to an individual's sex, gender, race, color, national origin, religion, age, disability, gender identity, sexual orientation, marital status, veteran status, military status, domestic violence victim status, ex-offender status, or any other characteristic protected by German law. Students, employees, applicants, and other members of the Bard College Berlin community (including, but not limited to, vendors, visitors, and guests) shall not be subject to discrimination or harassment prohibited by law or otherwise treated adversely based upon a protected characteristic. Similarly, the College will not tolerate harassing, violent, intimidating, or discriminatory conduct by its students, employees, or any other member of, or visitor to, the College community. This includes, without limitation, sexual harassment, sexual assault, sexual violence, dating violence, and domestic violence.

## **2. Introduction**

All members of the Bard College Berlin community are expected to exhibit behavior that demonstrates respect for one another and to act in a manner that upholds the vision of community and education expressed in the Educational Mission of the institution. The College is committed to providing learning and working environments free of sexual and gender-based harassment, discrimination, sexual assault, sexual exploitation, stalking, and intimate partner violence (hereafter referred to as “sexual violence and gender-based misconduct”) and to preventing, responding to and remedying occurrences of sexual violence and gender-based misconduct when it becomes aware of them. To that end, the College provides services and support for individuals who have been impacted by Sexual Violence and Gender-Based misconduct, as well as accessible, prompt, thorough, and impartial methods of investigation and resolution of incidents of Sexual Violence and Gender-Based Misconduct.

Sexual Violence and Gender-Based Misconduct (also shortened to “Gender-Based Misconduct”) is an umbrella phrase used in this policy to more conveniently refer to any form of misconduct prohibited by this policy, including, but not limited to, the offenses of sexual harassment, sexual assault, stalking, dating violence, and domestic violence.

The Bard College Berlin Sexual Violence and Gender-Based Misconduct Policy should be interpreted and applied in a manner consistent with the principles of free inquiry, free expression, and free speech to which Bard College Berlin is committed. The College’s policy is not intended to stifle these freedoms. Prohibited discrimination, harassment, retaliation, and other misconduct are neither legally protected expressions nor the proper exercise of academic freedom.

Inquiries or complaints regarding any form of discrimination or harassment may be directed to the Gender Equity Coordination Team consisting of:

- Director of Diversity Equity and Inclusion & Gender Equity Coordinator (at present: Maria Anderson-Long <m.andersonlong@berlin.bard.edu> ; after September 1, Lauren Gaillard <l.gaillard@berlin.bard.edu>)
- Deputy Gender Equity Coordinator (Ashley Morrison <a.morrison@berlin.bard.edu>)

Inquiries regarding any form of discrimination or harassment or legal processes in Germany may be directed to:

**Antidiskriminierungsstelle des Bundes**

030 18555-1855

[Contact form](#)

**Berliner Netzwerk gegen sexuelle Gewalt**

Oranienstraße 106

10969 Berlin

### 3. Policy Statement

It is a violation of Bard College Berlin’s Sexual Violence and Gender-Based Misconduct Policy to commit any of the following acts:

- Gender-Based Discrimination
- Sexual Assault
- Sexual Harassment
- Rape
- Gender-Based Harassment
- Nonconsensual Sexual Contact
- Hostile Environment
- Sexual Exploitation
- Intimate Partner Violence or Abuse
- Stalking
- Retaliation

These acts are defined in more detail below. Committing any of these acts may result in disciplinary action as outlined below.

This policy is in accordance with national and federal state legislation and regulations prohibiting discrimination and harassment, as well as provisions of response and services for victims of interpersonal violence. These laws include:

- [Berliner Hochschulgesetz](#), particularly [§5b](#) and [§5c](#)
- [Allgemeines Gleichbehandlungsgesetz \(AGG\)](#) from August 18, 2006, particularly [§3.4](#) [Strafgesetzbuch \(StGB\)](#), particularly [§ 177](#) and [§ 238](#)
- The [European Equal Treatment Directive 2006/54/EC](#)

#### 3.1. Scope of Policy

The College will respond to reported incidents of sexual violence and gender-based misconduct,

involving students, faculty, staff, or any other member of the Bard College Berlin community, reported to have occurred:

- on campus;
- off campus involving members of the Bard College Berlin community; or
- during official Bard College Berlin programs, regardless of location.

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

The College 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. The Gender Equity Coordinator, in consultation with other College officials, will, in their discretion, determine whether a College interest has been implicated for purposes of this policy.

Employees of the College are expected to cooperate with and participate in the College investigation and resolution processes set forth in this policy. Action taken and support provided regarding incidents of misconduct involving contract employees, visitors, and guests may be limited; however, the College will endeavor to respond when possible, practical, and reasonable.

One or more of the College's personnel policies may overlap with this policy in a particular situation. The procedures described below apply to any situation where a student is a [Complainant](#) or [Respondent](#). In all other situations, the College reserves the right to apply this policy or another applicable College policy or process, including the shortened procedure for faculty and staff cases which appears in section [5.5](#) of this document.

Please find the [Glossary of Terms](#) at the end of the Policy.

### **3.2. Student Bill of Rights for the Gender-based Misconduct Policy**

All students have the right to:

- Make a report to local law enforcement and/or state police
- Have disclosures of domestic violence, dating violence, stalking, and sexual assault taken seriously
- Describe the incident to as few institutional representatives as practicable and not be required to unnecessarily repeat a description of the incident

- Make a decision about whether or not to disclose a crime or violation and participate in the conduct process and/or criminal justice process free from pressure by the institution
- As much privacy as possible in the circulation of information
- Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or conduct process of the College

All Complainants have the right to:

- Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard
- Be treated with dignity and to receive from the institution advice about health care and counseling services
- Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed or should have acted in a different manner to avoid such crimes or violations
- Be protected against retaliation by the College, any student, the accused and/ or the respondent, and/or their friends, family and acquaintances within the jurisdiction of the College
- Be accompanied by an adviser of choice who may assist and advise throughout the judicial or conduct process, including during all meetings and hearings related to such process

All Respondents have the right to:

- Participate in a process that is fair, impartial, and provides adequate notice of the allegations, a meaningful opportunity to be heard and an opportunity to respond to the allegations
- Be treated with dignity and to receive from the institution advice about health care and counseling services.
- Be protected against retaliation by the College, any student, the accused and/ or the respondent, and/or their friends, family and acquaintances within the jurisdiction of the College.
- Be accompanied by an adviser of choice who may assist and advise throughout the judicial or conduct process, including during all meetings and hearings related to such process.
- Access to at least one level of appeal of a determination.

### 3.3. Data Protection

The College's ability to notify parents or guardians about any complaints or allegations made with respect to this policy is limited by European and German federal law and the laws of the state of Berlin, including but not limited to the [Regulation \(EU\) 2016/679 of the European Parliament and of the Council of 27 April 2016](#), the [Bundesdatenschutzgesetz \(BDSG\)](#), the [Berliner Datenschutzgesetz - \(BlnDSG\)](#), and the [Studierendatenverordnung \(StudDatVO\)](#).

The College will maintain disciplinary files and files in connection with proceedings under this policy for seven (7) years. After seven (7) years, the files will no longer be available, except in cases resulting in expulsion or suspension. All records maintained by the College are subject to European and German federal law, and the laws of the state of Berlin

### 3.4. Reporting Options and Immediate Assistance

Any member of the Bard College Berlin community who has experienced potential Sexual Violence or Gender-Based Misconduct is encouraged to seek support and assistance through at least one of the resources listed below. Seeking assistance promptly may be important to ensure safety, to obtain medical care, and to preserve evidence to assist the response of law enforcement and/or the College. Behaviors that do not rise to the level of policy violations can also be reported, as the College may still be able to provide options for support, resolution or remedy.

#### 3.4.1. Confidential Reporting

Confidential Reporting is possible at Bard College Berlin through the resources listed below. Information shared with a Confidential Resource does not constitute a formal report/complaint and will not be investigated.

##### On-Campus Confidential Resources:

Counseling services at Bard College Berlin <https://berlin.bard.edu/student-life/services-and-resources/health-and-counseling/>

##### Off-Campus Confidential Resources:

Berliner Krisendienst (Berlin crisis service)	+49 30 390 630 0
LARA (sexual violence against women)	+49 30 216 88 88
BIG e.V. (Domestic violence)	+49 30 611 03 00
L-Support (Violence against Lesbians)	<a href="http://www.l-support.net">www.l-support.net</a>



Maneo (Violence against Gays)

[www.maneo.de/en.html](http://www.maneo.de/en.html)

MUT (Sexual violence against men)

+49 30 236 33 978

Information may be shielded or protected from disclosure only if shared with a medical, licensed counseling, or pastoral provider covered by a legal privilege or protection. Civil and criminal procedure and law may result in records and information maintained by confidential resources, and persons serving as confidential resources, being subject to subpoena. Information shared with confidential resources may be reported for statistical purposes without identifying information.

### **3.4.2. Institutional Reporting**

Any member of the community who wishes to file a report of Sexual Violence or Gender-Based Misconduct with the College may do so by contacting the Gender Equity Coordinator or Deputy Coordinator, by phone, email, in person or via the online [Reporting Form](#).

When information pertaining to specific incidents of reported gender-based misconduct is shared, the Gender Equity Coordinator or Deputy will attempt to protect the privacy of all parties involved, but is required to initiate a preliminary inquiry and determine what, if any, further investigation is warranted. Please note however that while anonymous reports may be submitted to the Gender Equity Coordinator or Deputy Coordinator, or [online](#), due to restricted identifying information, the College does not have the ability to investigate and respond to these complaints.

Any Responsible Employee (as defined in the Glossary) with knowledge of gender-based misconduct involving student members of the Bard College Berlin community must notify the Gender Equity Coordinator or Deputy.<sup>1</sup> Bard College Berlin will limit redisclosure as much as possible<sup>2</sup> and comply with federal and national privacy laws, but information reported to the College may be subject to disclosure pursuant to a lawful subpoena (Zwangsvorladung) issued to the College or pursuant to a request or investigation by an authorized government agency.

Upon receiving a report of potential gender-based misconduct, Responsible Employees must inform the reporting individual of their own reporting responsibilities (i.e., that they cannot provide confidentiality, but will keep privacy as much as possible) and the option of seeking

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<sup>1</sup> Climate surveys, classroom writing assignments, human subjects research, and events such as Take Back the Night or similar speak-outs do not constitute notice to the College

<sup>2</sup> For the purpose of this policy, “privacy” and “confidentiality” have distinct meanings. Privacy means that information related to a complaint will be shared with a limited number of Bard College employees who “need to know” in order to assist in the assessment, investigation, and resolution of the report. The privacy of student education records will be protected in accordance with European, German and State laws and the privacy of employee records will be protected in accordance with Human Resources policies. Confidentiality exists in the context of laws that create a privilege and protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy.

assistance from confidential resources and support services. In addition, Responsible Employees must provide the following information to the reporting individual before the disclosure of the sexual assault, intimate partner violence, and/or stalking:

- Individuals have the right to make a report to local law enforcement, and/or German police, or choose not to report.
- Individuals have the right to report the incident to the College.
- Individuals have the right to be protected by the College from retaliation for reporting an incident.
- Individuals have the right to receive assistance and resources from the College.

Individuals or persons who have questions regarding the reporting procedures for Sexual Violence and Gender-Based Misconduct may contact the Gender Equity Coordinator or Deputy Coordinator, to discuss the process, policies, resources, their institutional rights, and their options for reporting to the local authorities.

An individual who is determined to knowingly have made a false complaint or accusations, or who provided false information during an investigation, may be subject to disciplinary action by the institution. This provision does not apply to reports made in good faith, even if the facts alleged in the report cannot be substantiated by subsequent investigation.

### **3.4.3. Criminal Reporting**

Individuals who have experienced potential Gender-Based Misconduct have the right to decide whether to file or decline to file a report with the local law enforcement agency where the misconduct occurred. The Gender Equity Coordinator, Deputy and other campus authorities are available to assist individuals in reporting to law enforcement.

What constitutes a criminal act will be defined by the penal code of the jurisdiction in which the alleged misconduct occurred. The College system and legal system have investigation processes that work independently of each other and can happen concurrently.

To file a criminal report, individuals may contact the following, and/or any other appropriate law enforcement agency:

#### **Criminal Investigation Division of the Berlin Police**

LKA 413  
Keitstraße 30  
10787 Berlin

#### **Pankow Police Department**

Polizeidirektion 1, Abschnitt 13

Hadlichstraße 37-42,  
13187 Berlin  
030 4664113700

#### **3.4.4. Preservation of Evidence**

The College encourages all individuals to preserve evidence relating to reports of gender-based misconduct. Evidence may be important for an investigation under this policy, for supporting a criminal investigation or prosecution, or in obtaining an order of protection or an equivalent protective or restraining order (Kontaktverbot). Examples of evidence may include text messages, emails, social media communications, phone records, photographs, documents, clothing, bedding, and medical information.

Individuals who have experienced a recent sexual assault or act of physical violence are encouraged to seek medical care within 24 hours or as quickly as possible. In addition, individuals should consider seeking a Sexual Assault Forensic Exam (medizinische Befundsicherung) at a local hospital, which includes assessment and treatment of injury, addressing concerns of pregnancy and sexually transmitted diseases, and collection of evidence. Sexual Assault Forensic Exams are covered by public health insurance and free of charge. The Gender Equity Coordinator may be able to provide support in accessing examinations or transportation to a hospital or a clinic .

#### **3.4.5. Amnesty Policy**

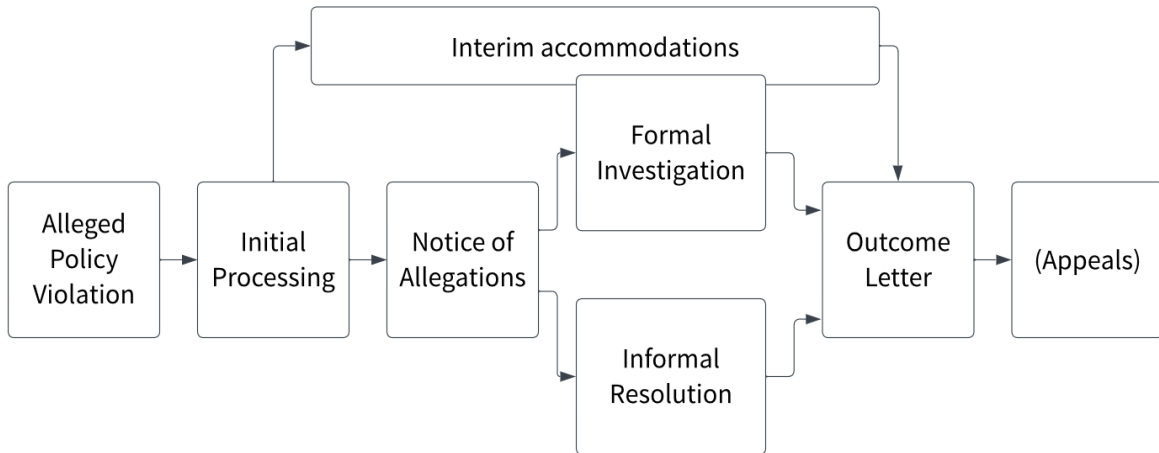
Bard College Berlin recognizes that there may be health or safety emergencies related to the use of alcohol or other substances in which the potential for disciplinary action by the College may deter students from seeking assistance for themselves or for other members of the Bard College Berlin community. In all such matters, the health and safety of the student at risk is the College's top priority. Medical assistance should always be sought out as a first step. In such cases, students should call 112 followed by calling the Bard College Berlin 24hr emergency phone to ask for assistance. Alternatively, if students are unsure of what to do, they should call the Bard College Berlin 24hr emergency phone to ask for assistance.

Should a student, or another individual on behalf of that student, voluntarily come forward seeking assistance in a situation involving the over-consumption or abuse of drugs and/or alcohol, the College's response in regard to that overconsumption will be first and foremost focused on medical treatment, counseling and/or educational interventions.

However, the College reserves the right to address any associated acts that compromise the well-being of the community and its members such as harassment, violence, damage, harm to self/others, or distribution of illegal substances on a case-by-case basis as deemed appropriate/necessary.

## 4. Institutional Gender-Based Misconduct Processes

The College will investigate and adjudicate reports of gender-based misconduct in a thorough, reliable, impartial, and timely manner, as described below.



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 College policy. Although 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, with the exception of information the parties agree not to disclose related to Informal Resolution, discussed below.

### 4.1. Preliminary Inquiry

Once a report has been made, the Gender Equity Coordinator will assign one member of the Coordination team (either the Coordinator or the Deputy Coordinator) as primary contact and to conduct the initial intake and assessment of reports of gender-based misconduct. The Coordinator or Deputy Coordinator may seek additional information to evaluate whether the event reported constitutes a potential violation of the Sexual Violence and Gender-Based Misconduct Policy. In affirmative cases, the Complainant (when not the Reporting Party) will be contacted as quickly as is feasible to begin the intake process.

During the initial intake, assessment, meeting, and/or correspondence with the Complainant, the Gender Equity Coordinator or Deputy Coordinator assigned as primary contact will assess the Complainant's safety and well-being and review with the Complainant the College policy including, as applicable, informing the Complainant that the Gender Equity staff can offer privacy not confidentiality, sharing information about criminal, informal and formal institutional investigation reporting options and processes, noting supportive measure options, and providing information about off-campus resources.

Prior to initiating a formal institutional investigation or an informal resolution process, the (Deputy) Gender Equity Coordinator must obtain a formal complaint from the Complainant. A formal complaint is a written document submitted by a Complainant and filed with the Gender Equity Coordinator alleging sexual violence or gender-based misconduct and requesting that the College investigate and adjudicate the allegation. A formal complaint must contain the Complainant's physical or electronic signature, or otherwise indicate that the Complainant is the person filing the formal complaint.

A Complainant may request that their name or other identifying information not be disclosed to the Responding Party, and/or that an investigation not be undertaken. Individuals can decline their consent to either process, unless the College determines in good faith that an investigation is needed to provide a safe and non-discriminatory environment or to adequately mitigate a potential risk of harm to the Complainant or other members of the community. Individuals can later change their minds and request that an investigation is done, even though they previously requested one was not done.

Regardless of the Complainants request for confidentiality, the (Deputy) Gender Equity Coordinator will assist the Complainant with interim measures and accommodations.

#### **4.1.1. Interim and Supportive Measures and Accommodations**

Following a report of Sexual Violence and Gender-Based Misconduct, the College can offer appropriate and reasonable supportive measures to the parties to help ensure safety and well-being, prevent retaliation, avoid an ongoing hostile environment, and to promote an accessible educational and employment environment.

Supportive measures are offered free of charge and are intended to restore or preserve, to the extent practicable, equal access to the College's educational programs. Supportive measures are non-disciplinary, non-punitive individualized services that are implemented in a way that does not unreasonably burden the other party.

The (Deputy) Gender Equity Coordinator will provide information regarding supportive measures and accommodations, and will implement and/or coordinate their issuance. Supportive measures and accommodations are offered regardless of whether a Formal Investigation Process is commenced. Supportive measures and accommodations could include, but are not limited to:

- Change in campus housing and academic schedules if these requests are made by a party and are reasonably available;
- Academic accommodations (extensions, excusing absences, opportunities to complete missed coursework, access to academic support, etc.);
- Access to counseling or support services;

- Changes to work schedules, job assignments, or other work accommodations;
- Mutual No Contact Orders, and in limited circumstances, one-way No Contact Orders; and
- Other actions deemed appropriate by the (Deputy) Gender Equity Coordinator and feasible for university implementation.

Both parties shall be afforded a prompt review, reasonable under the circumstances, of the need for and terms of any such interim measure or accommodation that directly affects them and shall be allowed to submit evidence in support of their request. Interim measures and accommodations will be reviewed upon request by the (Deputy) Gender Equity Coordinator in charge of the case, or their designees. Before modifying an interim measure or accommodation, the College will notify the other party of the request for modification.

The issuance of supportive measures and/or accommodations is not a conclusion as to whether there has been a violation of College policy. The (Deputy) Gender Equity Coordinator has the discretion to issue, modify, or remove any supportive measure or accommodation due to new information or change in circumstances.

#### **4.1.2. No Contact Order**

As an interim supportive measure, or as part of an outcome, in order to promote safety and civility on campus, the Gender Equity Coordinator or Deputy Coordinator is authorized to issue No-Contact Orders (NCOs) prohibiting contact between or among students, faculty, and staff, when there is a reasonable concern that physical or psychological harm may result from such contact.

The College will consider all facts and circumstances that may be relevant to whether a NCO should be issued, including, but not limited to, the following factors:

- When there are allegations, threats, or evidence of physical violence by one individual against another;
- When there are allegations, threats, or evidence of emotional abuse or harassment by one individual of another;
- When there is a substantial risk of emotional harm from continued contact between individuals;
- When continued contact between individuals may have a material impact on campus disciplinary proceedings;
- When a NCO is requested or agreed to in good faith by all individuals involved; and,
- When there are allegations of serious violations of College policy.

An individual receiving a NCO is to have no contact, direct or indirect, on or off-campus, with the other party. Contact includes all forms of written communication (texting, social media, email, etc.) as well as personal contact (face-to-face, telephonic, etc.). This includes indirect contact through other persons or through asynchronous modes of electronic communication.

If the requesting individual and receiving individual observe each other in a public place, it shall be the responsibility of the receiving individual to leave the area immediately and without direct contact. However, NCOs do not guarantee that parties will not see each other.

NCOs are only enforceable by the College. NCOs differ from court-imposed orders of protection or restraining orders (Kontaktverbot), which may be enforced by courts or law enforcement. Violations of a NCO should be reported to the Gender Equity Officer or Head of Student Life. If safety is a concern, please call the police (110) and then the Bard College Berlin 24hr emergency phone.

After issuance, a NCO remains in effect until the graduation, withdrawal, termination, or end of employment of at least one of the parties, unless the NCO expressly provides otherwise or is modified or rescinded by the College.

Violations of No Contact Orders are subject to discipline under provisions of the Student Handbook or the retaliation provisions of the Sexual Violence and Gender-Based Misconduct Policy, as appropriate, and could result in interim suspension, additional conduct charges, or other outcomes.

#### **4.1.2.1. Support Person**

The Complainant and Respondent are entitled to a support of their choice to accompany them throughout the reporting, intake, investigation, and resolution process, including all meetings and interviews. A support person may be a friend, family member, attorney, union representative, or any other person that a party chooses so long as the support person is available, except for a member of the campus community who has other adjudicatory responsibilities under this policy or otherwise has a conflict of interest. The College does not appoint a support person for a party during the investigation phase of the process.

Support persons may attend interviews and meetings and may talk quietly with the Complainant or Respondent who has chosen them, but are not permitted to answer questions or speak on the behalf of them. Support persons are not permitted to disrupt meetings, interviews, or the process, and are expected to refrain from interference with the investigation and resolution process. Support persons who disrupt or otherwise fail to respect the limits of the role will be warned once. If the support person continues to disrupt or otherwise fail to respect the limits of the role, the support person will be asked to leave the meeting or interview, and the meeting or interview will typically continue without the support person present. Support persons are expected to maintain the privacy of records shared with them.

## **5. Investigation Procedures**

### **5.1. Formal Investigation Process**

When a Complainant chooses to pursue a Formal Investigation Process, or when the College chooses to pursue investigation for reasons noted above, the investigation and adjudication will be conducted by a designated investigator or investigators charged by the College with gathering facts about an alleged violation of this policy, assessing relevancy of evidence, synthesizing the evidence, and compiling this information into an Investigation Report.

The Gender Equity Coordinator or Deputy, whoever is acting as initial primary contact for the case, in consultation with the Head of Student Life will determine which Gender Equity staff member will act as investigator in the case. This will normally be the Gender Equity Coordinator but may be the Deputy depending on the outlines of the case. In circumstances of conflict of interest or potential bias, it may also be an external consultant or a trained College official not otherwise implicated in the case. If the situation involves a faculty member, the Dean of the College will be notified at this stage; and the Managing Director for all administrative staff.

The Investigator will interview each party and all relevant witnesses, conduct follow-up interviews as necessary, and gather all available relevant evidence. No unauthorized audio or video recording of any kind is permitted during investigation meetings. If the investigator elects to audio and/or video record interviews, all involved parties must be made aware of such recording.

The Complainant and Respondent have the right to exclude their own prior sexual history with persons other than the other party in the investigation, and the right to exclude their own mental health diagnoses and/or treatment from admittance in the investigation stage that determines responsibility. Past findings of domestic violence, dating violence, stalking, or sexual assault related to criminal convictions or conduct violations may be considered when determining outcomes.

Both parties may submit statements and identify witnesses to the investigator, who has discretion to determine the relevance to the investigation. Statements offered for the purpose of providing information about a party's character, general disposition, or qualities will generally not be considered relevant. The investigator will not interview any witness identified by a party whose sole purpose is to provide character information or specialized expertise about a particular subject matter. Letters addressing the character of a party also will not be considered. The College reserves the right to utilize experts to assist the investigator in analyzing evidence. Throughout the investigation, parties may submit written questions to be asked of the other party or witnesses for the investigator's consideration. The investigator does not have the power of subpoena and thus the evidence gathered by the investigator is restricted to that which is voluntarily submitted. Both parties and all witnesses will be given the opportunity to review the investigator's summary related to their own statement to ensure accuracy.



Prior to the conclusion of the investigation, the investigator will provide both parties with the opportunity to review documentary evidence submitted by the other party, in the presence of the investigator and consistent with privacy laws, regulations, and policies. The investigator will also provide each party with the opportunity to review the interview summary related to the other party's statement, and the statements of witnesses, in the presence of the investigator and consistent with privacy laws, regulations, and policies. After reviewing the statements, each party will have the opportunity to submit comments and/or additional questions, which will be considered by the investigator for relevancy. If warranted, the investigator will provide additional evidence review sessions to ensure that each party has an adequate opportunity to review all statements and evidence.

At the conclusion of the investigation, the investigator will issue and file with the Gender Equity Coordinator (when this individual is not already the investigator) a written Report of findings. The Investigator need not include information in the Investigative Report that the investigator determines not relevant or otherwise excludable. The Complainant and Respondent, and each party's advisor if any, will be provided a copy of the Investigative Report (which may be sent in hard copy or electronic format or made available through an electronic file sharing platform), subject to redaction permitted and/or required by law. The Gender Equity Coordinator will submit the report to the Head of Student Life, who will determine what steps, if any, should occur next, including outcomes determination. In cases involving faculty and/or staff the Managing Director and Dean of the College will be involved in the process to identify next steps and outcomes.

## **5.2. Outcomes**

An individual who has been found to have violated the Sexual Violence and Gender-Based Misconduct Policy may be subject to outcomes and/or directives including any of the outcomes listed in the Code of Conduct, change in academic or employment schedule, change in on-campus residence assignment, no contact order, educational programming involving gender-based misconduct awareness, counseling, community restitution, prohibition from certain Bard College Berlin facilities or activities, prohibition from campus, suspension, expulsion, admission revocation, revocation of awards or honors, withholding of degree, degree revocation, demotion, termination, a combination of these, or any sanction deemed just and proper.

Sanctioning outcomes/parameters may be impacted by the following criteria: severity of the violation, motivation of behavior, disciplinary record, and the impact of safety concerns to the greater campus community.

## **5.3. The Appeal Process**

Appeals for violations of the Gender-Based Misconduct Policy are addressed through the College's Grievance Committee. The Grievance Committee is chaired by the Associate Dean of the College and additionally consists of two faculty or staff members of the Academic Senate selected annually. When a student is the Complainant and a staff or faculty member is the Respondent, the

second Managing Director will join the Grievance Committee. No one who has served as the adjudicator for a particular matter may be on the appeal panel for that same matter; in cases where one of the members of the Grievance Committee faces a conflict of interest, the Associate Dean may nominate another member of the Academic Senate to take their place.

If the appeal falls within eligible grounds (see below), both parties will be notified and informed of the grounds for the appeal. Any outcomes imposed will remain in place during the appeal process. If both the Reporting Party and the respondent appeal, the appeals will be considered concurrently.

If the appeal is proper, a copy of the appeal will be provided to the other party, who will then be given five (5) business days to submit a written response, which will also be exchanged as part of the appeal.

Parties from the incident, advisors, and third parties are prohibited from directly contacting the appeal panel members regarding an investigation, adjudication, or appeal.

The eligible grounds on which an appeal may be based are:

1. Procedural error that substantially affected the outcome;
2. New evidence that was not reasonably available at the time of the investigation and could substantially affect the outcome; and/or
3. The (Deputy) Gender Equity Coordinator, investigator, or Decision-makers had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent in the matter that affected the outcome.

Dissatisfaction with the outcome does not constitute grounds for appeal.

If the committee determines that it needs additional information, it may refer the matter back to the investigator for further investigation or request additional information to be submitted to the panel for consideration.

If the appeal is denied, the parties will be notified and the matter will be closed.

If the appeal is granted, the committee will issue a decision advising that the appeal was granted and which, if any, outcomes or penalties are upheld, overruled, modified, or returned to the adjudicator for reconsideration.

The Associate Dean of the College will notify the parties in writing of the decisions involving the appeal as well as the disposition. 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.

The Gender Equity Coordinator will maintain documentation of all such consultation. All decisions are by majority vote and apply the preponderance of the evidence standard.

## **5.4. Informal Resolution**

The College Informal Resolution processes can include three different approaches:

- The (Deputy) Gender Equity Coordinator can resolve the matter informally by providing supportive measures to remedy the situation.
- When the parties agree to resolve the matter through an alternate resolution mechanism as described below usually before a formal investigation takes place (see [Section 5.4.1.1](#)).
- When the Respondent accepts responsibility for violating a policy provision, and desires to accept sanctions and end the resolution process (similar to above, but usually occurs post investigation); (see Section [5.4.1.2](#)).

A Respondent who wishes to initiate Informal Resolution should inform the (Deputy) Gender Equity Coordinator. The Informal Resolution process is not available if the Respondent in a Sexual Violence and Gender-Based Misconduct complaint is a faculty or staff member of the College and the Complainant is a student.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Investigation Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Investigation Process.

Prior to implementing Informal Resolution, the College 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 the College.

The College 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.

### **5.4.1. Alternate Resolution Mechanism**

Alternate Resolution is an informal mechanism by which the parties reach a mutually agreed upon resolution of an allegation. All parties must consent to the use of an Alternate Resolution mechanism. Alternate resolution can include mediation, restorative justice practices, or other dispute resolution mechanisms as deemed appropriate under the circumstances.

The Gender Equity Coordinator normally facilitates this process, but in specific cases the Deputy may serve. In cases of potential conflict of interest or bias with both coordinators, an appropriate alternate resolution facilitator may be requested. The alternative facilitator may be appointed

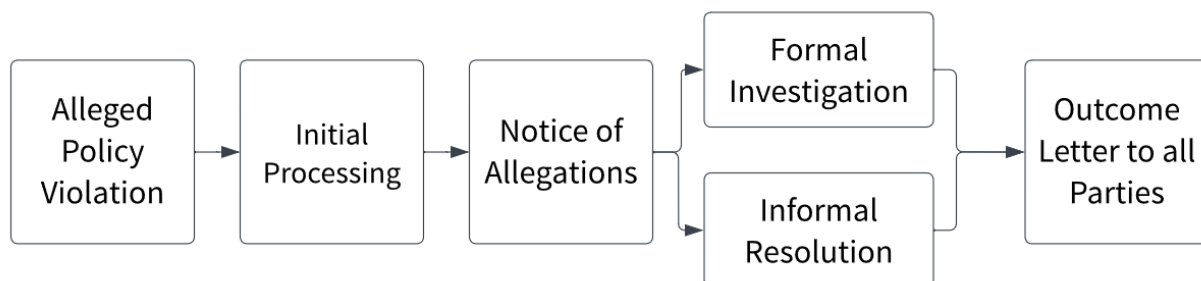
either from an external source or from within the College community when a specific individual is likely to achieve the most successful result for the parties.

If a resolution is not agreed upon, the complaint is returned to the Formal Investigation Process outlined in this policy. If a resolution is reached, the facilitator will draft a document reflecting the agreement between the parties that becomes final once it is signed by both parties. This written and signed resolution indicates that the complaint has been resolved under this policy without the need for further investigation or to pursue the Formal Investigation Process. The ultimate determination of whether alternate resolution is available, successful or appropriate is to be made by the Head of Student Life or the Associate Dean of the College (when the Head of Student Life faces a conflict of interest). The (Deputy) Gender Equity Coordinator 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.

#### **5.4.2. 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 intent to accept responsibility for all of the alleged misconduct, the Formal Investigation Process will be paused, and the (Deputy) Gender Equity Coordinator will determine whether an Informal Resolution can be used and determine whether all parties and the College are able to agree on responsibility, sanctions, and/or remedies. If so, the (Deputy) Gender Equity Coordinator implements the accepted finding that the Respondent is in violation of College 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 Investigation Process will resume at the same point where it was paused.

### **5.5. Gender-Based Misconduct procedures for faculty and staff Complainants and Respondents (no students involved)**



Faculty and staff have the right to report to Gender Equity Coordinator or Deputy (Gleichstellungsbeauftragter), and receive consultation about options (criminal case, informal resolution, institutional investigation)

When a faculty or staff Complainants request the Alternative Resolution approach, the procedure follows section 5.4.1.1 above and ultimate determination of whether alternate resolution is available, successful or appropriate is to be made by the Associate Dean of the College (or Dean of the College when the Associate Dean has faces a conflict of interest).

If a staff or faculty Complainant requests an Institutional Investigation:

1. Managing Director and Dean (when faculty member is involved) will be notified
2. In consultation with the Managing Director and Dean, the Gender Equity Coordinator (or an external consultant in cases of potential bias or conflict of interest) will be selected as investigator,
3. The investigator will interview the Complainant and Respondent as well as any additional individuals, and produce a report
4. All attempts will be made to maintain privacy of all parties
5. Report will be filed with the Managing Director and Dean (when a faculty member is involved) for outcomes determination
6. All outcomes must be in accordance with German legal regulations
7. All parties will be notified in writing of outcomes

## **6. Glossary of Terms**

### **Affirmative Consent**

Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

- Consent cannot be given when it is the result of coercion, intimidation, force, or threat of harm.
- Previous consensual sexual activity or consent to one sexual act does not necessarily constitute consent to any other sexual act.
- Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by lack of consciousness, being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone

who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent to sexual activity.

- Consent is required regardless of whether the person initiating the act is under the influence of illegal substances and/or alcohol.
- Consent may be initially given but withdrawn at any time.
- When consent is withdrawn or can no longer be given, sexual activity must stop.

### **Age of Consent**

Under German Federal Law the ability to give consent to sexual activity depends on the age of the individuals involved. The General Age of consent is 18.<sup>3</sup>

### **Coercion**

Coercion is unreasonable pressure used to compel someone to engage in sexual activity against their will. Coercion may include intimidation, manipulation, or threats. Coercion is evaluated by assessing the duration, frequency, and intensity of the verbal and/or physical conduct, as well as the degree of isolation or confinement. When a person makes clear that they do not want to participate in sexual activity, that they want to stop sexual activity, or that they do not want to go past a certain point of sexual interaction, continued pressure can be coercive.

### **Complainant**

An individual who is alleged to have experienced gender-based misconduct that could constitute a violation of this policy, whether or not a formal complaint is filed.

### **Confidential Employee**

A Confidential Employee is bound by a confidentiality agreement and will not share any identifying information with anyone. The professional counselors available to students via Linden are Confidential Employees.

### **False Reporting**

An individual who is determined to knowingly have made false complaints, or accusations, or provided false information during an investigation, may be subject to disciplinary action by the institution through the Student Code of Conduct. This provision does not apply to reports made

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<sup>3</sup> Any and all sexual acts on, in front of and with a child under the age of 14 years of age are considered abuse and are forbidden under the law. In principle, consensual sex among minors over the age of 14 is exempt from punishment. For adults, sex with minors under the age of 18 is not permitted if payment is involved. Sex with juveniles under 16 is punishable for persons over 21. Attempts to sexually abuse people under the age of consent are already punishable. For more information please see Strafgesetzbuch concerning Sexueller Mißbrauch von Jugendlichen. StGB §174 - §184

in good faith, even if the facts alleged in the report cannot be substantiated by subsequent investigation.

### **Gender-Based Discrimination**

Actions that limit, deprive, or deny an individual or group of educational or employment benefits, opportunities, or access on the basis of gender, gender identity, sexual orientation, or sex.

### **Sexual and Gender-Based Harassment**

Any unwelcome conduct of a sexual nature, such as unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, written, graphic, online, and/or physical conduct of a sexual nature (Sexual Harassment) as well as any unwelcome conduct based on gender, gender identity, gender expression, gender-stereotyping, sexual orientation, or sex, which includes acts of aggression, intimidation, stalking, or hostility, whether verbal, nonverbal, written, graphic, online, and/or physical (Gender-based Harassment). Gender-based harassment may occur when individuals are harassed for exhibiting what is perceived as a stereotypical characteristic of their gender, or for failing to conform with stereotypical notions of masculinity or femininity.

Harassment may be disciplined when:

- It creates a hostile environment; or
- Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment, academic standing, or participation in any College program or activity, or is used as the basis for College decisions affecting the individual (often referred to as „quid pro quo“ harassment).

### **Hostile Environment**

A hostile environment is created when sexual and/or gender-based harassment is sufficiently severe, persistent, or pervasive, such that it interferes with, denies, or limits an individual's ability to participate in or benefit from the College's educational or employment programs, activities, or opportunities. The determination of whether a hostile environment exists is made with consideration of both subjective and objective perspectives. A single or isolated incident of sexual or gender-based harassment may create a hostile environment if the incident is sufficiently severe.

To determine whether a hostile environment exists, the College will consider the totality of known circumstances, including but not limited to:

- The frequency, nature, and severity of the conduct;
- Whether the conduct was physically threatening;
- The effect of the conduct on the Reporting Party's mental or emotional state;
- Whether the conduct was directed at more than one person;

- Whether the conduct arose in the context of other discriminatory conduct;
- Whether there is a power differential between the parties;
- Whether the conduct unreasonably interfered with the Reporting Party's educational or work performance, and/or participation in College programs or activities; and
- Whether the conduct implicates academic freedom or protected speech.

### **Incapacitation**

Incapacitation occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be associated with being mentally and/or physically helpless, involuntarily restrained, asleep, unconscious, unaware that sexual activity is occurring, under the age of consent, or having a disability that impedes consent. Whether sexual activity with an incapacitated person constitutes gender-based misconduct may depend on whether the Responding Party knew or should have known of the Reporting Party's incapacitation based on objectively and reasonably apparent indications when viewed from the perspective of a sober, Reasonable Person in the Responding Party's position. The use of alcohol and/or drugs is never an excuse for committing gender-based misconduct and does not diminish anyone's responsibility to obtain affirmative consent.

### **Intimate Partner Violence or Abuse**

Any instance of violence or abuse – verbal, physical, or psychological – that occurs between intimate partners. Intimate partner violence includes domestic violence and dating violence. Intimate partner violence may involve intimidation, economic control, manipulation, humiliation, isolation, coercion, and/or threat of harm to one's self, an intimate partner, or the family members, friends, pets, or personal property of an intimate partner. Intimate partner violence can be a single act or a pattern of behavior, based on the frequency, nature, and severity of the conduct. Intimate partner is defined as:

- a person who is or has been in a social relationship of a romantic, emotional, physical, and/or intimate nature with the Reporting Party;
- a current or former spouse or intimate partner;
- a person with whom the Reporting Party shares a child or anyone who is protected from the respondent's acts under the domestic or family violence laws of Germany.

### **Nonconsensual Sexual Contact**

Any intentional sexual contact without affirmative consent. Sexual contact includes:



- the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, chest, inner thigh, or buttocks of another person, or intentionally touching another person with these body parts, or making another touch anyone or themselves with or on these body parts;
- making another person touch anyone or themselves with or on the genitalia, anus, groin, breast, inner thigh, or buttocks, either directly or through clothing;
- the intentional emission or ejaculate on the clothing or body of another person; and
- the intentional touching of another person's body for the purpose of sexual gratification, arousal, humiliation, harassment, or degradation.

### **Reasonable Person**

A hypothetical, reasonable person under similar circumstances and with similar identities to the Complainant, who exercises average care, skill, and sober judgment in conduct.

### **Reporting Party**

A person who makes a report of gender-based misconduct. This may or may not be the same individual as a Complainant, a witness, or a bystander.

### **Respondent**

An individual alleged to have committed a violation of this policy.

### **Responsible Employee**

Specified administrators (including the Managing Director, Head of Student Life, Director of Residential Life & Housing, Registrar, Dean, Associate Dean) are considered Responsible Employees. These administrators who become aware of sexual violence or gender-based misconduct involving student members of the community will maintain privacy to the greatest extent possible but are required to report the details to the (Deputy) Gender Equity Coordinator.

All other faculty, professional staff members, and Residential Assistants, who are not otherwise designated as [Confidential Employees](#), who become aware of sexual violence or gender-based misconduct are strongly recommended, but not required, to report the details to the (Deputy) Gender Equity Coordinator. These individuals should also maintain privacy to the greatest extent possible.

### **Retaliation**

Any adverse action taken against an individual or group because of something that individual or group did in connection with this policy, or because of their participation in an investigation or

proceeding under this policy. Retaliation includes intimidation, threats, harassment, assault and adverse employment or educational actions. Retaliation may be committed by the Responding Party, the Reporting Party, third parties, or any other individual or group. Retaliation may be found even when an underlying report made in good faith was not substantiated. Retaliation does not include good faith actions pursued in connection to a report of gender-based misconduct, or in connection with an investigation or proceeding under this policy.

### **Sexual Assault**

A sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent. Sexual assault consists of the following specific acts:

- **Rape:** The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- **Fondling:** The touching of the private body parts (including genital area, anus, groin, buttocks, or breast) of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity.
- **Incest:** Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- **Statutory Rape:** Non-forcible sexual intercourse with a person who is under the statutory age of consent. The statutory age of consent in Germany is 18. For more information see [above](#).

### **Sexual Exploitation**

Sexual exploitation occurs when an individual takes non-consensual or abusive sexual advantage of another for one's own advantage or benefit, or to the benefit or advantage of anyone other than the one being exploited. Examples of sexual exploitation include, but are not limited to:

- Invasion of sexual privacy;
- Causing the prostitution of another person;
- Nonconsensual observing or recording of private (such as undressing or showering) or sexual activity;
- Nonconsensual posting, sharing, or publicizing of compromising images and/or videos;
- Going beyond the boundaries of consent (such as letting a third party watch otherwise consensual sexual activity, without the affirmative consent of all involved);
- Exposing one's genitals or inducing another to expose their genitals in nonconsensual

- circumstances;
- Sexually based hazing and/or bullying; and
  - Engaging in consensual sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or other sexually transmitted disease (STD) without informing the other person of such infection.

### **Stalking**

A course of conduct directed at a specific person that would cause a Reasonable Person to fear for their safety or the safety of others, or to suffer substantial emotional distress. Course of conduct means two or more acts, including, but not limited to, acts in which the stalker 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. Stalking behaviors may include pursuing or following, unwanted or non-consensual communication or contact (including in-person contact, telephone or voice messages, electronic messages, social media messages, and text messages), unwanted gifts, trespassing, surveillance, and other types of observation.

### **Student Code of Conduct**

The [Student Code of Conduct](#) is the written policy adopted by Bard College Berlin governing student behavior, rights, and responsibilities while such student is matriculated at the institution.

### **Witness**

A person who has relevant information about an incident that will tend to prove, disprove, or otherwise inform an investigation of a report of gender-based misconduct.

Note: "Nothing in this policy can in any way limit an individual's right to seek forms of response and redress provided by the German legal system."

NOTE: This is an interim policy effective August 10, 2023 through to September 2023. This policy is subject to review and revision on a regular basis as necessary. Please visit [www.bard.edu/nondiscrimination/](http://www.bard.edu/nondiscrimination/) or contact the DEI and Gender Equity Office to ensure you have the latest version of this policy.