

# **Barnard College**



## **Policy Against Discrimination and Harassment and Related Procedures**

## Introduction

Barnard College (the College)<sup>1</sup> is committed to fostering an environment that is free from discrimination and harassment, including sexual assault and all other forms of gender-based misconduct. The College has a responsibility to increase community-wide awareness of such misconduct, prevent its occurrence, promptly and equitably investigate reports of misconduct, and support individuals who have experiences of discrimination and/or harassment. At the College, the Nondiscrimination and Title IX Office is responsible for overseeing the College's Policy Against Discrimination and Harassment and related resolution procedures.

The Nondiscrimination and Title IX Office endeavors to work collaboratively across campus to further the goal that faculty, staff, and students be able to live, work, and study in a campus community free from discrimination and harassment. As such, the Office provides outreach, supportive consultation, and response services to all members of the Barnard community.

This document contains information for community members related to available support, College policy, and resolution procedures for instances of discrimination and/or harassment. The following information is available in this document:

- Barnard College's Policy Against Discrimination and Harassment ("The Policy")
- Nondiscrimination and Harassment Resolution Process
- Formal Title IX Resolution Procedure

Students, faculty, and staff at the College are subject to the behavioral standards and expectations outlined in the Policy. Questions about the Policy or related procedures may be directed to [nondiscrimination@barnard.edu](mailto:nondiscrimination@barnard.edu) or to Elizabeth Scott-Francis, Ed.D., Executive Director of CARES Outreach and Response and Title IX Coordinator ([escottfrancis@barnard.edu](mailto:escottfrancis@barnard.edu)).

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<sup>1</sup> For the purposes of this Policy and related procedures, the term "College" includes Barnard College. The Gender-Based Misconduct Policies and Procedures for Students<sup>2</sup> provides the policies and procedures applicable when a Columbia University and/or Teacher's College student is a Respondent.

<https://studentconduct.columbia.edu/sites/default/files/content/documents/GbMITIXPoliciesAndProceduresforStudents.pdf>. In instances in which a Barnard student is a Respondent, the College's Policy and Procedures apply.

# **I. Barnard College Policy Against Discrimination and Harassment**

## **Overview**

Barnard College is committed to providing an environment free from unlawful discrimination, harassment, or retaliation. As such, Barnard College adheres to all federal and state civil rights laws and regulations prohibiting discrimination and harassment in institutions of higher education. Barnard does not discriminate against any employee, applicant for employment, student, or applicant for admission on the basis of race, color, religion, creed, national or ethnic origin, caste, age, disability, sexual orientation, pregnancy, sex<sup>2</sup>, gender identity or expression, or any other protected category under applicable local, state, or federal law, including protections for those opposing discrimination or participating in any grievance process on campus, with the Equal Employment Opportunity Commission, or other human rights agencies.

In addition, Barnard College does not discriminate on the basis of alienage or citizenship status, marital partnership status, military status, arrest or conviction record, predisposing genetic characteristics, caregiver status, or victim status for the following offenses: domestic violence, stalking, and/or sex offense, in its employment practices.

This policy covers discrimination and harassment in both employment and access to educational opportunities. Therefore, any member of the Barnard community whose acts deny, deprive, or limit the educational or employment access, benefits, and/or opportunities of any member of the College community, guest, or visitor on the basis of that person's actual or perceived membership in the protected classes listed above is in violation of the College's policy on nondiscrimination. Barnard College is guided by the precept that in no aspect of its employment practices or educational programs and activities should there be unlawful discrimination against persons based on the characteristics described above. This policy is intended to further the goal that faculty, staff and students are to be able to live, work, and study in an environment free from discrimination and harassment.

The College takes prompt and appropriate action to address misconduct, end a hostile environment if one has been created, and prevent the recurrence of a hostile environment. The College provides prevention education programs; connection to on campus and off campus services and resources for individuals who have been impacted by gender-based misconduct, sexual misconduct, domestic violence, dating violence, and/or stalking; and equitable investigative and grievance processes that are accessible, prompt, impartial and fair. When brought to the attention of the College, any such discrimination and/or harassment will be promptly and fairly addressed and remedied by the College according to the appropriate grievance/resolution process. Appropriate disciplinary action may be taken against those found to have engaged in or knowingly allowed discrimination or harassment, with sanctions up to and including dismissal. This document specifies applicable scope, prohibited conduct under the

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<sup>2</sup> As a women's institution, Barnard College accepts applications from those who consistently live and identify as women.

Policy, and provides illustrative scenarios ([Appendix A](#)), which may be helpful in understanding the range of misconduct addressed by the Policy.

## **2020 Final Rule**

In May 2020, the U.S. Department of Education issued new regulations for colleges and universities that address sexual harassment. Specifically, the U.S. Department of Education new set of regulations under Title IX:

- Define the meaning of “sexual harassment” (including forms of sex-based violence) and limits Title IX’s coverage to incidents involving misconduct that is “severe, pervasive and objectively offensive,”
- Address how institutions of higher education that receive federal funding (including Barnard College) **must** respond to reports of behaviors falling within that definition of sexual harassment, and
- Set out a detailed grievance process that institutions of higher education (including Barnard College) **must** follow when investigating, adjudicating and imposing sanctions in cases involving sexual harassment under that definition.

To comply with these regulations, the College has adopted a new resolution process for those types of alleged misconduct- the [Formal Title IX Resolution Process](#). The 2020 regulations do not address all of the types of misconduct or places in which misconduct occurs that the College believes must be addressed in keeping with our own commitment to non discrimination and our obligations under additional federal, state and local laws. The Barnard College Nondiscrimination and Harassment Resolution Process addresses other types of discrimination, harassment on the basis of protected class and gender-based misconduct by affiliates<sup>3</sup> that are not covered by the 2020 regulations. Both procedures are important in creating and supporting a College community that rejects all forms of discrimination, harassment and gender-based misconduct. In addition, Columbia University maintains the [Gender-Based Misconduct Policy and Procedures for Students](#) for instances of gender-based misconduct where the Respondent is a student at Columbia University or Teacher’s College.

Barnard College remains committed to diligently investigating reports of misconduct, supporting students and employees who experience gender-based misconduct, and responding fairly and firmly when employee members of the College community violate College policy.

## **Applicable Scope**

### ***Scope of the Policy***

The core purpose of this Policy is to support the prohibition of all forms of discrimination and harassment. Sometimes, discrimination involves exclusion from or different treatment in

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<sup>3</sup> College Affiliates are individuals or related groups of individuals authorized by the College through a contract or standing agreement to receive access to services typically granted only to those with an official academic or employment relationship (student, alumna, employee, emeritus).

activities, such as admission, athletics, or employment. Other times, discrimination takes the form of harassment or, in the case of sex-based discrimination, can encompass sexual harassment, sexual assault, stalking, sexual exploitation, dating violence or domestic violence. This Policy governs the conduct of College students, employees, and third parties <sup>4</sup>that: (1) occurs on any College property or leased space, or in connection with College-sponsored programs or activities; or (2) creates, contributes to, or continues a hostile work, educational or living environment for College employees, students, or third parties.

### ***Scope of the Resolution Procedures***

When an alleged violation of this Policy is reported, the allegations may be subject to resolution using Barnard's Title IX Formal Resolution Process or the Nondiscrimination and Harassment Resolution Process <sup>5</sup> as determined by the Title IX Coordinator in collaboration with the Complainant and/or reporting party.

When the Respondent is a member of the Barnard community, a resolution process may be available regardless of the status of the Complainant, who may or may not be a member of the Barnard community. This community includes, but is not limited to, students<sup>6</sup>, student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, invitees, and campers or those participating in summer programs or activities hosted or sponsored by the College. The procedures outlined in this document may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this Policy. The decision to move forward with addressing or investigating patterns and campus climate falls within the discretion of the Title IX Coordinator.

For reports or allegations that are determined to fall outside of the Scope of this Policy, the Nondiscrimination and Title IX Office will refer incident(s) and report(s) to the relevant College office to address the concerns. The Title IX Coordinator has responsibility for reviewing all submitted reports and complaints and determining whether the allegations fall within the scope of the Policy. A report or allegation may be deemed to be outside the scope of the Policy for the following reasons (including but not limited to):

- Respondent is not a member of the Barnard community (based on criteria described above);
- Reported behavior does not meet the definition of prohibited conduct under the Policy;
- The behavior, as alleged, if true, would not constitute a violation of the Policy;

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<sup>4</sup> For purposes of this Policy, "third parties" includes non-employees who are (or are employed by) a contractor, subcontractor, vendor, consultant, or anyone providing services in the workplace. Non-employees include persons commonly referred to as independent contractors, "gig" workers and temporary workers. Also included are persons providing equipment repair, cleaning services or any other services provided pursuant to a contract with the employer.

<sup>5</sup> Incidents of sexual harassment or discriminatory or harassing conduct on the basis of sex alleged to have occurred before August 14, 2020 will be investigated and adjudicated according to the Nondiscrimination & Harassment Resolution Process.

<sup>6</sup> For the purpose of this policy, the College defines "student" as any individual who has accepted an offer of admission or who is enrolled in credit or non-credit bearing coursework, and who maintains an ongoing relationship with the College.

In the event that reports or allegations are deemed to be outside of the scope of the Policy, the Title IX Coordinator or designee will provide written communication to reporting individuals and/or Complainants communicating this decision. This communication will include referrals to appropriate campus partner offices as appropriate.

### ***Jurisdiction of the College***

This policy applies to the education program and activities of Barnard and to conduct that takes place on the campus or on property owned or controlled by the College, at Barnard-sponsored events, or in buildings owned or controlled by Barnard's recognized student organizations. The Respondent must be a member of Barnard's community in order for its policies to apply.

This policy can also be applicable to the impacts of off-campus misconduct that effectively deprive someone of access to Barnard's educational programs & activities. The College may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial College interest. Regardless of where the conduct occurred, the College will review relevant information to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity. A substantial College interest includes:

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

If the Respondent is unknown or is not a member of the College 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. Further, even when the Respondent is not a member of Barnard's community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator.

### **Title IX Coordinator**

The Executive Director, CARES Outreach & Response serves as the Title IX Coordinator and ADA/504 Coordinator and oversees implementation of the College's Policy Against

Discrimination and Harassment. The Title IX Coordinator has the primary responsibility for coordinating Barnard'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.

All parties who inquire with the Office will be provided with comprehensive physical and/or electronic communication detailing rights, options, and resources which the Title IX Coordinator may also go over in person with the parties, as appropriate. See [Appendix B](#) for information about the Students' Bill of Rights under New York State Education Law Article 129-B<sup>7</sup>.

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

**Elizabeth Scott-Francis, Ed.D.**

Executive Director, CARES Outreach & Response, Title IX Coordinator  
Elliott Hall, First Floor (49 Claremont Ave. New York, NY 10027)  
212-854-6931

[nondiscrimination@barnard.edu](mailto:nondiscrimination@barnard.edu) | [escottfrancis@barnard.edu](mailto:escottfrancis@barnard.edu)  
<https://barnard.edu/nondiscrimination>

Complaints or notice of alleged policy violations about employees may be made internally to the Title IX Coordinator or the Executive Director of Human Resources:

**Katie Germana**

Executive Director of Human Resources  
[kgermana@barnard.edu](mailto:kgermana@barnard.edu)

Additionally, the following College officials have been designated to act as deputy compliance coordinators, all of whom are knowledgeable and trained in state and federal laws that apply to matters of discrimination and harassment as well as College policy and procedure. The Title IX Coordinator and Deputy Coordinators are available to provide support, share information, and receive reports of prohibited conduct under this Policy.

**Danielle-Hope Hayden MBA | Deputy Title IX Coordinator**

Senior Associate Director, Nondiscrimination and Title IX  
First Floor, Elliott Hall | 212-854-7686 | [dhayden@barnard.edu](mailto:dhayden@barnard.edu)

Inquiries may be made externally to:  
U.S. Department of Education  
Office for Civil Rights

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<sup>7</sup>This Student Bill of Rights was established by the "Enough is Enough" Law, New York State Education Law Article 129-B, effective October 7, 2015.

New York- Region II  
32 Old Slip, 26th Floor  
New York, NY 10005  
Telephone: (646) 428-3800  
Email: [OCR.NewYork@ed.gov](mailto:OCR.NewYork@ed.gov)

*Note: While this Policy and related Procedures identify the College office or employee who will typically perform certain roles or duties, the College may designate other College offices or employees to perform any roles or duties described in this Policy and related Procedures. The College may also, in its sole discretion, assign appropriate non-employees to perform any roles or duties described in the Policy or related Procedures.*

If the accused individual is connected with the College but is not a student or employee for the purposes of this Policy, different procedures may apply as described here:

- If the accused person is a Columbia University employee (including faculty and staff) or other person doing business with Columbia, please see Columbia's Equal Opportunity and Affirmative Action website: <https://eoaa.columbia.edu/> for applicable policies and procedures addressing nondiscrimination and harassment concerns, including gender-based misconduct and romantic and sexual relationships with undergraduate and graduate students. Alternatively, you may also contact Columbia's Deputy Title IX Coordinator, Faculty and Staff Concerns, Jazmin Taylor ([eoaa@columbia.edu](mailto:eoaa@columbia.edu)).
- If the accused person is a Teacher's College employee, please see the Teacher's College Title IX Policy and Procedures (<https://www.tc.columbia.edu/policylibrary/policies/title-ix-policy-and-procedures-11288607/>).
- If the accused person is a Columbia University or Teacher's College student, please see Columbia's Gender Based Misconduct and Interim Title IX Policies and Procedures for Students (<https://sexualrespect.columbia.edu/university-policy>).

## **DISABILITY ACCOMMODATIONS AND ACCESS**

The College is committed to complying with all applicable provisions of the Americans with Disabilities Act ("ADA") as well as with other relevant federal, state and local disability laws. It is the College's policy not to discriminate against any qualified employee, student or applicant with regard to any terms or conditions of employment or education based on that individual's disability or perceived disability. Consistent with this Policy Against Discrimination and Harassment, the College will provide reasonable accommodations to a qualified individual with a disability who has made the College aware of their disability and has engaged in an interactive process with the College to determine appropriate and reasonable accommodations (unless doing



so places an undue hardship on the College or represents a fundamental alteration of the job, program or course).

Resources are available for individuals with disabilities who believe they need reasonable accommodations to perform the essential functions of their job or to participate fully and equally in their education. In addition, the College is committed to fostering a campus that is equally accessible to employees, students and applicants. Individuals with disabilities who require reasonable accommodations, have physical or digital access needs, should contact the following:

### **Students**

Center for Accessibility Resources & Disability Services (CARDS)  
101 Altschul  
(212) 854-4634  
[cards@barnard.edu](mailto:cards@barnard.edu)

### **Faculty/Staff**

Human Resources  
475 Riverside Drive (The Interchurch Center)  
(646) 745-8350  
[hr@barnard.edu](mailto:hr@barnard.edu)

## **REASONABLE ACCOMMODATION OF PREGNANCY**

In accordance with federal, state and local law, the College will provide reasonable accommodations to employees and students based on the needs of pregnancy, childbirth or related medical conditions, unless doing so places an undue hardship on the College.

*Employees* seeking a reasonable accommodation based on the needs of pregnancy, childbirth or related medical conditions should contact [BC Human Resources](#) for guidance and assistance.

*Students* seeking a reasonable accommodation based on the needs of pregnancy, childbirth or related medical conditions should contact the College's Title IX Coordinator, Elizabeth Scott-Francis at [nondiscrimination@barnard.edu](mailto:nondiscrimination@barnard.edu), or via telephone at (212) 854-0037 for guidance and assistance.

## **REASONABLE ACCOMMODATION OF RELIGION**

In accordance with federal, state and local law, the College will provide reasonable accommodations of religious practices and beliefs, unless doing so places an undue hardship on the College.

*Employees* seeking a religious accommodation should contact [BC Human Resources](#)

*Students* seeking a religious accommodation should initially work with their course instructor. If they cannot reach a suitable arrangement, students should consult with the appropriate program director or department chair. Students also may take the matter to the Office of the Provost for additional appeal.

Faculty, staff and students will not be penalized or retaliated against for requesting **any** type of accommodation.

## **NOTICE/COMPLAINTS OF DISCRIMINATION, HARASSMENT, AND/OR RETALIATION**

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

1) File a complaint with, or give verbal notice to, the Title IX Coordinator or any of the Deputy Coordinators listed above. Such a report may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office address listed for the Title IX Coordinator or any other official listed.

2) Report online, using the reporting form posted at [https://barnard-gme-advocate.symplicity.com/public\\_report/index.php/pid781242?](https://barnard-gme-advocate.symplicity.com/public_report/index.php/pid781242?) Anonymous reports are accepted and can give rise to a need to investigate to determine if the parties can be identified. Inability to determine involved parties in anonymous reports may limit the College's ability to effectively investigate and resolve complaints and may result in a suspension or closure of the case until the time such information is available.

Because reporting carries no obligation to initiate a formal response, and as the College respects Complainant requests to dismiss complaints unless there is a compelling threat to health and/or safety, the Complainant is largely in control and should not fear a loss of privacy by making a report that allows the College to discuss and/or provide supportive measures.

A Formal Complaint refers to an electronic or paper document submitted or signed by the Complainant or signed by the Title IX Coordinator alleging a policy violation and requesting that the College investigate the allegation(s). A complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information in the section immediately above, or as described in this section.

As used in this paragraph, the phrase "document filed by a Complainant" means a document or electronic submission (such as by electronic mail or through an online portal provided for this

purpose by the College) that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint, and requests that the College investigate the allegations. Individuals may consult with the Title IX Coordinator or relevant Nondiscrimination and Title IX Staff to obtain, sign, and submit a formal complaint document. Similarly, those wishing to file a formal complaint electronically may do so using [Barnard's online reporting form](#).

If notice is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant to ensure that they have the opportunity to clarify their intention.

## **SUPPORTIVE MEASURES**

Barnard College will offer and implement appropriate and reasonable supportive measures to all parties upon notice of alleged harassment, discrimination, and/or retaliation. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to the College's education program or activity, including measures designed to protect the safety of all parties or the College's educational environment, and/or deter harassment, discrimination, and/or retaliation. Individuals may seek and receive supportive measures regardless of their decision to participate or engage in a resolution procedure or formal process.

Similarly, individuals engaging with Barnard's Title IX Formal Resolution Process or the Nondiscrimination and Harassment Resolution Process may request reasonable accommodations by contacting the Title IX Coordinator. The Title IX Coordinator will work collaboratively with the Director of the Center for Accessibility Resources and Disability Services (CARDS) (for students) or Human Resources (for employees) to ensure registered reasonable accommodations (disability-related) are honored throughout any related resolution process.

The Title IX Coordinator or designee promptly makes supportive measures available to the parties upon receiving notice or a complaint. The Title IX Coordinator or designee works with the Complainant to ensure that their wishes are taken into account with respect to the supportive measures that are planned and implemented. Barnard will maintain the privacy of the supportive measures, provided that privacy does not impair the College's ability to provide the support. The College will act to ensure as minimal an academic/occupational impact on the parties as possible and will implement measures in a way that does not unreasonably burden the other party.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services; Referral to the Employee Assistance Program; Referral to community-based service providers
- Visa and immigration assistance
- Student financial aid counseling
- Education to the institutional community or community subgroup(s)
- Altering campus housing assignment(s); Altering work arrangements for employees or student-employees
- Safety planning; Providing campus safety escorts; Providing transportation accommodations

- Implementing contact limitations (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related adjustments
- Trespass or Persona Non Grata (PNG) Orders
- [Timely warnings](#)
- Class schedule modifications, withdrawals, or leaves of absence
- Any other actions deemed appropriate by the Title IX Coordinator

Violations of no contact directives or other restrictions will be referred to appropriate student or employee conduct processes for enforcement. The College may establish an appropriate schedule for the Respondent to access applicable institution buildings and property at a time when such buildings and property are not being accessed by the Complainant, as long as any such restrictions are not unduly burdensome to the Respondent. In matters involving Barnard and Columbia University students, the Title IX Coordinator works collaboratively with Columbia University staff to establish mutually agreed-upon schedules to limit contact in cross-campus use of space.

## **EMERGENCY REMOVAL**

The College can act to remove a student Respondent entirely or partially from its education program or activities or impose restrictions on employees on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator in conjunction with relevant campus administrators using its standard objective violence risk assessment procedures. Barnard College utilizes the NABITA risk rubric in assessing objective risk and determining emergency removal.

### **Show Cause Meeting**

In all cases in which an emergency removal is imposed, the student or employee will be given notice of the action and the option to request to meet with the Title IX Coordinator (and HR, when appropriate) prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested within 5 business days, objections to the emergency removal will be deemed waived. An Advisor of choice may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so. There is no appeal process for emergency removal decisions.

If a Show Cause Meeting is requested, the Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation. The Title IX Coordinator has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion and/or termination.

The College will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. At the discretion of the Title IX Coordinator, alternative coursework or work options may be pursued to ensure as minimal an academic and employment impact as possible on the parties. Where the Respondent is an employee, existing provisions for interim action are applicable instead of the above emergency removal process. Barnard retains the authority to place a non-student employee Respondent on a paid or unpaid administrative leave during any Grievance or Resolution procedure.

## **PROMPTNESS**

All allegations are acted upon promptly by the College once it has received notice or a formal complaint. Complaints can take 60-120 business days to resolve, typically. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but the College seeks to avoid all undue delays within its control. Any time the general timeframes for resolution outlined in the College's procedures will be delayed, Barnard will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

## **CONFIDENTIALITY/PRIVACY**

The College is committed to protecting the privacy of all individuals involved in a report of potentially prohibited conduct.<sup>8</sup> Barnard will not share the identity of any individual who has made a report or complaint of harassment, discrimination, or retaliation; any Complainant; any individual who has been reported to be the perpetrator of sex discrimination; any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the

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<sup>8</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 Barnard employees who "need to know" in order to assist in the assessment, investigation, and resolution of the report. All employees who are involved in the College's response to notice under this policy receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of student education records will be protected in accordance with FERPA. **Confidentiality** exists in the context of laws (including Title IX) that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. The law creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouses. The College has designated individuals who have the ability to have privileged communications as Confidential Resources. For more information about Confidential Resources, click [this link](#).

purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures.

The College reserves the right to determine which Barnard officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act (FERPA). The Title IX Coordinator will share only what information is necessary with those who need to know to preserve the parties' rights and privacy. Information will be shared as necessary with Investigators, Decision-Makers, witnesses, and the parties. Confidentiality and mandated reporting are addressed more specifically [below](#).

## **TIME LIMITS ON REPORTING**

There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to the College's jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

The ability to act on a complaint may be significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate. When a complaint is affected by significant time delay, the College will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of the complaint.

## **DIGITAL HARASSMENT/MISCONDUCT**

The policies of Barnard 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 College networks, technology, or equipment. Although Barnard may not control websites, social media, and other venues in which harassing communications are made, when such communications are reported to the College, it will engage in a variety of means to address and mitigate the effects.

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct to harm another member of the College community.

## **DEFINITIONS OF PROHIBITED CONDUCT**

Students and employees are entitled to an employment and educational environment that is free of discriminatory harassment. Barnard's Policy Against Discrimination and Harassment is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane but controversial or sensitive subject matters protected by academic freedom.

The sections below describe the specific forms of legally prohibited harassment that are also prohibited under College policy. All policies encompass actual and/or attempted offenses.

**Discrimination**

Discrimination is defined as treating members of a protected class less favorably because of their membership in that class or as having a policy or practice that adversely impacts the members of one protected class more than others.

**Discriminatory Harassment**

Discriminatory harassment is defined as subjecting an individual to unwelcome conduct, whether verbal, physical or visual that creates an intimidating, hostile or abusive working, learning or campus living environment: that alters the conditions of employment or education; or unreasonably interferes with an individual's work or academic performance on the basis of the individual's membership in a protected class.

Discriminatory harassment may include, but is not limited to: verbal abuse; epithets or slurs; negative stereotyping; threatening, intimidating or hostile acts; denigrating jokes; insulting or obscene comments or gestures; and display or circulation (including in hard copy, by email or text, or through social media) in the working, learning or living environment of written or graphic material that denigrates or shows hostility or aversion toward an individual or group. Sexual harassment and gender-based harassment, which are described below, are forms of discriminatory harassment.

The College will determine whether the conduct was humiliating, abusive or threatening based on both subjective and objective factors, based on the totality of the circumstances surrounding an alleged incident or course of conduct, including without limitation, the frequency, nature and severity of the conduct. The College will determine whether that conduct created a hostile environment by examining whether a reasonable person would find the environment hostile or abusive (as well as whether the Complainant viewed it as such).

**Sexual Harassment**

Sexual harassment includes unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual's sex when:

- Such conduct is made either explicitly or implicitly a term or condition of an individual's employment, academic, co-curricular or student life activities; or
- Submission to or rejection of such conduct is used as the basis for academic or employment decisions affecting an individual's employment, academic evaluation, grades, advancement or student life decisions affecting that individual; or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance, education or participation in educational programs or activities or creating an intimidating, hostile or offensive employment, academic, or campus living environment, even if the complaining individual is not the intended target of the sexual harassment.

A sexually harassing hostile work environment includes, but is not limited to, words, signs, jokes, pranks, intimidation or physical violence which are of a sexual nature, or which are directed at an individual because of that individual's sex. Sexual harassment also consists of any unwanted verbal or physical advances, sexually explicit derogatory statements or sexually discriminatory remarks made by someone, which are offensive or objectionable to the recipient, which cause the recipient discomfort or humiliation, which interfere with the recipient's academic, co-curricular, or job performance or engagement.

### **Title IX Sexual Harassment<sup>9</sup>**

Sexual Harassment, as defined under Title IX, is misconduct on the basis of sex that satisfies one or more of the following conditions:

- An employee conditioning educational benefits on participation in unwelcome sexual conduct (i.e., quid pro quo);
- Unwelcome sexual conduct that a reasonable person would determine is so severe, pervasive and objectively offensive that it effectively denies a person equal access to the College's education programs or activities;
- The following conduct, as defined in the Clery Act and VAWA Amendments to the Clery Act (and defined in further detail below):
  - Sexual Assault (as defined in the Clery Act)
  - Dating Violence (as defined in the VAWA amendments to the Clery Act)
  - Domestic Violence (as defined in the VAWA amendments to the Clery Act)
  - Stalking (as defined in the VAWA amendments to the Clery Act)

Sexual harassment can occur between individuals, regardless of their sex or gender. Sexual harassment can occur on or off campus, including while traveling for business or at Barnard-sponsored events or parties. Calls, text messages and social media usage by employees can constitute unlawful workplace harassment, even if they occur away from the workplace premises or not during work hours.

### **Gender-Based Harassment**

Acts of aggression, intimidation, stalking, or hostility based on gender or gender-stereotyping constitute gender-based harassment. Gender-based harassment can occur if individuals are harassed either for exhibiting what is perceived as a stereotypical characteristic of their gender, or for failing to conform to stereotypical notions of masculinity or femininity. To constitute harassment, the conduct must unreasonably interfere with another person's education or participation in educational programs or activities or work, or create an intimidating, hostile, demeaning or offensive working, learning or living environment.

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<sup>9</sup> "Title IX sexual harassment" as defined in this policy aligns with the definitions for prohibited sexual harassment under Title IX outlined in § 106.45.

<https://www.federalregister.gov/documents/2020/05/19/2020-10512/nondiscrimination-on-the-basis-of-sex-in-education-programs-or-activities-receiving-federal>



### **Gender-Based Misconduct**

Gender-based misconduct includes a broad range of behaviors focused on sex and/or gender that may or may not be sexual in nature. Gender-based misconduct encompasses gender-based harassment, sexual harassment, sexual assault, sexual exploitation, stalking, dating violence and domestic violence.

### **Sexual Assault: Penetration**

Any form of vaginal, anal, or oral penetration, however slight, by a penis, tongue, finger, or object, without a person's affirmative consent.

### **Sexual Assault: Contact**

Any sexual contact, including sexual touching for the purpose of sexual gratification of either party, without a person's affirmative consent. Sexual touching includes contact under or over clothing with the breasts, buttocks, genitals, groin or inner thigh, or touching another with any of these body parts; making another person touch any of these body parts under or over clothing; or the emission of ejaculate on the clothing or body of another person without that person's consent.

### **Domestic Violence**

The use or threat of physical violence or sexual assault that is directed toward

- (1) a current or former spouse or intimate partner;
- (2) a person with whom one shares a child; or
- (3) anyone who is protected from the Respondent's acts under the domestic or family violence laws of New York.

This violation includes behavior that seeks to establish power and control over another person by causing fear of physical or sexual violence. Domestic violence can be a single act or a pattern of behavior, depending on the frequency, nature, and severity of the conduct. Domestic violence may include: coercion, threats, intimidation, isolation, stalking, or other forms of emotional, psychological, sexual, technological, or economic abuse.

*\*To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship).*

### **Dating Violence**

The use or threat of physical violence or sexual assault that is directed toward a person who is or has been in a social relationship of a romantic or sexually intimate nature with the Respondent. This violation includes behavior that seeks to establish power and control over another person by causing fear of physical violence or sexual assault. Dating violence can be a single act or a pattern of behavior, depending on the frequency, nature, and severity of the conduct.

## **Stalking**

A course of unwanted attention that is repeated or obsessive, directed toward an individual or a group that is reasonably likely to cause alarm, fear or substantial emotional distress. Stalking may take many forms, including but not limited to: lying in wait for, monitoring or pursuing contact. Stalking may occur in person or through telephone calls, text messages, unwanted gifts, letters, emails, surveillance, or other types of observation and communication.

For the purposes of this definition—

1. Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
2. Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
3. Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

## **Sexual Exploitation**

Non-consensual abuse or exploitation of another person's sexuality for the purpose of sexual gratification, financial gain, personal benefit or advantage, or any other illicit purpose. Acts of sexual exploitation include, but are not limited to:

- (1) non-consensual streaming, sharing or distribution of images, photography, video, or audio recording of sexual conduct, nudity or state of undress when and where there is a reasonable expectation of privacy, without the knowledge and affirmative consent of all participants;
- (2) observing, photographing, videotaping or making any other visual or audio recording of sexual conduct or nudity or state of undress when and where there is a reasonable expectation of privacy, without the knowledge and affirmative consent of all participants;
- (3) exposing one's genitals in non-consensual circumstances;
- (4) inducing incapacitation for the purpose of making another person vulnerable to gender-based misconduct.
- (5) misappropriation of another person's identity on apps, websites, or venues designed for dating or sexual connections.

## **Retaliation**

Retaliation is unlawful under federal, state and local law. Retaliation is any adverse action or threatened action, taken or made, personally or through a third party, against an individual (or group of individuals) because of that individual's participation in any manner in an investigation or proceeding under this Policy, including individuals who file a third-person report and those who are interviewed or otherwise provide evidence in an investigation (witnesses). Retaliation is conduct that would discourage a reasonable person from reporting misconduct, participating in

an investigation or taking other actions protected by this Policy. The adverse action need not be academic or job-related or occur in the classroom or workplace to constitute retaliation.

- Any individual or group of individuals, not just the Respondent or Complainant can be found to have engaged in retaliation.
- Retaliation includes threatening, intimidating, harassing or any other conduct that would discourage a reasonable person from engaging in activity protected under this Policy. Protected activity includes: reporting misconduct (either internally or with any anti discrimination agency); participating in an investigation or adjudication; seeking services; receiving protective measures and accommodations.
- Retaliation includes maliciously and purposefully interfering with, threatening, or damaging the academic or professional career of another individual, before, during or after the investigation and resolution of a report of misconduct under this Policy.
- This provision does not apply to reports made or information provided in good faith, even if the facts alleged in the report are determined not to be accurate.
- Retaliation may be found even when the underlying charge does not constitute discrimination, harassment or gender-based misconduct in violation of College policies.
- Any person found to have retaliated against another will be subject to disciplinary action even if the alleged behavior is found not to have violated this Policy.

### **Force, Coercion, Consent, and Incapacitation**

As used in the prohibited behaviors defined above, the following definitions and understandings apply:

**Force:** Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent.

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

**Coercion:** Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

**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 sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent.

Individuals may experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity. If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged. For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent. Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on the College to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred.

**Incapacitation:** A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, and how” of their sexual interaction). Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk. This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

### **Other Civil Rights Offenses**

In addition to the forms of specific prohibited behavior described above, The College additionally prohibits the following offenses as forms of discrimination that may be within or

outside of Title IX when the act is based upon the Complainant's actual or perceived membership in a protected class.

- Threatening or causing physical harm, extreme verbal, emotional, or psychological abuse, or other conduct which threatens or endangers the health or safety of any person;
- Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another.

Violation of any other Barnard policies may constitute a Civil Rights Offense when a violation is motivated by actual or perceived membership in a protected class, and the result is a discriminatory limitation or denial of employment or educational access, benefits, or opportunities.<sup>10</sup>

### **Consensual Relationships and Sexual Harassment**

Consensual romantic or sexual relationships between faculty (and other staff or instructional staff) and students are not a violation of this Policy; however, such relationships are prohibited in certain circumstances. Actual or apparent authority that employees may have over a student is a strong factor in finding that certain types of conduct constitute sexual harassment. This can be so even if a student has not complained about the conduct, does not show signs of being harassed, or fails to file a complaint of harassment. Complaints of sexual harassment of students, including alleged consensual relationships, will be carefully evaluated in the context of the unique relationship and responsibility that faculty, administrators, and other College employees have to students or other employees

### **RETALIATION<sup>11</sup>**

Retaliation is unlawful under federal, state, and local law. Retaliation is any adverse action or threatened action, taken or made, personally or through a third party, against an individual (or group of individuals) because of that individual's participation in any manner in an investigation or proceeding under this Policy, including individuals who file a third-person report and those who are interviewed or otherwise provide evidence in an investigation (witnesses). Retaliation is conduct that would discourage a reasonable person from reporting misconduct, participating in an investigation or taking other actions protected by this Policy. The adverse action need not be academic or job-related or occur in the classroom or workplace to constitute retaliation.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be

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<sup>10</sup> Barnard College maintains various policies and associated response procedures related to student and employee conduct. The Title IX Coordinator will refer appropriately to other College offices and processes when an alleged violation does not meet the threshold for action under this policy or is not related to protected status. <sup>11</sup> Retaliation allegations can be routed exclusively through the Nondiscrimination and Harassment Resolution Process if the College so elects, but where retaliation and Title IX sexual harassment allegations are both alleged, it will likely make more sense to use the Formal Title IX Resolution Procedure, when applicable, to resolve all together.

promptly investigated. Barnard College will take all appropriate and available steps to protect individuals who fear that they may be subjected to retaliation. Barnard and any member of Barnard's community are prohibited from taking or attempting to take adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy and procedure.

The exercise of rights protected under the First Amendment does not constitute retaliation. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

## **DUTY TO REPORT**

### ***Abuse of Minors***

All College employees are directed contact the police (911) if they believe a minor is in immediate danger and to then report to the BC Title IX Coordinator, Elizabeth Scott-Francis at [escottfrancis@barnard.edu](mailto:escottfrancis@barnard.edu), or via telephone at (212) 854-3362.

If you suspect child abuse, maltreatment or neglect, you will be assisted by General Counsel and/or CARES staff to:

- Call the New York State Child Abuse & Maltreatment Hotline: 800-342-3720
- When calling the NY State Child Abuse & Maltreatment Hotline, make sure to obtain an ID number and the name of representative contacted. Please notify CARES with this information. Identify proper notification of the appropriate program director(s).

If you are in doubt about whether a disclosure or observation may require reporting, please consult promptly with the Nondiscrimination Office or Office of General Counsel.

### ***Mandated Reporting- Discrimination and Harassment***

All Barnard employees (faculty, staff, administrators and student employees) are considered mandated reporters and are expected to report actual or suspected discrimination or harassment, including sexual harassment, to appropriate officials immediately. Mandated reporters must promptly share with the Title IX Coordinator all known details of a report or disclosure made to them in the course of their employment. Employees must also promptly share all details of behaviors under this policy that they observe or have knowledge of, even if not reported to them by a Complainant or third-party. Failure of a Mandated Reporter to report an incident of

harassment or discrimination of which they become aware is a violation of Barnard policy and can be subject to disciplinary action for failure to comply.

Disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as “Take Back the Night” marches or speak-outs do not provide notice that must be reported to the Coordinator by employees, unless the Complainant clearly indicates that they desire a report to be made or a seek a specific response from the College. Such information will be used to inform campus climate, prevention, and educational efforts, generally.

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

If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report crimes and/or policy violations, and these employees will immediately pass reports to the Title IX Coordinator (and/or police/Community Safety, if desired), who will take action when an incident is reported to them.

### **Confidential Resources**

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

- Columbia SVR Rape Crisis/Anti Violence Support Center
- Being Barnard
- The Wellness Spot Health Promotion Program
- Primary Care Health Services
- Furman Counseling Center
- University Chaplain
- Barnard Ombuds Office

Confidential resources are not mandated reporters and are not required to report internally to the Office of Nondiscrimination and Title IX. All of the above-listed individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, and/or professional credentials, except in extreme cases of immediacy of threat or danger or abuse of a minor/elder/individual with a disability, or when required to disclose by law or court order.

The Employee Assistance Program is available for employees to take advantage of available support resources. This program is provided to employees at no cost and includes referral services for 24/7 counseling as well as financial and legal advice.

## **WHEN A COMPLAINANT DOES NOT WISH TO PROCEED**

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

The Title IX Coordinator has ultimate discretion over whether the College proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may determine there is a need to move forward or to sign a formal complaint (under the Formal Title IX Resolution Procedure) to initiate a grievance process upon completion of an appropriate review. When the Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this policy.

If the College proceeds, the Complainant (or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation. Note that the College's ability to remedy and respond to notice may be limited if the Complainant does not want the College to proceed with an investigation and/or grievance process. The goal is to provide the Complainant with as much control over the process as possible, while balancing the College's obligation to protect its community. In cases in which the Complainant requests no formal action and the circumstances allow the College to honor that request, the College will offer informal resolution options, supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action. A Complainant who elects to take no action may change their decision and choose to pursue a formal complaint at a later date.

## **TRANSCRIPT NOTATIONS**

In compliance with NY State law, the College will note on the academic transcript of students found responsible for violations of the Barnard College Policy Against Discrimination and Harassment and/or Code of Conduct equivalent to the Clery Act Part I crimes (as amended by the Violence Against Women Act) that a student was "suspended after a finding of responsibility for a code of conduct/ policy against discrimination violation" or "dismissed after a finding of responsibility for a code of conduct/policy against discrimination and harassment violation" if the student receives a sanction of suspension or dismissal after a finding of responsibility.

The crimes which require this notation include: murder; rape, fondling, incest, and statutory rape; robbery; aggravated assault; burglary; motor vehicle theft; manslaughter; and arson; dating violence; domestic violence; and stalking. During the course of a resolution process, investigation, or initial assessment, the College may elect to place a notation on a transcript or student account as a hold until the process is complete. If a student withdraws from the College



while the conduct or nondiscrimination process is pending, the notation will read “withdrew with conduct/nondiscrimination charges pending.”

A student may appeal to the Dean of the College and the Title IX Coordinator, in writing via email ([deanofthecollege@barnard.edu](mailto:deanofthecollege@barnard.edu) or [nondiscrimination@barnard.edu](mailto:nondiscrimination@barnard.edu)), for removal of a notation that the student was suspended, no earlier than one year after the end date of the suspension. Notations that a student was dismissed from the College are not subject to removal and are not eligible for appeal.

Barnard retains the right to place such a notation in the personnel files of employees who are found responsible for violations of the Barnard College Policy Against Discrimination and Harassment. The notation will read “disciplined after a finding of responsibility for a policy against discrimination and harassment violation” or “terminated after a finding of responsibility for a policy against discrimination and harassment violation” if the employee receives a sanction or is terminated following a finding of responsibility.

## **EDUCATION AND TRAINING PROGRAMS**

All College students and employees are expected to read, understand and adhere to this Policy. The College provides educational and training programs for faculty and staff concerning conduct that may constitute a violation of College policies and the procedures applicable to alleged violations. Similarly, all students receive access to this information during New Student Orientation Programs (NSOP) and through participation in a pre-arrival module developed and distributed by the Nondiscrimination and Title IX Office. All College employees are required<sup>12</sup> to participate in training programs offered to them and to be knowledgeable about the College’s policies and procedures.

Requests for live training as well as any questions related to the College’s policies and procedures should be addressed to the Nondiscrimination and Title IX office at [nondiscrimination@barnard.edu](mailto:nondiscrimination@barnard.edu).

## **RESOURCES**

The College provides a variety of resources for individuals who believe they have experienced prohibited conduct and all parties involved in the resolution and investigative processes. Contact information for these resources and other community providers is provided in the appendices of this document.

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<sup>12</sup> All Barnard College employees are required to complete annual online discrimination, harassment and gender-based misconduct training. Access to the training platform may be found in the Workday portal and is sent via email annually.

## GLOSSARY

- *Advisor* means a person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.
- *Complainant or reporting individual*<sup>13</sup> means an individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
- *Complaint (formal)* means a document submitted or signed by a Complainant or signed by the Title IX Coordinator alleging harassment or discrimination based on a protected class or retaliation for engaging in a protected activity against a Respondent and requesting that the College investigate the allegation.
- *Confidential Resource* means an employee who is not a Mandated Reporter of notice of harassment, discrimination, and/or retaliation (irrespective of Clery Act Campus Security Authority status).
- *Day* means a business day when Barnard College is in normal operation.
- *Directly Related Evidence* is evidence connected to the complaint, but is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation) and will not be relied upon by the investigation report.
- *Education program or activity* means locations, events, or circumstances where Barnard College exercises substantial control over both the Respondent and the context in which the sexual harassment or discrimination occurs and also includes any building owned or controlled by a student organization that is officially recognized by Barnard College.
- *Final Determination*: A conclusion by preponderance of the evidence that the alleged conduct did or did not violate policy.
- *Finding*: A conclusion by preponderance of the evidence that the conduct did or did not occur as alleged (as in a “finding of fact”).
- *Title IX Formal Resolution Process* refers to a method of formal resolution designated by the College to address conduct that falls within the policies included below, and which complies with the requirements of the Title IX regulations (34 CFR §106.45). This method of formal resolution is designated to address specific conduct that falls within the policy below.

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<sup>13</sup> NY 129-B indicates that the term “reporting individual” shall encompass the terms victim, survivor, complainant, claimant, witness with victim status, and any other term used by an institution to reference an individual who brings forth a report of a violation.”

- *Resolution Process Pool* includes any investigators, hearing officers, appeal officers, and Advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).
- *Hearing Decision-maker or Panel*<sup>14</sup> refers to those who have decision-making and sanctioning authority within Barnard’s grievance processes.
- *Investigator* means the person or persons charged by Barnard College with gathering facts about an alleged violation of this Policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.
- *Mandated Reporter* means an employee of Barnard College who is obligated by policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator.
- *Notice* means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- *Official with Authority* (OWA) means an employee of Barnard College explicitly vested with the responsibility to implement corrective measures for harassment, discrimination, and/or retaliation on behalf of the College.
- *Parties* include the Complainant(s) and Respondent(s), collectively.
- *Nondiscrimination & Harassment Resolution Process* means the resolution process that applies only when the Title IX Formal Resolution Process is not applicable or in cases of discrimination and/or harassment based on other protected status, as determined by the Title IX Coordinator.
- *Relevant Evidence* is evidence that tends to prove or disprove an issue in the complaint.
- *Remedies* are post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to Barnard’s educational program.
- *Respondent* means an individual who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
- *Resolution* means the result of an informal or formal resolution procedure.
- *Sanction* means a consequence imposed by the College on a Respondent who is found to have violated this policy.
- *Sexual Harassment* is the umbrella category including the offenses of sexual harassment, sexual assault, stalking, and dating violence and domestic violence.

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<sup>14</sup>In Barnard’s resolution procedures, panels are only convened in appeal proceedings.

- *Student* is defined for the purpose of this policy as any individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and who maintains an ongoing relationship with Barnard College.
- *Title IX Coordinator*<sup>15</sup> is at least one official designated by the College to ensure compliance with Title IX and Barnard's Title IX program. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.
- *Nondiscrimination and Title IX Team* refers to the Title IX Coordinator, any deputy coordinators, and any member of the Resolution Process Pool.

<sup>15</sup> At Barnard, the Executive Director of CARES Outreach & Response is the Title IX Coordinator.

## **II. Nondiscrimination and Harassment Resolution Process**

### **Overview**

Anyone who has experienced or learned of potentially discriminatory and harassing behavior is encouraged to report these incidents. Discrimination and harassment in the context of this resolution process is defined within the Policy Against Discrimination and Harassment (“Policy”), and confirms such discrimination is prohibited by the College in compliance with federal, state, and local laws. The Nondiscrimination and Harassment Resolution Process is applicable when the Title IX Coordinator determines the Title IX Formal Resolution Process is inapplicable or offenses subject to the Title IX Formal Resolution Process have been dismissed, OR the alleged behavior is discrimination or harassment related to another protected status under the Policy Against Discrimination and Harassment.

Barnard College will act on any formal or informal allegation or notice of violation of the policy Against Discrimination and Harassment that is received by the Title IX Coordinator or a member of the administration, faculty, or other employee, with the exception of confidential resources, as articulated in the Policy.

The procedures described below apply to all allegations of harassment, discrimination, and/or retaliation on the basis of protected class status involving students, staff, faculty members, or third parties. Unionized or other categorized employees may also be subject to the terms of their respective collective bargaining agreements/employees’ rights. These procedures may also be used to address or resolve collateral misconduct arising from the investigation of or occurring in conjunction with harassing, discriminatory, or retaliatory conduct (e.g., vandalism, physical abuse of another). All other allegations of misconduct unrelated to incidents covered by this Policy will be addressed through the procedures elaborated in the respective student, faculty, and staff handbooks. Reports may be received from information reports from Community Safety, supervisors, or other College staff, or may come directly from an individual bringing forward a specific complaint or witnessed behavior. Individuals who believe they have experienced or observed discrimination or harassment may consult with the Title IX Coordinator to discuss their concern or initiate a report.

### **Review of Reported Information**

Following a report, complaint, or disclosure of an alleged violation of the College’s Policy Against Discrimination and harassment, the Title IX Coordinator<sup>16</sup> or designee completes a review of the information shared. This review may include:

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<sup>16</sup> If circumstances require, Nondiscrimination and Title IX/CARES Department Senior leadership will designate another person to oversee the process below should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.

- The Title IX Coordinator or designee reaches out to the Complainant and/or impacted individual with information about the College's procedures, rights, resources, and an invitation to meet.
- If the Complainant and/or impacted individual wishes to meet, the Title IX Coordinator or designee works with the Complainant to communicate rights and options, including resolution options, available supportive measures, and connection with an advisor.
- The Title IX Coordinator or designee determines if any interim measures are necessary based on the reported information.

Based on this review, the Title IX Coordinator or designee will work with the Complainant/Reporting Party to determine next steps.

The review of information determines jurisdiction, scope, and ultimately which resolution options are appropriate. The process followed considers the preference of the parties but is ultimately determined at the discretion of the Title IX Coordinator. At any point during the review of reported information or resolution process, if the Title IX Coordinator determines that information reported or obtained does not support the conclusion that the complaint falls within the scope of the office's jurisdiction or that the allegations, if true, would constitute a policy violation, the process will end, and the parties will be notified.

The Complainant may request that the Title IX Coordinator revisit the above determination and/or re-open the investigation. This decision lies in the sole discretion of the Title IX Coordinator, but the request is usually only granted in extraordinary circumstances. The Complainant must make these requests via email to [nondiscrimination@barnard.edu](mailto:nondiscrimination@barnard.edu) within five (5) business days of receiving the notification of the conclusion of the process.

## **Resolution Process Pool**

The resolution process relies on a pool of officials ("Pool") for implementation. Members of the Pool are trained annually in all aspects of the resolution process and can serve in any of the following roles, at the direction of the Coordinator:

- To act as optional process Advisors to the parties
- To facilitate Informal Resolution
- To serve as a Decision-maker
- To serve on an Appeal Panel

The Title IX Coordinator carefully vets Pool members for potential conflicts of interest or disqualifying biases and appoints the Pool, which acts with independence and impartiality. Pool members receive annual training, including a review of College policies and procedures as well as applicable federal and state laws and regulations so that they are able to appropriately address allegations, provide accurate information to members of the community, protect safety, and promote accountability. This training includes, but is not limited to:

- The scope of the College’s Discrimination and Harassment Policy and Procedures
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents and promote accountability
- Implicit bias; Disparate treatment
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, timely, and impartial manner by individuals who receive training in conducting investigations of sexual harassment, trauma-informed practices, and impartiality,
- How to uphold fairness, equity, and due process
- How to weigh evidence; How to conduct questioning; How to assess credibility; Impartiality and objectivity; Types of evidence
- Deliberation; How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses; How to apply definitions used by the recipient with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy
- How to conduct an investigation and applicable grievance process, including hearings, appeals, and informal resolution processes

## **Advisors**

*All Complainants and Respondents* may be accompanied by one (1) advisor of their choice to any meeting related to any incident of misconduct outlined in the Policy Against Discrimination and Harassment.

### ***Guidelines for Advisors of Choice***

Advisors may provide support and advice about the resolution and investigation process. An advisor may not intervene in a meeting or address an investigator or other disciplinary officials. If any advisor’s conduct is not consistent with these guidelines, the advisor may be excluded from the process. While efforts will be made to accommodate the schedules of advisors, the process will not be unduly delayed due to an advisor’s unavailability. Advisors who are attorneys are permitted whenever advisors are permitted (as set forth above).

### ***Expectations of the Parties with Respect to Advisors***

Each party may choose an Advisor<sup>17</sup> who is eligible and available<sup>18</sup> to accompany them throughout the process. The Advisor can be anyone, including an attorney, but may not be someone who is also a witness in the process. A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout.

The parties are expected to inform the Investigators of the identity of their Advisor at least two (2) business days before the date of their first meeting with the Investigator(s) (or as soon as possible if a more expeditious meeting is necessary or desired). The parties are expected to provide timely notice to the Investigator(s) and/or the Title IX Coordinator if they change Advisors at any time. Upon written request of a party, the College may copy the Advisor on all communications between the Recipient and the party. For parties who are entitled to union representation, the College will allow the unionized employee to have a union representative (if requested by the party) to serve as their Advisor of choice. Witnesses are not permitted to have union representation or Advisors in grievance process interviews or meetings.

## Resolution Options

Proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accord with Barnard policy. While there is an expectation of privacy around what is discussed during interviews, the parties have discretion to share their own experiences with others if they so choose, but are encouraged to discuss with their Advisors first before doing so.

### *Informal Resolution*

Informal resolution options are not available for instances that include allegations of sexual harassment or sexual assault.

Options for informal resolution may be available for individuals who have experienced domestic violence, dating violence, and/or stalking depending on the circumstances.

### Personal Informal Resolution

A person who believes that they have experienced misconduct as defined in the Policy, may choose to work with the alleged Respondent directly through various approaches including:

- An in-person discussion
  - A personal phone conversation
  - Email correspondence, or
  - Other forms of communication.
- 

<sup>17</sup> This could include an attorney, advocate, or support person. Witnesses are not entitled to Advisors within the process, though they can be advised externally.

<sup>18</sup> “Available” means the party cannot insist on an Advisor who simply doesn’t have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must implement and monitor sanctions.



In some cases, this may effectively resolve the situation; in others, they may be ineffective or place the reporting individual in an uncomfortable, insecure, or compromised position. Under no circumstances should an individual feel pressured to attempt personal informal resolution. If these measures prove unsuccessful, the reporting individual may choose to pursue other methods of resolution.

### College-Assisted Informal Resolution

If both parties consent and sexual harassment and/or assault are not alleged, the College may offer to facilitate informal procedures involving both parties. Such approaches are pursued only with the consent of both parties, and either party has the right to terminate the process and begin a formal process at any time. If any of these approaches result in a resolution, any formal procedures will be concluded and the matter is considered closed. If the parties are unable to reach a resolution, a Complainant may choose to proceed with a formal resolution.

### **Types of College-Assisted Informal Resolution**

#### *Facilitated Conversation*

The College encourages a facilitated conversation whenever practical and appropriate. A facilitated conversation may take place only if the Complainant and Respondent both agree to participate. A matter is resolved through facilitated conversation only if all parties agree on the resolution.

Employees may seek assistance from their manager, supervisor, Human Resources, or other College entity to facilitate a conversation between the parties to discuss the allegations and a possible resolution of the matter. Students may seek assistance from a faculty member or instructor, Campus Life and Student Experience staff member, or other college entity for assistance in requesting a facilitated conversation to discuss the allegations and a possible resolution of the matter. Staff in the Nondiscrimination and Title IX Office remain involved throughout the duration of a facilitated resolution, and oversee the process regardless of the entities selected to support the dialogue.

#### *Formal Mediation*

Mediation is a private process where parties can participate in a search for mutually acceptable solutions. Mediation requires the consent of both parties and suspends any formal procedures for up to thirty (30) working days, which can be extended with the consent of both parties and at the discretion of the College. The Title IX Coordinator (or designee) may facilitate mediation between parties who agree to mediation.

Parties may agree upon a variety of resolutions such as modification of work assignment, training for department staff, or an apology. Because mediation is a voluntary process, formal disciplinary action cannot be imposed against a Respondent. Parties may agree to a resolution that is oral or embodied in a written agreement. The final resolution is private unless the parties agree otherwise.

### *Alternate Resolution*

The College may seek to resolve certain Misconduct through an informal process involving both the Complainant and Respondent. This form of resolution can take place prior to a formal resolution.

Alternate resolution is an informal process by which parties mutually agree to resolve an allegation. The Title IX Coordinator determines if Alternative Resolution is appropriate, based on the willingness of the parties and the nature of the conduct alleged.

In an Alternate Resolution, a trained administrator facilitates a dialogue with the parties to an effective resolution, if possible. Institutionally-imposed sanctions are not possible as the result of an Alternative Resolution process, though the parties may agree to accept sanctions and/or appropriate remedies. The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution can result in appropriate enforcement actions. Alternate Resolution is not typically the primary resolution mechanism used to address reports of violent behavior of any kind or in other cases of serious violations of policy, though it may be made available after the Formal Resolution process is completed should the parties and the Title IX Coordinator believe it could be beneficial. The results of Alternate Resolution are not appealable.

### ***Formal Resolution***

Formal Resolution can be pursued for any behavior for which the Respondent has not accepted responsibility that constitutes conduct covered by the Policy Against Discrimination and Harassment at any time during the reporting or Informal Resolution process. Formal Resolution starts with a thorough, reliable, and impartial review of information, and, if appropriate, a subsequent investigation. Promptly following the receipt of a report, information will be reviewed by the Title IX Coordinator to determine if the reported behavior, as described, falls within the Jurisdiction of the College and Scope of the Policy, and if the alleged behavior as reported, if true, would constitute a violation of the Policy.

Following the review of information, if an investigation is to commence, the Title IX Coordinator or designee will provide written notification of the investigation to the parties at an appropriate time during the investigation. Advanced notice facilitates the parties' ability to identify and choose an Advisor, if any, to accompany them to the interview. Notification will include a meaningful summary of the allegations, will be made in writing, and may be delivered by one or more of the following methods: in person or emailed to the parties' Barnard-issued. Once emailed, and/or received in-person, notice will be presumptively delivered. The notification should include the policies allegedly violated, if known at the time. Alternatively, the policies allegedly violated can be provided at a later date, in writing, as the investigation progresses, and details become clearer. The College aims to complete all investigations within a sixty to one hundred twenty (60-120) business day time period, which can be extended as necessary by the Title IX Coordinator with notice to the parties as appropriate. However, some

investigations can take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc. The College will make a good faith effort to complete the investigation as promptly as circumstances permit and will communicate with the parties to update them on the progress and timing of the investigation.

Once the decision is made to commence an investigation, the Title IX Coordinator appoints a team of investigators, usually within five (5) business days of determining that an investigation should proceed. The Title IX Coordinator will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no conflicts of interest or disqualifying bias. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Investigator will be assigned and the impact of the bias or conflict, if any, will be remedied. If the bias or conflict relates to the Title IX Coordinator, concerns should be raised with the Office of General Counsel.

Barnard may elect to take a short delay in its investigation (several days to weeks, to allow evidence collection) when criminal charges based on the same behaviors that invoke the Recipient's resolution process are being investigated by law enforcement. The College will promptly resume its investigation and resolution process once notified by law enforcement that the initial evidence collection process is complete.

College action(s) are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced. Investigations involve interviews with all relevant parties and witnesses, obtaining available, relevant evidence, and identifying sources of expert information, as necessary. All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence, and to fully review and respond to all evidence on the record.

#### *Respondent Accepts Responsibility for Alleged Violations*

The Respondent may choose to accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent accepts responsibility, the Title IX Coordinator makes a determination that the individual is in violation of Barnard Policy. The Title IX Coordinator then determines appropriate sanction(s) or responsive actions, which are promptly implemented in order to effectively stop the harassment, discrimination, and/or retaliation; prevent its recurrence; and remedy the effects of the conduct, both on the Complainant and the community.

If the Respondent accepts responsibility for all of the alleged policy violations and the Title IX Coordinator or designee has determined appropriate sanction(s) or responsive actions, which are promptly implemented, the process is over. The Complainant will be informed of this outcome. If the Respondent accepts responsibility for some of the alleged policy violations and the Title IX Coordinator has determined appropriate sanction(s) or responsive actions, which are

promptly implemented for those violations, then the remaining allegations will continue to be investigated and resolved through the Formal Resolution process. The parties will be informed of this outcome. The parties are still able to seek Alternate Resolution on the remaining allegations, subject to the stipulations above.

## **Investigation**

The investigative team (or external investigators where appropriate) will interview the Complainant, the Respondent and any other persons with relevant information about the alleged incident(s). The investigative team may also review personnel records and other student records and/or documents deemed relevant to the investigation. Acting on behalf of the College, the investigative team has the authority and responsibility to gather information from all sources judged necessary for a fair resolution of a complaint. The Complainant and Respondent may suggest witnesses the investigative team should interview and documentation they should consider. The investigative team, however, has complete discretion to determine which witnesses to interview and which documents to consider. Complainants, Respondents, witnesses and advisors will not be permitted to record anything related to the investigation and/or disciplinary process.

Participants are expected to cooperate fully and with the College investigation. Providing false or misleading information, or submitting a report or complaint in bad faith, may subject an individual to discipline under this Policy or related College Policies and Processes. All parties and witnesses involved in an investigative process are urged to respect the integrity of the procedures and legitimate privacy interests of the parties and witnesses. This does not prohibit either a Complainant or Respondent from consulting with or obtaining support from family members, counselors, therapists, clergy, doctors, attorneys or similar resources.

During the investigation process, both the Complainant and the Respondent will have an equal opportunity to provide the Investigator with relevant evidence and/or specific witness information. It is possible that more than one meeting may be necessary for the Complainant and Respondent to have the opportunity to respond to information obtained. The Investigative Team will prepare an investigation report that will include a summary of relevant information of each interview, provide a summary of factual information, and include any relevant documentation collected. It should be noted, some information disclosed during investigation may not be relevant or appropriate to include in the investigative report. For example, disclosure of medical or mental health conditions, diagnoses, and/or treatment will generally not be included.

### Evidentiary Rules

In conducting the investigation and drafting the investigative report, the investigator(s) will follow the protocols set forth below:

*Preserving Evidence.* The investigator(s) will direct the Complainant, Respondent, witnesses, and other interested individuals to preserve any relevant evidence, which may include phone logs, text messages, electronic communications or other evidence relating to the complaint.

*Character Witnesses.* The investigator will not interview witnesses whose sole purpose is to provide character information.

*Romantic or Sexual History in Sexual Assault Cases.* The investigator(s) will not consider information concerning the romantic or sexual history of either the Complainant or the Respondent, except from either the Complainant or Respondent regarding their shared sexual history. If either offers such information, the other will have the right to respond.

*Prior Conduct Violations.* The investigator(s) may consider the Respondent's prior conduct violations, where the previous incident was substantially similar to the present allegation(s) and/or the information indicates a pattern of behavior by the Respondent.

#### Written Investigative Report

In consultation with the Title IX Coordinator, the investigative team will prepare a draft report detailing the relevant content from the interviews and the documentation gathered. The draft report will include the investigative team's assessment of individual credibility and recommended findings of responsibility. The Respondent and Complainant will each have the opportunity to review a copy of the investigative report. The names and other identifying information of students will be redacted from such materials in accordance with the Family Educational Rights and Privacy Act (FERPA) except to the extent that doing so would interfere with the purpose of the Policy to prohibit discrimination and/or harassment.

Following their review of the draft investigation report, both the Complainant and Respondent will have the opportunity to submit to the investigative team written responses to the draft report. The Complainant and Respondent will have the opportunity to review any written submissions by the other. The Title IX Coordinator may set reasonable parameters for these written submissions. In the written submission, the Respondent will be required to respond to each of the alleged violation(s) in one of the following ways: 1) Responsible; 2) Not Responsible; or 3) No Response. If the Respondent accepts responsibility for all of the allegations, the matter will immediately proceed to the disciplinary stage. If the Respondent does not accept responsibility for any of the violations, the investigative team will review the written submissions and make any appropriate revisions to the draft report.

The final investigation report will include a determination whether the Respondent is responsible for the alleged (non Title IX) misconduct. The investigative team will make this determination after consulting with the Title IX Coordinator. The investigative team will use "preponderance of the evidence" as the standard of proof to determine whether the Respondent is responsible. To

find a Respondent responsible for violating the Policy, the investigative team must conclude that the Respondent was more likely than not to have engaged in the conduct at issue.

## **Discipline**

If the investigative team finds that the Respondent has engaged in the alleged behavior, the Title IX Coordinator will consult with members of the Investigative Team regarding possible discipline and, based on the facts and circumstances of the case, may consider instances of previous Prohibited Conduct or Misconduct, the seriousness of the violation, the totality of the information available, and any mitigating or aggravating circumstances the Title IX Coordinator deems relevant in determining appropriate discipline. The College will impose discipline that is fair and appropriate given the facts of the particular case; adequate to protect the safety of the campus community and reflective of the seriousness of the behavior.

The Investigative Team and Title IX Coordinator will consider relevant factors, which may include: (1) the specific conduct at issue; (2) the circumstances surrounding the conduct at issue; (3) the Respondent's state of mind (intentional, knowing, bias-motivated, reckless, negligent, etc.); (4) the impact of the offense on the Complainant; (5) the Respondent's prior disciplinary history; (6) the safety of the College community; and (7) the Respondent's conduct during the disciplinary process.

The Investigative Team will generally render a disciplinary decision within 10 business days following issuance of the final investigation report. The Investigative Team will deliver a disciplinary decision in writing to the Title IX Coordinator who will notify the Complainant and Respondent in writing.

Discipline may include, but is not limited to: reprimand/warning, change of Respondent's job duties, disciplinary probations, revocation of honors and awards, restricted access to College and University facilities or activities (including College housing), a "no contact" order, transfer of a Respondent's College-provided residence, transfer of Respondent's workplace/station, demotion, suspension, and dismissal or restriction from College employment. The College may also require training or recommend counseling.

## **Withdrawal or Resignation While Resolution Processes are Pending**

**Students:** Should a student Respondent decide not to participate in the resolution process or fail to respond to notification and outreach within specified time frames, the process proceeds absent their participation to a reasonable resolution. The College may place a hold, bar access to an official transcript, and/or prohibit graduation as necessary to permit the resolution process to be completed.

**Employees:** Should an employee resign with unresolved allegations pending, the records of the

Title IX Coordinator and Human Resources will reflect that status, and any College responses to future inquiries regarding employment references for that individual will include the former employee's unresolved status.

## Appeals

All requests for appeal consideration in this process must be submitted in writing to the Title IX Coordinator within five (5) business days of the delivery of the written disciplinary decision. The appeal must be made in writing and may be no longer than five double-spaced typed pages. Failure to meet the deadline for appeal shall result in waiver of the right to appeal. The College reserves the right to investigate and take any necessary action of its own accord based on new information or events that were not known during the course of the initial investigation. Any party may appeal, but appeals are limited to the following grounds:

- A procedural error or omission occurred that significantly impacted the outcome of the hearing (e.g., substantiated bias, material deviation from established procedures),
- To consider new evidence, unknown or unavailable during the investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included in the appeal.
- Belief by either party that the severity of the sanction is substantially disproportionate given the details of the case.

Disagreement with the finding or the sanctions is not, by itself, grounds for an appeal.

On receipt of the appeal, the Title IX Coordinator will designate a three-member Appeal Panel in the matter, and will forward the appeal to the panel for review. The appeal panel will be composed of members of the Pool and/or Senior Administrators from the College. Thereafter the Title IX Coordinator will notify the party who is not appealing that an appeal was filed, the grounds for the appeal asserted, and the identity of the Appeal panel members. The non-appealing party will be permitted to submit a written response to the appeal, which shall be no longer than five double spaced typed pages to the Title IX Coordinator within five (5) business days of receiving the notice of the appeal. The Title IX Coordinator will forward any response to the Appeal Panel.

If new grounds are raised, the original non-appealing party will be permitted to submit a written response to these new grounds within three (3) business days. These responses or appeal requests will be shared with each party. The Panel will review the appeal request(s) within five (5) business days of completing the pre-appeal exchange of materials. If grounds are not sufficient for an appeal, or the appeal is not timely, the Appeal Panel dismisses the appeal. When the Panel finds that at least one of the grounds is met by at least one party, additional principles governing the review of appeals include the following:

- Decisions by the Panel are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is compelling justification to do so.
- Appeals are not intended to be full re-hearings of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the

- investigation and pertinent documentation regarding the grounds for appeal.
- An appeal is not an opportunity for the Panel to substitute their judgment for that of the original Investigator(s) or the Title IX Coordinator merely because they disagree with the finding and/or sanction(s).
- Appeals granted based on new evidence may be remanded to the Investigator(s) for reconsideration. Other appeals should be remanded at the discretion of the Panel.
- Sanctions imposed as the result of the Formal Resolution are implemented immediately unless the Title IX Coordinator stays their implementation in extraordinary circumstances, pending the outcome of the appeal.
  - For students: Graduation, study abroad, internships/externships, etc., do NOT in and of themselves constitute extraordinary circumstances, and students may not be able to participate in those activities during their appeal.
- All parties will be informed in writing of the outcome of the appeal without significant time delay between notifications, and in accordance with the standards for Notice of Outcome as defined above.
- Once an appeal is decided, the outcome is final; further appeals are not permitted, even if a decision or sanction is changed on remand.
- In rare cases when a procedural error cannot be cured by the original Investigator(s) and/or Title IX Coordinator/ Decision-maker (as in cases of bias), the Panel may recommend a new investigation and/or Formal Resolution process, including a new resolution administrator.
- The results of a new Formal Resolution process can be appealed once, on any of the three applicable grounds for appeals.
- In cases in which the appeal results in Respondent's reinstatement to the College or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable.

### **Long-Term Remedies/Actions**

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the harassment, discrimination, and/or retaliation, remedy the effects, and prevent reoccurrence. These remedies/actions may include, but are not limited to:

- Referral to counseling and health services; Referral to the Employee Assistance Program
- Education to the individual and/or the community
- Permanent alteration of housing assignments; Permanent alteration of work arrangements for employees



- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.
- Recommendations to campus departments or teams related to practice, organizational structure, or workflows

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no policy violation is found. When no policy violation is found, the Title IX Coordinator will address any remedies owed by the College to the Respondent to ensure no effective denial of educational access. The College will maintain the confidentiality of any long-term remedies/actions/measures, provided confidentiality does not impair the Recipient's ability to provide these services.

### **Transcript Notation**

For crimes of violence, including, but not limited to sexual violence, the College will make a notation on the transcript of students found responsible after a conduct process that they were "suspended after a finding of responsibility for a code of conduct violation" or "expelled after a finding of responsibility for a code of conduct violation." For any Respondent who withdraws from the institution while such conduct charges are pending, and declines to complete the disciplinary process, the College will make a notation on the transcript that they "withdrew with conduct charges pending." The College permits a student seeking removal of a transcript notation for a suspension to petition the Dean of the College or the Title IX Coordinator/ Title IX Coordinator (depending on the nature of the charge) in writing for such removal, provided that such notation will not be removed prior to one year after conclusion of the suspension. Notations for expulsion will not be removed. If a finding of responsibility is vacated for any reason, any such transcript notation will be removed.

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

All Parties are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified in the outcome(s) (including the Appeal Panel). Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from the College. A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

### III. Formal Title IX Resolution Process

#### Overview

Barnard College will act on any formal notice/complaint of violation of the Policy Against Discrimination and Harassment (“the Policy”) that is received by the Title IX Coordinator or any other Official with Authority by applying these procedures, known as the Title IX Formal Resolution Process.

Title IX of the Educational Amendments Act of 1972 (Title IX) is a federal law that prohibits sex discrimination by any recipient of federal funds. This law has been interpreted by courts and the U.S. Department of Education to require colleges and universities to take certain steps to prevent and respond to allegations of sexual harassment (as defined under Title IX).

In May 2020, the U.S. Department of Education issued new regulations for colleges and universities that address sexual harassment. Specifically, the U.S. Department of Education new set of regulations under Title IX:

- Define the meaning of “sexual harassment” (including forms of sex-based violence) and limits Title IX’s coverage to incidents involving misconduct that is “severe, pervasive and objectively offensive,”
- Address how institutions of higher education that receive federal funding (including Barnard College) must respond to reports of behaviors falling within that definition of sexual harassment, and
- Set out a detailed grievance process that institutions of higher education (including Barnard College) must follow when investigating, adjudicating and imposing sanctions in cases involving sexual harassment under that definition.

To comply with these regulations, the College has adopted this Formal Title IX Resolution Process to address these specific allegations of misconduct among community members. This Formal Title IX Resolution Procedure became effective on August 14, 2020, and only applies to sexual harassment alleged to have occurred on or after August 14, 2020.

The process below applies **only** to qualifying allegations of sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined in the Policy Against Discrimination and Harassment in Section I. of this document) involving students, staff, administrators, or faculty members. If other Policy definitions are invoked, such as protected class harassment or discrimination as defined in the Policy, please refer to the Nondiscrimination and Harassment Resolution Process (in Section II. of this document) for a description of the procedures applicable to the resolution of such offenses. The Nondiscrimination and Harassment Resolution Process can also apply to sexual harassment (including sexual assault, dating

violence, domestic violence, and stalking, as defined in the Policy) when jurisdiction does not fall within this Title IX Formal Resolution Process as determined by the Title IX Coordinator. Barnard remains committed to addressing any violations of its policies, even those not meeting the narrow standards defined under the 2020 Title IX Final Rule.

Unionized/other categorized employees are also subject to the terms of their agreements/employees' rights to the extent those agreements do not conflict with federal or state compliance obligations.<sup>19</sup>

The procedures below may be used to address collateral misconduct arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another), when alleged violations of the Policy are being addressed at the same time. All other allegations of misconduct unrelated to incidents covered by the Policy will be addressed through procedures described in the student code of conduct, or relevant faculty and Human Resources procedures.

### **Notice/Complaint**

Upon receipt of a complaint or notice of an alleged violation of the Policy, the Title IX Coordinator (or designee) initiates a prompt initial assessment to determine the next steps the College needs to take. Title IX Coordinator will initiate at least one of three responses:

- 1) Offering supportive measures because the Complainant does not want to file a formal complaint; and/or
- 2) An Informal Resolution (upon submission of a formal complaint); and/or 3) A Formal Resolution including an investigation and a hearing (upon submission of a formal complaint).

The College uses the Formal Title IX Resolution Process to determine whether or not the Policy has been violated. If so, the College will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to harassment or discrimination, their potential recurrence, and/or their effects.

### **Initial Assessment**

Following receipt of notice or a complaint of an alleged violation of the Policy, the Title IX Coordinator<sup>20</sup> engages in an initial assessment. The steps in an initial assessment can include:

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<sup>19</sup> Staff may consult with qualified legal counsel on the complex interaction between the regulations and union rights under collective bargaining agreements.

<sup>20</sup> If circumstances require, the appropriate Senior College administrator overseeing the CARES Department or Title IX Coordinator will designate another person to oversee the resolution process should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable, unable to fulfill their duties, or have a conflict of interest.

- The Title IX Coordinator seeks to determine if the person impacted wishes to make a formal complaint, and will assist them to do so, if desired.
  - If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint themselves because a violence risk assessment based upon available information indicates a compelling threat to health and/or safety.
- If a formal complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.
- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an informal resolution option, or a formal investigation and grievance process.
  - If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes, assesses their request(s), and implements accordingly. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.
  - If an informal resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for informal resolution and may then seek to determine if the Respondent is also willing to engage in informal resolution.
  - If a Formal Grievance Process is preferred by the Complainant, the Title IX Coordinator determines if the misconduct alleged falls within the scope of the 2020 Title IX regulations<sup>21</sup>:
    - If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address: an incident, and/or, a pattern of alleged misconduct, and/or , a culture/climate issue, based on the nature of the complaint.
    - If alleged misconduct does not fall within the scope of the 2020 Title IX regulations, the Title IX Coordinator determines that the regulations do not apply (and will “dismiss” that aspect of the complaint, if any), assesses which policies may apply, which resolution process is applicable, and will refer the matter accordingly.

*\*Please note that dismissing a complaint under the 2020 Title IX regulations is solely a procedural requirement under Title IX which does not limit the College’s authority to address a complaint with an appropriate process and remedies.*

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<sup>21</sup> The Formal Title IX Resolution Process applies to a formal complaint when all of the following elements are met, in the reasonable determination of the Title IX Coordinator: 1) The conduct is alleged to have occurred on or after August 14, 2020; 2) The conduct is alleged to have occurred in the United States; 3) The conduct is alleged to have occurred in Barnard’s education program or activity; and 4) the alleged conduct, if true, would constitute covered sexual harassment as defined in the policy.

### **Dismissal (Mandatory and Discretionary)<sup>22</sup>**

The College must dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

- 1) The conduct alleged in the formal complaint would not constitute sexual harassment as defined in the Policy, even if proved; and/or
- 2) The conduct is alleged to have occurred before August 14, 2020; and/or
- 3) The conduct did not occur in an educational program or activity controlled by the College (including buildings or property controlled by recognized student organizations) and/or the College does not have control of the Respondent; and/or
- 4) The conduct did not occur against a person in the United States; and/or
- 5) At the time of filing a formal complaint, a Complainant is not participating in or attempting to participate in the education program or activity at the College<sup>23</sup>.

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

- 1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; or
- 2) The Respondent is no longer enrolled in or employed by the recipient; or
- 3) Specific circumstances prevent Barnard from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it. Upon any dismissal, the College will promptly send written notice, simultaneously to the parties, of the dismissal and the rationale for doing so, and describe other applicable action related to the matter. This dismissal decision is appealable by any party under the relevant appeal procedures. The decision not to dismiss is also appealable by any party claiming that a dismissal is required or appropriate.

### **Multi-Party Situations**

Barnard may consolidate Formal Complaints alleging covered sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of covered sexual harassment arise out of the same facts of circumstances.

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<sup>22</sup> These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR §106.45. <sup>23</sup> Such a Complainant is still entitled to supportive measures, but the formal Title IX Resolution process is not applicable unless the Title IX Coordinator signs the complaint in the event the Complainant cannot/will not do so.

## **Counterclaims**

The College is obligated to ensure that the grievance process is not abused for retaliatory purposes. Barnard permits the filing of counterclaims but uses an initial assessment to determine whether the allegations in the counterclaim are made in good faith. Counterclaims by a Respondent may be made in good faith, but are on occasion made for purposes of retaliation, instead. Counterclaims made with retaliatory intent will not be permitted.

Counterclaims determined to have been reported in good faith will be processed using the appropriate grievance procedures. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur. Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this policy.

## **Right to an Advisor**

All parties may have an Advisor of their choice present with them for all meetings, interviews, and hearings within the grievance process, if they so choose. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available.<sup>24</sup>

## **Who Can Serve as an Advisor**

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside of the Barnard community. The Title IX Coordinator will also offer to assign a trained Advisor to any party if the party so chooses. If the parties choose an Advisor from the pool available from the College, the Advisor will have been trained by Barnard and be familiar with the resolution process. If the parties choose an Advisor from outside the pool of those identified by the College, the Advisor may not have been trained by the College and may not be familiar with College policies and procedures. Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing.

## **Advisor's Role in Meetings and Interviews**

The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including any initial meetings and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith. Barnard has a long-standing practice of requiring individuals to participate in the process directly and not through an advocate, advisor, or representative. The Advisor of Choice is not an advocate. Except where explicitly stated by these procedures, as consistent with the

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<sup>24</sup> "Available" means the party cannot insist on an Advisor who simply doesn't have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

Final Rule, Advisors of Choice shall not participate directly in the process as per standard policy and practice of the College.

### **Advisors in Hearings/ Barnard-Appointed Advisor**

Under U.S. Department of Education regulations for Title IX, a form of indirect questioning is required during the hearing but must be conducted by the parties' Advisors. The parties are not permitted to directly question each other or any witnesses. If a party does not have an Advisor for a hearing, the College will appoint a trained Advisor for the limited purpose of conducting any questioning of the other party(ies) and witnesses.

### **Pre-Interview Meetings**

Advisors and their advisees may request or be asked by the College to meet with the investigators conducting interviews/meetings in advance of these interviews or meetings. Such pre-meeting allows Advisors to clarify and understand their role and Barnard's policies and procedures. All Advisors are subject to the same College policies and procedures, whether they are attorneys or not, and whether they are selected by a party or assigned by the College. Advisors are expected to advise without disrupting proceedings.

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation. Any Advisor who oversteps their role as defined by this policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the scheduled meeting will end, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

### **Sharing Information with the Advisor**

The College expects that the parties may wish to have Barnard share documentation and evidence related to the allegations with their Advisors. The College provides a consent form that authorizes College officials involved in the process to share such information directly with a party's Advisor. The parties must either complete and submit this form to the Title IX Coordinator or provide similar documentation demonstrating consent to a release of information to the Advisor before Barnard is able to share records with an Advisor.

### **Privacy of Records Shared with Advisor**

Advisors are expected to maintain the privacy of the records shared with them. Barnard may restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by Barnard's privacy expectations.

## **Expectations of an Advisor**

The College generally expects an Advisor to adjust their schedule to allow them to attend related meetings when planned, but the College may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay. The College may also make reasonable provisions to allow an Advisor who cannot be present in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

## **Expectations of the Parties with Respect to Advisors**

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Title IX Coordinator of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired). The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor is to be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing.

## **Resolution Processes**

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with Barnard 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 as part of an Informal Resolution, discussed below. Barnard encourages parties to discuss with their Advisors any sharing of information before doing so.

The Formal Title IX Resolution Process is Barnard's primary resolution approach for prohibited sexual harassment under Title IX, unless Informal Resolution is elected by all parties and the College. The options for Informal Resolution are detailed in this section, and the Formal Title IX Resolution Process is detailed starting in the next section.

### **Informal Resolution**

A complainant who files a Formal Complaint may elect, at any time, to address the matter through Barnard's Informal Resolution Process. All Parties to a Formal Complaint must agree to enter the Informal Resolution Process through an informed written consent. More detailed information about the Informal Resolution Process is available in [Appendix A](#).

- Supportive Resolution. When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) to remedy the situation.
- Alternate Resolution. When the parties agree to resolve the matter through an alternative



resolution mechanism as described below, including mediation, restorative practices, and/or facilitated dialogue or other means, usually before a formal investigation takes place.

- Administrative Resolution. When the Respondent elects to accept responsibility for the allegations in the formal complaint and desires to accept a sanction(s) and end the resolution process.

To initiate Informal Resolution, a Complainant must submit a formal complaint, as defined above. A Respondent who wishes to initiate Informal Resolution should contact the Title IX Coordinator. It is not necessary to pursue Informal Resolution first in order to pursue the Formal Resolution Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Resolution 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. Barnard 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.

## **Formal Resolution Process**

The Formal Title IX Resolution Process relies on staff members in the Nondiscrimination and Title IX Office as well as a pool of faculty and staff<sup>25</sup> (“the Pool”) to carry out the process.

### **Pool Member Roles**

Members of the Pool are trained annually, and may serve in the following roles, at the direction of the Title IX Coordinator:

- To act as an Advisor to the parties
- To serve in a facilitation role in Informal Resolution or Alternative Resolution
- To perform or assist with initial assessment
- To investigate complaints
- To serve as a hearing facilitator
- To serve as a Decision-maker regarding the complaint
- To serve as an Appeal Decision-Maker

### **Pool Member Appointment and Training**

The Title IX Coordinator is responsible for identifying and appointing members of the Pool. Pool members receive annual and ongoing training on a variety of topics related to Nondiscrimination and Title IX and College policy. Specific training is also provided for all Pool members. More information about Pool Member appointment and training, including the materials used to train

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<sup>25</sup> External, trained third-party neutral professionals may also be used to serve in pool roles when deemed appropriate by the College.

all members of the Pool, are publicly posted on the College website here:  
<https://barnard.edu/cares/nondiscrimination-and-title-ix/inform>

### **Formal Resolution Process: Notice of Investigation and Allegations**

The Title IX Coordinator will provide written notice of the investigation and allegations (the “NOIA”) to the Respondent upon commencement of the Formal Title IX Resolution Process. This facilitates the Respondent’s ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, who will be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

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

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various allegations. Notice will be made in writing and may be delivered by one or more of the following methods: in person, or emailed to the parties’ Barnard-issued email or designated accounts. Once emailed and/or received in-person, notice will be presumptively delivered.

## **Resolution Timeline**

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

## **Appointment of Investigators and Ensuring Impartiality**

Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints Nondiscrimination and Title IX Staff members and/or Pool members to conduct the investigation (typically using a team of two Investigators), usually within two (2) business days of determining that an investigation should proceed.

Any individual materially involved in the administration of the resolution process including the Title IX Coordinator, Investigator(s), and Decision-maker(s) may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent. The Title IX Coordinator will vet the assigned Investigator(s) for impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. At any time during the resolution process, the parties may raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Pool member will be assigned and the impact of the bias or conflict, if any, will be remedied.

The Formal Resolution Process involves an objective evaluation of all relevant evidence obtained, including evidence that supports that the Respondent engaged in a policy violation and evidence that supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness. The College operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by a preponderance of the evidence.

## **Investigation Timeline**

Investigations are completed expeditiously, though some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc. The College will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

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

The College may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include, but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions. The College will communicate in writing the anticipated duration of the delay and reason to the parties, and provide the parties with status updates if necessary. The College will promptly resume its investigation and resolution process as soon as feasible. During such a delay, Barnard will implement supportive measures as deemed appropriate.

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

### **Steps in the Investigation Process**

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record. The Investigator(s) typically take(s) the following steps, if not already completed (not necessarily in this order):

- Determine the identity and contact information of the Complainant
- Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated
- Assist the Title IX Coordinator, if needed, with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the parties
- Meet with the Complainant to finalize their interview/statement, if necessary
- Work with the Title IX Coordinator, as necessary, to prepare the initial Notice of Investigation and Allegation (NOIA). The NOIA may be amended with any additional or dismissed allegations
  - Notice should inform the parties of their right to have the assistance of an Advisor, who could be a member of the Pool or an Advisor of their choosing present for all meetings attended by the party
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings

- Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary
- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of the other party and witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions
- Complete the investigation promptly and without unreasonable deviation from the intended timeline
- Provide regular status updates to the parties throughout the investigation
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) with a list of witnesses whose information will be used to render a finding
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the College does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten days. Each copy of the materials shared will be watermarked on each page with an indicator of the role of the person receiving it (e.g., Complainant, Respondent, Complainant's Advisor, Respondent's Advisor).
- The Investigator(s) may elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses
- The Investigator(s) will incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) will document all rationales for any changes made after the review and comment period
- The Investigator(s) shares the report with the Title IX Coordinator and/or legal counsel for their review and feedback
- The Investigator will incorporate any relevant feedback, and the final report is then shared with all parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing. The parties and advisors are also provided with a file of any directly related evidence that was not included in the report

## **Evidentiary Considerations in the Investigation**

The investigation does not consider:

- 1) incidents not directly related to the possible violation, unless they evidence a pattern;
- or 2) questions and evidence about the Complainant's sexual predisposition; or
- 3) questions and evidence about the Complainant's prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Within the boundaries stated above, the investigation can consider character evidence generally, if offered, but that evidence is unlikely to be relevant unless it is factual evidence or relates to a pattern of conduct.

All parties must submit any evidence they would like the investigator to consider prior to when the parties' time to inspect and review evidence begins.<sup>26</sup> Barnard will provide copies of the parties' written responses to the investigation to all parties and their advisors, if any. Barnard will provide the parties five (5) business days after the initial inspection and review of evidence, and before the investigator completes their Investigative Report, to provide additional evidence in response to their inspection and review of the evidence. Barnard will then provide the parties five (5) business days to inspect, review, and respond to the parties additional evidence through a written response to the investigator. Those written responses will be disclosed to the parties and decision-maker, if applicable.

Barnard will provide the parties up to ten (10) business days to provide a response, after which the investigator will not be required to accept a late submission. Investigator has ten (10) business days to generate a report or, alternatively, may provide the parties with written notice extending the investigation for five (5) days and explaining the reason for the extension. The parties and their advisors and any witnesses must sign an agreement not to disseminate, photograph, or otherwise copy any of the evidence subject to inspection and review or use such evidence for any purpose unrelated to the Formal Title IX Resolution Procedure.

## **Referral for Hearing**

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a live hearing. The hearing will not be held less than ten (10) business days from the conclusion of the investigation – when the final investigation report is transmitted to the parties and the Decision-maker – unless all parties and the Decision-maker agree to an expedited timeline.

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<sup>26</sup> See 85 Fed. Reg. 30026, 30307 (May 19, 2020).

The College will designate a single Decision-Maker from the Pool or from the Nondiscrimination and Title IX staff, at the discretion of the Title IX Coordinator. The Title IX Coordinator will not serve as the Decision-Maker. Similarly, no Decision-Maker will also have served as Investigator or advisor to any party of the case, nor may they serve on the appeals body of the case. The single Decision-maker will also serve as the hearing Chair. The Title IX Coordinator may elect to have an alternate from the Pool sit in throughout the hearing process in the event that a substitute is needed for any reason. The hearing will convene at a time and venue determined by the Chair or designee.

### **Evidentiary Considerations in the Hearing**

Any evidence that the Decision-maker(s) determine(s) is relevant may be considered. The hearing does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) questions and evidence about the Complainant's sexual predisposition; or 3) questions or evidence about the Complainant's prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent. Within the boundaries stated above, the hearing can consider character evidence generally, if offered, but that evidence is unlikely to be relevant unless it is factual evidence or relates to a pattern of conduct.

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility, aligned with the College's use of a progressive discipline system. This information is only considered at the sanction stage of the process, and is not shared until then. The parties may each submit a written impact statement prior to the hearing for the consideration of the Decision-maker(s) at the sanction stage of the process (if the process progresses to sanctioning) after a determination of responsibility is reached. After post-hearing deliberation, the Decision-maker(s) render(s) a determination based on the preponderance of the evidence; whether based upon available information it is more likely than not that the Respondent violated the Policy.

### **Notice of Hearing**

No less than ten (10) business days prior to the hearing<sup>27</sup>, the Title IX Coordinator or the Chair will send notice of the hearing to the parties. Once emailed, and/or received in-person, notice will be presumptively delivered.

The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable hearing procedures, and a statement of the potential sanctions/responsive actions that could result.

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<sup>27</sup> Unless an expedited hearing is agreed to by all parties.

- The time, date, and location of the hearing.
- Description of any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur, and how the parties will participate, including use of technology that enables the Decision-maker(s) and parties to see and hear a party or witness answering questions.
- A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker(s) on the basis of demonstrated bias or conflict of interest. This must be raised with the Title IX Coordinator at least two (2) business days prior to the hearing.
- Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence. For compelling reasons, the Decision-Maker may reschedule the hearing.
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they do not have an Advisor, and the Recipient will appoint one. Each party must have an Advisor present. There are no exceptions.
- A copy of all the materials provided to the Decision-maker(s) about the matter, unless they have been provided already.<sup>28</sup>
- An invitation to each party to submit to the Chair an impact statement pre-hearing that, only in the event of a responsible finding, the Decision-maker(s) will review during any sanction determination.
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by the College and remain within the 60-90 business day goal for resolution.

### **Pre-Hearing Preparation**

After any necessary consultation with the parties, the Chair will provide the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days prior to the hearing.

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<sup>28</sup> The final investigation report may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.



The parties will be given the name(s) of the Decision-maker(s) at least five (5) business days in advance of the hearing. All objections to any Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than two days prior to the hearing. Decision-makers will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

The Title IX Coordinator will give the Decision-maker(s) a list of the names of all parties, witnesses, and Advisors at least five (5) business days in advance of the hearing. Any Decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

During the ten (10) business day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Chair at a pre-hearing meeting or at the hearing and will be exchanged between each party by the Chair.

### **Pre-Hearing Meetings**

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

At each pre-hearing meeting with a party and their Advisor, the Chair will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant. The Chair may rule on these arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing. The Chair may consult with the Title IX Coordinator, or ask them to attend pre-hearing meetings. The pre-hearing meetings may be conducted as separate meetings with each party/advisors, with all parties/advisors present at the same time, remotely, or as a paper-only exchange. The Chair will work with the parties to establish the format.

### **Hearing Procedures**

At the hearing, the Decision-maker(s) has the authority to hear and make determinations on all allegations of discrimination, harassment, and/or retaliation and may also hear and make

determinations on any additional alleged policy violations that occurred in concert with the discrimination, harassment, and/or retaliation, even though those collateral allegations may not specifically fall within the Policy Against Discrimination and harassment.

Participants at the hearing include the Decision-Maker/Chair, the hearing facilitator, the Investigator(s) who conducted the investigation, the parties, Advisors to the parties, any called witnesses, the Title IX Coordinator, and anyone providing authorized accommodations, interpretation, and/or assistive services. The Chair will answer all questions on procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Chair will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Decision-maker(s) and the parties, and the witnesses will then be excused.

In hearings involving more than one Respondent or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly. However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged policy violation.

## **The Order of the Hearing**

For all live hearings conducted under the Formal Title IX Resolution Procedure, the order will be as follows:

### **a. Introduction**

The Chair explains the procedures, including rules and expectations for the hearing, and introduces the participants. This may include a final opportunity for challenge or recusal of the Decision-maker(s) on the basis of bias or conflict of interest. The Chair will rule on any such challenge unless the Chair is the individual who is the subject of the challenge, in which case the Title IX Coordinator will review and decide the challenge.

### **b. Opening Statements**

The Parties will each be given the opportunity to provide opening statements.

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

The Investigator(s) will then present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-maker(s) and the parties (through their Advisors). The Investigator(s) will be present during the entire hearing process, but not during deliberations.

Neither the parties nor the Decision-maker(s) should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and Advisors and parties will refrain from discussion of or questions for Investigators about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

**d. Testimony and Questioning**

Once the Investigator(s) present(s) the report and are questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The hearing will facilitate questioning of parties and witnesses by the Decision-maker(s) and then by the parties through their Advisors.

All questions are subject to a relevance determination by the Chair. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Chair upon request if agreed to by all parties and the Chair), the proceeding will pause to allow the Chair to consider the question (and state it if it has not already been stated aloud), and the Chair will determine whether the question will be permitted, disallowed, or rephrased. The Chair may invite explanations or persuasive statements regarding relevance with the Advisors, if the Chair so chooses. The Chair will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair has final say on all questions and determinations of relevance. The Chair may consult with legal counsel on any questions of admissibility. The Chair may ask Advisors to frame why a question is or is not relevant from their perspective but will not entertain arguments from the Advisors on relevance once the Chair has ruled on a question. If the parties raise an issue of bias or conflict of interest of an Investigator or Decision-maker at the hearing, the Chair may elect to address those issues, consult with legal counsel, refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not in issue at the hearing, the Chair should not permit irrelevant questions that probe for bias.

**e. Live Cross-Examination Procedure**

Each party's advisor will conduct live cross-examination of the other party or parties and witnesses. During this live cross-examination, the advisor may ask the other party or parties and witnesses relevant questions and follow-up questions, including those questions challenging credibility directly, orally, and in real time. Before any cross-examination question is answered, the Decision-maker will determine if the question is relevant. Questions asked during a hearing must be relevant to the allegations and the response to those allegations. Cross-examination questions that are duplicative of

those already asked, including by the Decision-Maker, may be deemed irrelevant if they have been asked and answered.

**f. Refusal to Submit to Questioning; Inferences**

Whether a party or witness does or does not answer questions from the Decision-maker, their statements will be admissible. Any party or witness may choose not to offer evidence and/or answer questions at the hearing, either because they do not attend the hearing or because they attend but refuse to participate in some or all questioning. The Decision-Maker can only rely on whatever relevant evidence is available through the investigation and hearing in making the ultimate determination of responsibility. The Decision-maker(s) may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

If collateral charges of policy violations other than sexual harassment are considered at the same hearing, the Decision-Maker(s) may consider all evidence it deems relevant, may rely on any relevant statement as long as the opportunity for questioning is afforded to all parties through their Advisors, and may draw reasonable inferences from any decision by any party or witness not to participate or respond to questions. If a party's Advisor of choice refuses to comply with Barnard's established rules of decorum for the hearing, the College may require the party to use a different Advisor. If a recipient-provided Advisor refuses to comply with the rules of decorum, the College may provide that party with a different Advisor to conduct questioning on behalf of that party.

**g. Recording Hearings**

Hearings (but not deliberations) are to be recorded by Barnard for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted. The recording of the hearing or a transcript will be available for review by the parties within five (5) business days, unless there are any extenuating circumstances. The parties or advisors of choice can review the recording or transcript either in person or via video conference. The recording of the hearing or transcript will not be provided directly to the parties or advisor of choice and parties are not permitted to make a copy or retain access to the recording or transcript beyond the period of review.

**Deliberation Determining Responsibility, Decision-Making, and Standard of Proof**

The Decision-maker will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. Barnard uses the preponderance of the evidence standard for investigations and determinations regarding responsibility of formal complaints under the Formal Title IX Resolution Procedure. This means that the investigation and hearing process determines whether it is more likely than not that a violation of the Policy occurred. When there is a finding of responsibility on one or more of the

allegations, the Decision-maker may then consider the previously submitted party impact statements in determining appropriate sanction(s).

The Decision-maker will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The Decision-maker may – at their discretion – consider the statements, but they are not binding. The Decision-maker(s) will review the statements and any pertinent conduct history provided by the Title IX Coordinator and will recommend the appropriate sanction(s) in consultation with other appropriate administrators, as required.

### **Written Determination Regarding Responsibility**

The Decision-maker will prepare a deliberation statement and deliver it to the Title IX Coordinator, detailing the identification of the allegations, a description of the procedural steps taken from the receipt of the formal complaint through the determination, findings of fact supporting the determination, conclusions regarding which section of the policy, if any, the respondent has or has not violated, rationale for determination, evidence used in support of their determination, the evidence not relied upon in their determination, credibility assessments, any recommended sanctions and rationale, and Barnard's procedures to appeal. This report must be submitted to the Title IX Coordinator within two (2) business days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

### **Notice of Outcome**

Using the deliberation statement, the Title IX Coordinator will work with the Decision-maker to prepare a Notice of Outcome letter. The Title IX Coordinator will share the letter, including the final determination, rationale, and any applicable sanction(s) with the parties and their Advisors within five (5) business days of receiving the Decision-maker(s)' Written Determination Regarding Responsibility.

The Notice of Outcome will be shared with the parties simultaneously. Notification will be made in writing and may be delivered by email via the Barnard-issued email or otherwise approved account. The Title IX Coordinator will connect with the parties to advise that the Notice of Outcome is ready to be shared so individuals may best prepare to receive such notice. The Title IX Coordinator will also offer parties the opportunity to individually meet shortly after the delivery to provide any clarification or answer any questions about the outcome. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered. The Notice of Outcome will articulate the specific policy(ies) reported to have been violated, including the relevant policy section, and will contain a description of the procedural steps taken by the College from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Notice of Outcome will specify the finding on each alleged policy violation; the findings of

fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent the College is permitted to share such information under state or federal law; any sanctions issued which the College is permitted to share according to state or federal law; and whether remedies will be provided to the Complainant to ensure access to the College's educational or employment program or activity. The Notice of Outcome will also include information on when the results are considered by the College to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

## **Sanctions**

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation; The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the Decision-maker(s)

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested. The sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities. For examples of student and employee sanctions, see Appendix C.

## **Appeals**

Any party may appeal 1) the dismissal of a formal complaint or any included allegations and/or 2) a determination regarding responsibility. To appeal, a party must submit their written request for appeal to the Title IX Coordinator within five (5) business days of the delivery of the Notice of Outcome, indicating the grounds for the appeal.

Appeals are limited to the following grounds:

- Procedural irregularity that affected the outcome of the matter (i.e. a failure to follow Barnard's own procedures).
- New evidence that was not reasonably available at the time the determination of responsibility or dismissal was made, that could affect the outcome of the matter.
- The Title IX Coordinator, Investigator(s), or Decision-Maker had a conflict of interest or bias for or against an individual party, or for or against complainants or respondents in general, that affected the outcome of the matter.

- Excessiveness or insufficiency of the sanction: An appeal based on the imposed sanction must explain why the sanction is inappropriate based on the weight of the information provided during the investigation, hearing, and/or sanction.

The Request for Appeal will be forwarded to the Appeal Chair or designee for consideration to determine if the request meets the grounds for appeal (a Review for Standing). This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed. If any of the grounds in the Request for Appeal do not meet the grounds above, that request will be denied by the Appeal Chair, and the parties and their Advisors will be notified in writing of the denial and the rationale. If any of the grounds in the Request for Appeal meet the grounds above, then the Appeal Chair will notify the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s).

The submission of appeal stays any sanctions for the duration of the appeal procedures. Supportive measures remain available during the appeal process. If a party appeals, Barnard will as soon as practicable notify the other party in writing of the appeal; however, the time for appeal shall be offered equitably to all parties and shall not be extended for any party solely because the other party filed an appeal.

The other party(ies) and their advisors will be given five (5) business days to submit a response to the portion of the appeal that was approved and involves them. All responses, if any, will be forwarded by the Appeal Chair to all parties for review and comment. The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed to determine if it meets the grounds in this grievance process by the Appeal Chair and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Investigator(s) and/or original Decision-maker(s), as necessary, who will submit their responses, if any, in five (5) business days, which will be circulated for review and comment by all parties. If not approved, the parties will be notified accordingly, in writing.

Appeals will be decided by an Appellate Panel that will be free of conflict of interest and bias, and will not serve as investigator, Title IX Coordinator, or hearing Decision-maker in the same matter. Attached to their appeal, the individual may provide a written submission for the Appellate Panel to consider. The written statement must be prepared by the individual and be no longer than five single-spaced typed pages. No attachments or exhibits will be accepted; references to evidence should be made to materials included in the Investigative Report.

Outcome of appeal will be provided in writing and delivered electronically simultaneously to both parties, and include rationale for the decision.

### **Long-Term Remedies/Other Actions**

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the harassment, discrimination, and/or retaliation, remedy the effects, and prevent reoccurrence. These remedies/actions may include, but are not limited to:

- Referral to counseling and health services; Referral to the Employee Assistance Program
- Education to an individual and/or the community
- Permanent alteration of housing assignments; Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no policy violation is found. When no policy violation is found, the Title IX Coordinator will address any remedies owed by the College to the Respondent to ensure no effective denial of educational access. The College will maintain the confidentiality of any long-term remedies/actions/measures, provided confidentiality does not impair the College's ability to provide these services.

### **Failure to Comply with Sanctions and/or Responsive Actions**

All Parties are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-maker(s) (including the Appeal Panel). Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from the College. A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.



## **APPENDIX A: Barnard College Informal Resolution for the Formal Title IX Resolution Process**

### **Overview of Informal Resolution**

Informal Resolution is an informal approach, including mediation, restorative practices, facilitated dialogue, by which the parties reach a mutually agreed upon resolution of an allegation. All parties must consent to the use of an Informal Resolution approach. The Title IX Coordinator may look to the following factors to assess whether Informal Resolution is appropriate, or which form of Alternative Resolution may be most successful for the parties:

- The parties' amenability to Alternative Resolution;
- Likelihood of potential resolution, taking into account any power dynamics between the parties;
- The parties' goals and motivation to participate;
- Civility of the parties;
- Results of a violence risk assessment/ongoing risk analysis; Whether an emergency removal is needed;
- Disciplinary history;
- Availability of a properly trained Alternative Resolution facilitator;
- Complaint complexity;
- Emotional investment/capability of the parties; Rationality of the parties;

The ultimate determination of whether Alternative Resolution is available or successful is to be made by the Title IX Coordinator. The Director is authorized to negotiate a resolution that is acceptable to all parties, and/or to accept a resolution that is proposed by the parties, usually through their Advisors. The Title IX 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 are not appealable.

### **Procedures for Entering and Exiting Informal Resolution Process**

Parties who do not wish to proceed with an investigation and hearing, and instead seek Barnard's assistance to resolve allegations of misconduct, may elect to enter the informal resolution process. Generally speaking, these resolution options may be less time intensive than an investigation and a resolution and/or live hearing, while still affording individuals an opportunity to actively participate in a process led by Barnard for resolution of their complaints.

The Parties may elect to enter Barnard's informal resolution process at any time after the filing of the Formal Complaint through an informed written consent. This informed written consent will include all terms of the elected informal process, including a statement that any agreement reached through the process is binding on the Parties.

No Party may be required to participate in informal resolution, and Barnard may never condition enrollment, employment, or enjoyment of any other right or privilege upon agreeing to informal resolution. The Parties may elect to leave the informal resolution process at any point until the informal resolution process is concluded. If a Party elects to leave the informal resolution process, the formal resolution process recommences. In participating in the informal resolution process, the Parties understand that the timeframes governing the formal process temporarily cease, and only recommence upon reentry into the formal process.

### **Determination to Approve Entry into Informal Resolution Process**

Even where the Parties agree to submit a matter to informal resolution, the Title IX Coordinator or other designated official may approve the decision to move the matter to the informal resolution process and may determine that informal resolution is not appropriate under the circumstances. Factors that the Title IX Coordinator or other designated official may weigh in considering the appropriateness of the informal resolution process include, but are not limited to, the gravity of the allegations, whether there is an ongoing threat of harm or safety to the campus, whether the respondent is a repeat offender, and whether the Parties are participating in good faith. This determination is not subject to appeal.

Informal resolution processes may be applied only in instances that the Title IX Coordinator deems appropriate and when all parties voluntarily agree to participate. At any time, parties may decide to exit the informal resolution process, which would trigger a return to the formal grievance process if the alleged conduct constituted covered sexual harassment under Title IX. Informal resolution is only permitted to address allegations of student-on-student or employee-on-employee discrimination or harassment, and is never allowed as an option to resolve allegations that an employee sexually harassed a student.<sup>29</sup> At any time after the commencement of the informal resolution process, the Title IX Coordinator or other designated official may determine that the informal resolution process is not an appropriate method for resolving the matter, and may require that the matter be resolved through the formal process. This determination is not subject to appeal.

### **Role of the Facilitator**

Informal resolution processes are managed by facilitators, who may not have a conflict of interest or bias in favor of or against complainants or respondents generally or regarding the specific Parties in the matter. The Title IX Coordinator may serve as the facilitator, subject to these restrictions. All facilitators must have training in the definition of sexual harassment under

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<sup>29</sup>All parties who experience sexual harassment are encouraged to come forward and consult with the Title IX Coordinator to best understand available options. 85 Fed. Reg. 30026, 30054 (May 19, 2020).

34 C.F.R. § 106.30(a), the scope of the institution's education program or activity, how to conduct informal resolution processes, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, or bias.

### **Confidentiality**

In entering the informal resolution process, the Parties agree that any testimony and evidence (including admissions of responsibility) they share or receive during the informal resolution process concerning the allegations of the Formal Complaint is confidential. No evidence concerning the allegations obtained within the informal resolution process may be disseminated to any person, provided that any Party to the informal resolution process may generally discuss the allegations under investigation with a parent, friend, advisor, or other source of emotional support, or with an advocacy organization. As a condition of entering the informal resolution process, any evidence shared or received during the informal resolution process may not be used in any subsequent formal resolution process or institutional appeal.

### **Informal Resolution Options**

Barnard offers the following informal resolution procedures for addressing complaints of Discrimination and Harassment covered under this Informal Resolution Policy.

**Supportive Resolution** In some instances a Complainant may desire supportive measures as the sole resolution. This may or may not include restrictions related to the access or instructions regarding when parties find themselves in the same campus location.

**Administrative Resolution** Should the Parties mutually determine to enter the informal resolution process, and the respondent elects to accept responsibility for the allegations of the Formal Complaint at any point during the informal resolution process, the institution may administratively resolve the Formal Complaint. Where the respondent admits responsibility, the Parties will receive simultaneous written notification of the acceptance of responsibility, and the decision-maker will convene to determine the respondent's sanction and other remedies, as appropriate and consistent with institutional policy. The Parties will be given an opportunity to be heard at the sanctions hearing, including but not limited to the submission of impact statements, and the Parties may be accompanied by their Advisor, but questioning of Parties or witnesses will not be permitted. The Parties will receive simultaneous written notification of the decision regarding sanctions and remedies, which may be appealed according to the process described below.

**Alternative Resolution** The purpose of alternative resolution is for the parties who are in conflict to identify the implications of an individual's actions and, with the assistance of a trained

facilitator, identify points of agreement and appropriate remedies to address them. Either party can request alternative resolution to seek resolution; alternative resolution will be used only with the consent of both parties, who will be asked not to contact one another during the process. The Office of Nondiscrimination and Title IX will also review any request for mediation, and may decline to mediate based on the facts and circumstances of the particular case. Either party has the right to terminate the alternative resolution process and choose or resume another option for resolution at any time. The alternative resolution process will typically commence within 10 days after the Office of Nondiscrimination and Title IX receives consent to mediate from both parties, and will continue until concluded or terminated by either party or the Office of Nondiscrimination and Title IX.

During alternative resolution, any potential investigation will halt, and calculations for time frames will be stayed. If the mediation results in a resolution, the disciplinary process will be concluded and the matter will be closed. If a resolution cannot be reached, the matter will be referred to the Title IX Coordinator to re-evaluate other options for resolution, including investigation. During mediation, a facilitator will guide a discussion between the parties. In circumstances where the parties do not wish to meet face to face, either party can request “caucus” mediation, and the facilitator will conduct separate meetings. Whether or not the parties agree to meet face to face, each party will be permitted to bring an advisor of their choice to any meetings who may be, but is not required to be, an attorney. At the conclusion of the alternative resolution process, the facilitator will memorialize the agreement that was reached between the parties. The Office of Nondiscrimination and Title IX will monitor adherence to the proposed solution and close the matter when compliance is satisfactory.

## **APPENDIX B: RULES OF DECORUM**

The College's resolution processes are designed to be an educational disciplinary experience. Hearing Participants are expected to act in accordance with their role as it is described. The Decision-maker is responsible for conducting the hearing and maintaining decorum such that the hearing is executed fairly and effectively. If the Decision-maker determines that decorum is broken and the hearing has become disorderly the Decision-maker may recess or pause proceedings to address the behavior. Misconduct during the hearing can take many forms, both minor and egregious. It is within the Decision-maker's discretion to discourage or penalize Parties, Witnesses or Advisors who demonstrate a lack of decorum.

The following rules and standards apply equally to all Parties and their Advisors regardless of sex, gender, or other protected class, and regardless of whether they are in the role of Complainant, Respondent, or Witness.

### **Rules of Decorum**

1. If an advisor, Party or witness, is referencing another person, including the hearing participants, as much as possible the person's name or role (i.e. Complainant, Respondent) should be used.
2. If an advisor, Party or witness is referencing another person, including the hearing participants, it is the expectation that the person is referenced by their gender as they identify it. No participant shall intentionally mis-gender another person.
3. During cross-examination, the Decision-maker must approve all questions before the Party or witness responds. As much as possible, the Decision-maker and Advisors are expected to restrict the use of compound, redundant, irrelevant, or otherwise impermissible questions.
4. The advisor may not use profanity or make irrelevant ad hominem attacks on a Party or witness. Questions are meant to be interrogative statements used to test knowledge or understand a fact; they may not include accusations within the text of the question. 5.

Hearing participants are prohibited from:

- Interrupting other participants;
- Using profanity directed toward another participant;
- Objectively offensive or aggressive gestures;
- Harassing another participant;
- Yelling, screaming, badgering;
- Physically "leaning in" to the personal space of another participant;
- Approaching a participant without the express permission of the Decision-maker;
- Taking any action that a reasonable person may see as intended to intimidate a participant or meaningfully modify someone's participation in the process;
- Engaging in any other behavior to deliberately disrupt the live hearing.

The Decision-maker has sole discretion to pause or interject during the process and all hearing participants are expected to comply with any direction provided. If a hearing participant violates the Rules of Decorum or proceedings otherwise become disorderly the Decision-maker may recess or pause proceedings to address the behavior.

If a hearing participant violates the Rules of Decorum, the Decision-maker may issue a penalty to that hearing participant. Specifically, the Decision-maker may give a verbal warning, pause the hearing process, or remove a hearing participant. If an advisor is removed for egregious or repeated violations of the Rules of Decorum, the respective Party may have the opportunity to immediately replace the Advisor or the The Office of Nondiscrimination and Title IX will assign an advisor to the Party for the purpose of completing cross-examination. Reasonable delays, including the temporary adjournment of the hearing, may be anticipated should an advisor be removed. A Party cannot serve as their own advisor in this circumstance. If the Decision-maker determines that an Advisor violated the Rules of Decorum but in the course of asking a relevant question, the violation will not affect the question's relevancy. The Decision-maker will notify the Advisor of the violation and permit the question to be re-asked (or permit a replacement Advisor in cases where the Advisor has been removed for the violation of the Rules of Decorum).

### **Removal Process**

If the Decision-maker determines that a participant has violated the Rules of Decorum, the Decision-maker will first notify the offending person of said violation. Upon a second or further violation, the Decision-maker has the discretion to remove the offending participant. The Decision-maker will document any decision to remove an advisor as Party of the written determination regarding responsibility.

## APPENDIX C: SANCTION EXAMPLES

### Student Sanctions

The following are examples of typical sanction that may be imposed upon students or organizations:

- *Warning*: A formal statement that the conduct was unacceptable and a warning that further violation of any Barnard policy, procedure, or directive will result in more severe sanctions/responsive actions.
  - *Required Counseling*: A mandate to meet with and engage in either Barnard-sponsored or external counseling to better comprehend the misconduct and its effects.
  - *Access or Activity Restrictions*: A mandate to restrict access to specific space or activities for a specified period of time.
  - *Probation*: A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
  - *Suspension*: Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at Barnard. The appropriate transcript notation will apply.<sup>30</sup>
  - *Expulsion*: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend Barnard-sponsored events. This sanction will be noted permanently as a Conduct Expulsion on the student's official transcript, subject to any applicable expungement policies.
  - *Withholding Diploma*: The College may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities as a sanction if the student is found responsible for an alleged violation.
  - *Revocation of Degree*: The College reserves the right to revoke a degree previously awarded from Barnard for fraud, misrepresentation, and/or other violation of College policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
  - *Organizational Sanctions*: Deactivation, loss of recognition, loss of some or all privileges (including Barnard registration) for a specified period of time.
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<sup>30</sup> For crimes of violence, including but not limited to sexual violence, defined as crimes that meet the reporting requirements pursuant to the federal Clery Act established in 20 U.S.C. 1092(f)(1)(F)(i)(I)-(VIII), institutions shall make a notation on the transcript of students found responsible after a conduct process that they were "suspended after a finding of responsibility for a code of conduct violation" or "expelled after a finding of responsibility for a code of conduct violation." For the respondent who withdraws from the institution while such conduct charges are pending, and declines to complete the disciplinary process, institutions shall make a notation on the transcript of such students that they "withdrew with conduct charges pending."

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

### **Employee Sanctions**

The following are examples of typical sanction that may be imposed upon employees:

- *Warning – Verbal or Written*
- *Performance Improvement Plan/Management Process*
- *Enhanced supervision, observation, or review*
- *Required Counseling; Required Training or Education*
- *Probation; Denial of Pay Increase/Pay Grade*
- *Loss of Oversight or Supervisory Responsibility; Demotion*
- *Transfer; Reassignment*
- *Delay of tenure track progress*
- *Assignment to new supervisor*
- *Restriction of stipends, research, and/or professional development resources*
- *Suspension with pay; Suspension without pay*
- *Termination*
- *Other Actions:* In addition to or in place of the above sanctions, the College may assign any other responsive actions as deemed appropriate.

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

Should a Respondent decide not to participate in the resolution process, the process proceeds absent their participation to a reasonable resolution.

a. **Students:** Should a student Respondent permanently withdraw from the College, the resolution process ends with a dismissal, as the College no longer has disciplinary jurisdiction over the withdrawn student.

However, the College will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation. If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely and that student is not permitted to return to the College unless and until all sanctions, if any, have been satisfied.

b. **Employees:** Should an employee Respondent resign with unresolved allegations pending, the resolution process ends with dismissal, as the College no longer has disciplinary jurisdiction over the resigned employee. However, the College will continue to address and remedy any systemic issues or concerns that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

The employee who resigns with unresolved allegations pending is not eligible for admission or



rehire with the College, and the records retained by the Title IX Coordinator will reflect that status. All Recipient responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

## APPENDIX D: BARNARD COLLEGE RESOURCES

### On-Campus Student Resources

<b>*Columbia Sexual Violence Response &amp; Rape Crisis/ Anti-Violence Support Center (SVR)</b>	105 Hewitt Hall   212-854-HELP (4357)
<b>*Rosemary Furman Counseling Center</b>	100 Hewitt Hall   212-854-2092 For after hours emergencies call 855-622-1903
<b>*Primary Care Health Services</b>	Lower Level, Brooks Hall   212-854-2091
<b>Nondiscrimination and Title IX Office</b>	First Floor, Elliott Hall   212-854-0037
<b>*Being Barnard</b>	119 Reid Hall   212-854-0145
<b>*Ombuds Office</b>	113 Hewitt Hall   212-854-1352
<b>*The Wellness Spot Health Promotion Program</b>	119 Reid Hall   212-854-3063
<b>*University Chaplain</b>	710 Lerner Hall   212-854-1493

### College Employee Resources

<b>Human Resources</b>	Interchurch Center (475 Riverside Dr.)   646-754-8350
<b>Nondiscrimination and Title IX Office</b>	First Floor, Elliott Hall   212-854-0037

<b>*Ombuds Office</b>	113 Hewitt Hall   212-854-1352
<b>*Employee Assistance Program</b>	<p>Offered through Health Advocate. Provides referral services for counseling (24/7) as well as legal and financial advice.</p> <p>Phone: 877-240-6863</p> <ul style="list-style-type: none"> <li>● Email: <a href="mailto:answers@HealthAdvocate.com">answers@HealthAdvocate.com</a></li> <li>● Web: <a href="http://HealthAdvocate.com/members">HealthAdvocate.com/members</a></li> </ul>

*\*Indicates confidential resource (i.e. not a mandated reporter).*

### **Off-Campus Resources for Students and Employees:**

#### **Local NYC Resources**

New York City is home to a plethora of resources for people of all identities and genders who are facing discrimination, harassment, or sexual and interpersonal violence. These agencies offer a number of services including emergency room advocates, confidential counseling, trauma support, identity-based support, and help navigating the criminal justice system should an individual choose to file a report with the NYPD.

- New York City Anti-Violence Project  
116 Nassau Street, 3rd Floor | (212) 714-1141 (this is a 24-hour help line)  
*AVP is dedicated to serving LGBTQ individuals and HIV-affected communities.*
- WomanKind  
9 Mott Street, Suite 200 | 1-888-888-7702 (this is a 24-hour help line)  
*WomanKind helpline advocates are multi-lingual and speak English, Spanish, and 18+ Asian languages and dialects including Chinese, Korean, Japanese, Tagalog, Hindi, Urdu, Bengali, and Vietnamese.*
- Sanctuary for Families  
PO Box 1406, Wall Street Station | (212) 349-6009  
*Annually, Sanctuary for Families serves over 10,000 individuals who experience some form of domestic violence, sex trafficking, and related forms of gender violence. Its services include: counseling, legal assistance, crisis and temporary shelter, community*

*education, and advocacy, among others.*

- **Safe Horizon**  
Multiple locations across the five boroughs | 1-800-621-4673 (this is a 24-hour help line)  
*Safe Horizon is the largest survivor service non-profit in the country, providing support for people who have experienced/are experiencing domestic violence, sexual assault, human trafficking, stalking, and youth homelessness.*
- **Mount Sinai Sexual Assault and Violence Intervention Program**  
114th Street and Amsterdam Ave. (across from Columbia) | (212) 423-2140  
(M-F, 9am-5pm)  
*The SAVI program is located in St. Luke's Hospital. While their main line is only open during business hours, advocates from the program are available to survivors at the hospital 24/7.*

*If you have experienced violence and wish to go to the Emergency Room, you do not have to do so alone. SVR provides advocates 24/7 through their helpline (212-854-HELP [4357]), to accompany individuals if they wish.*

### **Online Resources for Students and Employees**

There exists a wealth of information and support available online. The following websites provide call and text lines, online chat helplines, and resources with more information about the spectrum of discrimination, harassment, sexual, and relationship violence.

- **Love is Respect:** Provides comprehensive information and support services (including helpline and online chat) for young adults who are concerned about dating relationships. They also provide more information for those individuals supporting someone experiencing relationship violence.
- **RAINN:** RAINN is the nation's largest anti-sexual violence organization. They offer a 24/7 helpline and online chat services, as well as information and resources related to sexual violence.
- **The Network/ La Red:** The Network/La Red is a survivor-led organization dedicated to ending partner abuse in LGBTQIA+, Polyamorous, and BDSM communities. Though physically based in Massachusetts, they provide a 24/7 toll free helpline and online resources.
- **FORGE:** FORGE is a national transgender anti-violence organization. They provide referrals to local providers, a peer support listserv for survivors, and guided survivor healing programs.

## APPENDIX E: SCENARIO EXAMPLES

The following scenarios help illustrate some applications of the Policy.<sup>31</sup>

- A professor offers for a student to have sex or go on a date with them in exchange for a good grade. This constitutes sexual harassment regardless of whether the student accedes to the request and irrespective of whether a good grade is promised or a bad grade is threatened.
- A professor engages students in class in discussions about the students' past sexual experiences, yet the conversations are not in any way germane to the subject matter of the class. The professor inquires about explicit details and demands that students answer them, though the students are clearly uncomfortable and hesitant.
- Chris has recently transitioned to non-binary, but primarily expresses as a female. Since their transition, Chris has noticed that their African Studies professor, Dr. Mukembo, pays them a lot more attention. Chris is sexually attracted to Professor Mukembo and believes the attraction is mutual. Chris decides to act on the attraction. One day, Chris visits Dr. Mukembo during office hours, and after a long conversation about being non-binary, Chris kisses Dr. Mukembo. Dr. Mukembo is taken aback, stops the kiss, and tells Chris not to do that. Dr. Mukembo explains to Chris that they are not interested in Chris sexually or romantically. Chris takes it hard, crying to Dr. Mukembo about how hard it is to find someone who is interested in them now based on their sexual identity. Dr. Mukembo feels sorry for Chris and softens the blow by telling them that no matter whether they like Chris or not, faculty-student relationships are prohibited by the university. Chris takes this as encouragement. One night, Chris goes to a bar some distance from campus and sees Dr. Mukembo there. Chris tries to buy Dr. Mukembo a drink and, again, tries to kiss Dr. Mukembo. Dr. Mukembo leaves the bar abruptly. The next day, Chris makes several online posts calling out Dr. Mukembo and raising questions about whether they are sexually involved with students. Dr. Mukembo contacts the Office of Nondiscrimination and Title IX and alleges that Chris is sexually harassing him.

Lee is working as an on-campus tutor and received flowers and gifts delivered to their office. After learning the gifts were from another student they recently tutored, Lee thanked the student and stated that it was not necessary and would appreciate it if the gift deliveries stopped. The student then started leaving notes of love and gratitude on Lee's residence hall room door. Asked again to stop, the student stated by email, "You can ask me to stop, but I'm not giving up. We are meant to be together, and I'll do anything to make you have the feelings for me that I have for you." When Lee did not respond, the student emailed again, "You cannot escape me. I will track you to the ends of the earth. If I can't have you, no one will."

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<sup>31</sup> Some of these illustrative scenarios are adapted from the Columbia University policy.

- Amanda and Jamie meet at a party. They spend the evening dancing and getting to know each other. Jamie convinces Amanda to come up to their room. From 11:00 p.m. until 3:00 a.m., Jamie uses every line they can think of to convince Amanda to have sex with them, but she adamantly refuses. Despite her clear communications that she is not interested in doing anything sexual with them, Jamie keeps at her, questions her religious convictions, and accuses her of being “a prude.” Jamie brings up several rumors that they’ve heard about how she performed oral sex on a number of other students. Finally, it seems to Jamie that Amanda’s resolve is weakening, and he convinces her to perform oral sex on them. Amanda would have never done it but for Jamie’s incessant coercion.
- Jiang is a junior. Beth is a sophomore. Jiang comes to Beth’s residence hall room with some mutual friends to watch a movie. Jiang and Beth, who have never met before, are attracted to each other. After the movie, everyone leaves, and Jiang and Beth are alone. They hit it off, soon become more intimate, and start to make out. Jiang verbally expresses his desire to have sex with Beth. Beth, who was abused by a babysitter at the age of five and avoids sexual relations as a result, is shocked at how quickly things are progressing. As Jiang takes her by the wrist over to the bed, lays her down, undresses her, and begins to have intercourse with Beth, Beth has a severe flashback to her childhood trauma. She wants to tell Jiang to stop but cannot. Beth is stiff and unresponsive during the intercourse.

## **APPENDIX F: NEW YORK STATE STUDENTS' BILL OF RIGHTS**

Related to Sexual Assault, Dating Violence, Domestic Violence, and Stalking

All students have the right to:

- Make a report to Community Safety, local law enforcement, and/or state police;
- Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
- Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressures from the institution;
- 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 courteous, fair, and respectful health care and counseling services, where available;
- 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;
- Describe the incident to as few institutional representatives as practicable and not be required to unnecessarily repeat a description of the incident;
- Be protected from retaliation by the institution, any student, the accused, and/or the respondent, and/or their friends, family, and acquaintances within the jurisdiction of the institution;
- Have access to at least one level of appeal of a determination;
- Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or respondent throughout the judicial or conduct process including during all meetings and hearings related to such process; and
- Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the institution.