

# Barnard College



## **NONDISCRIMINATION POLICY AND PROCEDURES GOVERNING COMPLAINTS AGAINST STUDENTS**

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# I. Policy Against Discrimination

## 1. Introduction

Barnard College (the “College”) does not tolerate discrimination, harassment, or retaliation based upon actual or perceived membership in a Protected Class, which refers to a group of people with a common characteristic involving age, immigration or citizenship status, color, disability, sex, gender identity, marital status and partnership status, national origin, pregnancy and related conditions, race, religion/creed, height and weight, sexual orientation, status as veteran or active military service member, and any other applicable legally protected status.

This Nondiscrimination Policy and Procedures Governing Complaints Against Students (this “Policy”) sets forth the forms of discrimination, harassment, and retaliation prohibited at Barnard. Reports of misconduct outside the scope of this Policy may be addressed by other Barnard policies, and this Policy must be read and understood in conjunction with related College policies and procedures.

When allegations of discrimination and/or harassment based upon sexual assault, dating violence, domestic violence, stalking, or sex offenses are made against one or more Barnard students and/or employees, the matter will be investigated and resolved using the College’s separate [Title IX Sexual Harassment Policy](#). When allegations of discrimination, harassment, or retaliation are made against one or more employees of the College, the matter will be investigated and resolved using the College’s [Workplace Nondiscrimination Policy and Procedures Governing Complaints Against Employees](#).<sup>1</sup> When allegations are made against third parties concerning possible violation of this Policy, the Director of Nondiscrimination shall identify the appropriate procedures that apply based on the role of the third party and the nature of any relationship between the third party and the College. Note that individuals impacted by any form of sexual misconduct, irrespective of whether it falls under this Policy, may contact the Office of Nondiscrimination to receive support, resources, and information. All complaints will be evaluated by the Office of Nondiscrimination, which will determine whether the alleged conduct falls within the scope of the policies maintained by the Office.

This Policy applies when the alleged conduct occurs on Barnard premises, when the alleged conduct occurs in the context of a Barnard program or activity, or when the alleged conduct occurs outside the context of a Barnard program or activity but (i) has continuing adverse effects on Barnard premises or in any Barnard program or activity or (ii) occurs in close proximity to Barnard premises and is connected to Prohibited Conduct on Barnard premises.

The “Policy” portion of this document defines the scope of this Policy and describes the forms of Prohibited Conduct. The “Procedures” portion of this document sets forth the rights and responsibilities of parties and others involved in the process, reporting options and obligations, and the initial steps that the Office of Nondiscrimination may take upon receiving a report of alleged Prohibited Conduct, including conducting an Initial Inquiry, providing Supportive Measures, and imposing Interim Measures.<sup>2</sup>

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<sup>1</sup> When allegations are made against an individual who is enrolled as a student at or employed by Columbia University, [Columbia University’s policies](#) will apply.

<sup>2</sup> Please see Section II.5 of this Policy for the definitions of the terms Initial Inquiry, Supportive Measures, and Interim Measures.

The “Procedures” portion of the document also describes the resolution of matters, the range of available sanctions and the process by which sanctions are determined, and the procedure for appealing a determination of responsibility or sanction.

The appendices to this document include the New York State Students’ Bill of Rights (Appendix A) and illustrative scenarios (Appendix B).

## **2. Nondiscrimination Statement**

Barnard College prohibits any form of discrimination, harassment, or retaliation against any individual based upon their actual or perceived membership in a Protected Class. Such discrimination, harassment, and retaliation are prohibited in the administration of Barnard’s educational programs, admissions, scholarship and loan programs, and other programs and functions for students. At all times, Barnard complies with Title VI and Title VII of the Civil Rights Act of 1964, Sections 503 and 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, New York State Education Law 129-B, and other New York State and local laws that prohibit discrimination.

Discrimination, harassment, and retaliation prohibited by this Policy compromise the integrity of the College and unacceptably interfere with the opportunity for all individuals to fully participate in the academic, work, and living environment at Barnard. Barnard recognizes the human dignity of each member of our community and believes that all students have a responsibility to promote respect and dignity for others and to participate in an environment where no student is discouraged from or denied an educational opportunity because of any Protected Class. The College is committed to fostering an academic, work, and living environment that is welcoming to all members of the Barnard community.

## **3. Reporting**

Barnard College encourages all Community Members, including students, to report all potential incidents of discrimination, harassment, and retaliation. Reports may be made in person, by email, by regular mail, by phone, or electronically. If you believe you have been subjected to, witnessed, or otherwise learned of conduct prohibited by this Policy, please notify the Office of Nondiscrimination.

To file a report electronically with the Office of Nondiscrimination, please go to:

[https://barnard-gme-advocate.symplicity.com/public\\_report](https://barnard-gme-advocate.symplicity.com/public_report)

To file a report or ask questions about this Policy via email, please write:

[nondiscrimination@barnard.edu](mailto:nondiscrimination@barnard.edu)

To reach the Office of Nondiscrimination in other ways, please use the following contact information:

**The Office of Nondiscrimination**

<https://barnard.edu/nondiscrimination>

[nondiscrimination@barnard.edu](mailto:nondiscrimination@barnard.edu)

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All Barnard employees, including student-employees, are required to promptly report Discrimination, Discriminatory Harassment, or gender-based misconduct of which they become aware in the scope of their work for the College to the Office of Nondiscrimination unless they are a “confidential employee.” Failure to fulfill this reporting obligation will be referred to the appropriate office for corrective action.

Note: This does not require a person experiencing harm to report the incident.

## 4. Conduct Prohibited by This Policy

It is a violation of this Policy for a Barnard student or student group to commit the following acts:

- **Discrimination:** Treating individuals differently because of their actual or perceived membership in a Protected Class. Discrimination includes treating an individual differently on the basis of their actual or perceived membership in, or association with, a Protected Class in the context of an educational program or activity without a legitimate, nondiscriminatory reason so as to deny or limit the ability of the individual to participate in or benefit from Barnard’s services, activities, or privileges.
- **Discriminatory Harassment:** Engaging in acts that denigrate or show hostility or aversion toward one or more actual or perceived members or associates of a Protected Class. Discriminatory Harassment may include but is not limited to: verbal abuse; epithets or slurs; negative stereotyping (including but not limited to stereotypes about how an individual looks, including skin color, physical features, or style of dress that reflects ethnic traditions; a foreign accent; a foreign name, including names commonly associated with a particular shared ancestry or ethnic characteristics; or speaking a foreign language); threatening, intimidating, or hostile acts; denigrating jokes; insulting or obscene comments or gestures; calls for genocide and/or violence; and the display or circulation of written or graphic material in any form, including but not limited to social media. Phone calls, text messages, emails, and social media usage may create or contribute to a hostile working, learning, or campus living environment or otherwise constitute Discriminatory Harassment, even if the communications occur away from campus.
- **Hostile Environment:** A Hostile Environment may arise when unwelcome conduct, including Discrimination or Discriminatory Harassment, unreasonably interferes with a student’s ability to

participate in or benefit from an education program or activity, or creates an intimidating, threatening, demeaning, or offensive academic, campus, work, or living environment.

- **Retaliation:** Any adverse action taken, made, or threatened, personally or through a third party, against any individual because the individual has made a report pursuant to this Policy, engaged with the Nondiscrimination Office, and/or participated in a resolution process pursuant to this Policy. Retaliation may also include violations of a no-contact directive and/or other Supportive Measures or Interim Measures during the course of a proceeding pursuant to this Policy.
- **Intentional Interference:** Intentionally interfering with the process of the Office of Nondiscrimination concerning any report made under this Policy.

General bullying or uncivil behavior that is not based on actual or perceived membership in a Protected Class does not fall within the purview of this Policy. However, such behavior may violate the College's expectations as set forth in the Student Code of Conduct, Honor Code, Rules for the Maintenance of Public Order, or other College policies.

## 5. Other Important Concepts

### A. Role of the Civil Rights Coordinator

The College's Civil Rights Coordinator oversees the administration of this Policy in a neutral and equitable manner and serves as the central point of contact for those affected by conduct prohibited by this Policy. The Office of Nondiscrimination is responsible for overseeing the College's response to all reports and complaints of conduct prohibited by this Policy and identifying and addressing any patterns or systemic problems revealed by such reports and complaints. The Director of Nondiscrimination/Civil Rights Coordinator has been designated as the College's Title VI, Title VII, and Title IX Coordinator.

### B. Privacy and Confidentiality

References made to *confidentiality* refer to the ability of identified confidential resources to not report crimes and violations to law enforcement or College officials without permission except in extreme circumstances, such as a health and/or safety emergency or child abuse.

References made to privacy mean that Barnard offices and employees cannot guarantee confidentiality but will maintain privacy to the greatest extent possible, and that information will be relayed only as necessary to investigate and/or seek a resolution and to notify the Civil Rights Coordinator or designee (who is responsible for tracking patterns and spotting systemic issues). Barnard will limit the disclosure as much as practicable, even if the Civil Rights Coordinator determines that a request for confidentiality cannot be honored.

Reports made pursuant to this Policy will be kept private but not confidential. That means information provided in reports will be shared only as necessary to investigate the report, to determine appropriate resolutions, and to track patterns and systemic issues. Note that most Barnard employees have an obligation to share all reports of discrimination with the Office of Nondiscrimination.

Medical resources are confidential resources and are not obligated to disclose reports to the Office of Nondiscrimination (under any circumstance) or law enforcement (except in very limited situations, such as when failure to disclose the information would result in imminent danger to the individual or to others or as otherwise required by law).

The following offices and units at Barnard College may provide confidentiality:

- Columbia Sexual Violence Response and Rape Crisis/Anti-Violence Support Center
- Rosemary Furman Counseling Center
- Primary Care Health Service
- Being Barnard
- Ombuds Office
- The Wellness Spot Health Promotion Program
- College Chaplain

### **C. Amnesty for Parties and Witnesses**

Barnard College encourages students to report Prohibited Conduct and to participate in related investigations. The College recognizes that students who have been consuming alcohol or using drugs at the time of an incident may be hesitant to make a report. To encourage reporting, an individual who makes a good-faith report under this Policy or participates in an investigation of a report will not be subject to disciplinary action by the College for personal consumption of alcohol or drugs unless the College determines that the violation was serious and/or placed the health or safety of others at risk. In addition, the College will pursue disciplinary action if it learns that a student has distributed, sold, or otherwise provided another individual with alcohol or drugs for the purposes of inducing incapacitation.

### **D. Training and Education**

Barnard College ensures that all employees and contractors investigating reports and facilitating resolutions pursuant to this Policy receive training on all College policies and procedures, including this Policy, as well as training about the College's mission, education programs, and activities. The College offers a variety of training, awareness, and prevention programs to help prevent Discrimination within the Barnard community. For information on educational training, awareness, and prevention programs offered each year, please contact the Office of Nondiscrimination at [nondiscrimination@barnard.edu](mailto:nondiscrimination@barnard.edu).

### **E. Incidents Involving Minors**

All Barnard employees, students, volunteers, and contractors who learn of potential crimes or misconduct against individuals under the age of 18 are obligated to contact Barnard's Office of General Counsel and the New York State Child Abuse & Maltreatment Hotline at 800-342-3720. When calling the New York State Child Abuse & Maltreatment Hotline, make sure to obtain an ID number and the name of representative contacted. Oral reports must be followed by completing this [form](#) from the Office of Children and Family Services, and sending it to the local child protective services where the incident(s) occurred.

## **F. Bad-Faith Complaints and False Information**

It is a violation of this Policy for any person to submit a report or formal complaint that the person knows, at the time the report or formal complaint is submitted, to be false. This provision does not apply to a good-faith report even if there is no finding of responsibility.

It is also a violation of this Policy for any person to knowingly make a materially false statement during the course of an investigation, adjudication, or appeal under this Policy.

# **II. Procedures Governing Complaints Against Students**

## **1. Introduction to General Procedures**

This section outlines the process the College follows when it receives a report alleging a violation of this Policy by a Barnard student or student group.

The Office of Nondiscrimination is responsible for handling reports alleging Discrimination and other forms of Prohibited Conduct. In addition, the Office of Nondiscrimination may consolidate complaints alleging Discrimination under this Policy with complaints alleging potential violations of other College policies when the allegations arise out of the same facts or circumstances. The Office of Nondiscrimination will consult with other relevant College offices, such as the Office of Student Conduct, in determining whether to consolidate complaint procedures. When reported conduct implicates this Policy and the College's Title IX Sexual Harassment Policy, the procedures set forth in the Title IX Sexual Harassment Policy will apply.

The procedures described below have been developed by the College to determine whether this Policy has been violated. These procedures do not use the same rules of procedure or rules of evidence as those used by courts or law enforcement. Parties making reports pursuant to this Policy may also make reports to law enforcement or file civil actions in court.

## **2. Participation in Process**

The College asks parties to participate fully in the report resolution process. For the College to fully investigate a report, most situations will require the identification and participation of those making the report. However, anonymous reports of violations of this Policy will be investigated to the extent possible.

The College also asks those accused of violating this Policy to participate fully in the report resolution process. If an accused party elects not to participate in any part of the process, the College may proceed without their participation. Parties will be held accountable for any findings of responsibility, even if they decline to participate.

All participants have the responsibility to be completely truthful at all stages of the process. Any Barnard student who knowingly or intentionally provides false information as part of a report or investigation under this Policy will be subject to discipline in accordance with the procedures set forth in the Student Code of Conduct.

### **3. Standard of Evidence**

When investigating violations of this Policy, the College will use the preponderance of the evidence standard. This means that an investigation will determine whether it is more likely than not that a violation of this Policy occurred.

### **4. Advisors**

Students filing or responding to reports under this Policy may request the presence of an Advisor to provide support throughout the investigatory and resolution process. An Advisor may not be a party or witness in the matter or a related matter. It is the responsibility of each student to coordinate scheduling with their Advisor for any meetings. At the written request of a student party, the Office of Nondiscrimination will copy an Advisor on communication to the party provided the party executes a FERPA waiver permitting the Advisor to have access to the party's education records related to the process.

An Advisor may not speak, write, provide information to, or otherwise communicate with investigators or adjudicators during the process, and Advisors may not review any document or attend any meeting in the absence of the student they are assisting or without a valid FERPA waiver. An Advisor may not disrupt any meeting under this Policy.

### **5. The Investigation Process**

Upon receipt of a report of conduct prohibited by this Policy or when a student otherwise chooses to move forward with the complaint resolution process, the first step is an Initial Inquiry. An Initial Inquiry is an assessment by the Office of Nondiscrimination as to whether the allegations, if substantiated, would rise to the level of a violation of Barnard policy(ies) and a determination of the specific policy(ies) implicated. The Office of Nondiscrimination will conduct the Initial Inquiry after receipt of the report or meeting with the student alleging conduct prohibited by this Policy, whichever is later.

#### **A. The Initial Inquiry**

Upon receipt of a report of conduct prohibited by this Policy, the first step is an Initial Inquiry. An Initial Inquiry is an assessment by the Office of Nondiscrimination as to whether the allegations, if substantiated, would rise to the level of a violation of Barnard policy(ies) and a determination of the specific policy(ies) implicated.

##### **1. Supportive Measures**

Before and/or during an investigation under this Policy, the College may offer free supportive services to any student making a report or any student accused of violating the Policy ("Supportive Measures"). Such Supportive Measures are designed to restore or preserve equal access to the College's education programs or activities without unreasonably burdening the other party, to protect the safety of all parties and the College's educational environment, and to deter discrimination.

Supportive Measures may include, but are not limited to, the following:

- Arranging access to counseling services and offering assistance in setting up initial appointments
- Assistance in seeking extensions of deadlines or other course-related adjustments
- Assistance in arranging modifications of class schedules
- Assistance in arranging campus escort services
- Imposition of mutual restrictions on contact between the parties
- Assistance in arranging housing locations
- Assistance in arranging leaves of absence
- Coordinating with campus safety for increased security and monitoring of certain areas of the campus
- Assistance in arranging other changes to academic, living, dining, transportation, and working situations
- Honoring an order of protection or no-contact order entered by a state civil or criminal court, and other similar measures.

In providing Supportive Measures, the Office of Nondiscrimination will make every effort to avoid depriving any students of their education or access to the College's programs or activities. The Supportive Measures needed by parties may change over time, and the Office of Nondiscrimination will regularly communicate with parties to ensure that any Supportive Measures are necessary and effective based on the parties' evolving needs.

## **2. Interim Removal**

At any time after receiving a report of an alleged violation of this Policy, the College may remove a student accused of the violation from the College's educational programs and activities on an emergency basis if it determines, based on an individualized safety and risk analysis, that an immediate threat to the physical health or safety of any individual justifies removal. Any interim removal of a student will involve consultation with the Office of Student Conduct and the Office of the General Counsel.

## **3. Educational Resolution**

An Educational Resolution involves measures taken by the College in response to a report when formal resolution is not desired by the person who may have experienced the conduct alleged in the report, when there is not enough information to proceed with a formal resolution process against a known offending student, and/or when the Office of Nondiscrimination deems it an appropriate response. An Educational Resolution is not used when the Office of Nondiscrimination has determined that the College must proceed with an investigation. An Educational Resolution is nondisciplinary and does not result in findings of responsibility or in sanctions. An Educational Resolution does not preclude the College from taking further steps, including formal resolution or Alternative Resolution, if a complaint is later made or additional information is received by the Office of Nondiscrimination.

## **B. Dismissal**

The Office of Nondiscrimination may dismiss a complaint or any allegations within it at any point during the investigation process if:

- The student who filed the complaint requests to withdraw the complaint or any allegations within it by contacting the Civil Rights Coordinator in writing;

- The College is unable to identify the accused student after taking reasonable steps to do so;
- The accused student is no longer enrolled at, affiliated with, or employed by the College; OR
- The Office of Nondiscrimination determines that the conduct alleged in the complaint, even if proven, would not violate this Policy and the Office of Nondiscrimination has undertaken reasonable efforts to clarify the allegations with the reporting individual.

In the event the Office of Nondiscrimination determines that the complaint should be dismissed, it will promptly inform the parties of dismissal and the basis for the dismissal. The parties may not appeal the dismissal.

### **C. Notification to Parties**

If, after completing an Initial Inquiry, the Office of Discrimination decides to begin a formal resolution process, the Office will provide written notice of that decision to all parties whose identities are known. Notice will include:

- Notice of applicable Barnard procedures and policies.
- Details of the allegations known at the time, including:
  - the identities of the parties involved in the incident, if known and available;
  - the conduct alleged to constitute a violation of policy; and
  - the date and location of the incident(s), if known.

The written notice also will inform the parties of the College's prohibitions on Retaliation and knowingly making false statements or knowingly submitting false information during the complaint resolution process.

If, in the course of an investigation, the College decides to investigate additional allegations not included in the original notice, the Office of Nondiscrimination will provide notice of the additional allegations to the parties whose identities are known as set forth above.

### **D. Acceptance of Responsibility**

Before an investigation ends, the accused student may elect to take responsibility for one or more alleged violations by contacting the Office of Nondiscrimination in writing. Following an acceptance of responsibility, the Office of Nondiscrimination may solicit additional information relating to the matter. The Office of Nondiscrimination will then issue a brief outcome determination to the parties summarizing the alleged violations, stating the student has accepted responsibility, and referring the matter to the appropriate office for sanctioning as delineated in the resolution sections below.

Following the determination of sanctions, parties may appeal the sanctions imposed but not the acceptance of responsibility. In the event a student decides to accept responsibility for some but not all of the alleged violations, the Office of Nondiscrimination will determine whether to sever the matter, sending the violations for which the student has accepted responsibility to the appropriate office for sanctioning and continuing with the formal or informal resolution process for the remaining alleged violations as appropriate.

## **E. The Investigation**

The Office of Nondiscrimination has responsibility for investigating complaints proceeding through the formal resolution process and will assign one or more investigators to each matter, depending on the circumstances. In some cases, one or more external investigators may be retained. Investigators will identify, elicit, and gather evidence related to the alleged misconduct, including both inculpatory and exculpatory evidence. The burden of gathering evidence sufficient to reach a determination of whether or not a violation has occurred lies with the College and not with the parties.

During investigations, students will have an opportunity to describe and respond to allegations and present supporting evidence to the investigator(s). Both parties will have an equal opportunity to present names of potential fact witnesses. Investigators will consider the witness lists provided by the parties when identifying witnesses to interview, but the decision of whom to interview is within investigators' discretion. Investigators may choose to interview witnesses not identified by the parties.

Generally, investigators will meet with each party and each witness separately and may hold multiple meetings with a party or witness to obtain all necessary information. The parties may submit additional materials or information to investigators at any time before the conclusion of the investigation.

## **F. Investigative Report**

Investigators will produce a written Investigative Report that includes a summary of the relevant information provided by the parties and witnesses and a copy and/or summary of all relevant evidence collected during the investigation. Investigative Reports will also include a determination based on the preponderance of the evidence of whether there is sufficient evidence to support a finding of responsibility for a violation of this Policy (and, where applicable, any other relevant policies). If a complaint presents multiple alleged violations, a finding will be made separately as to each alleged violation. The investigator's determination will be based solely on the evidence contained within the final Investigative Report.

Parties will be notified simultaneously in writing of the final Investigative Report and outcome of the investigation and be provided access to review the final Investigative Report.

If a student is found to be responsible for one or more violations, the notification of findings will include information regarding the sanctioning process and may recommend sanctions. In considering Sanctions, the College seeks to meet the following objectives:

- Educating students about the importance of this Policy and its requirements;
- Promoting safety and protecting the College community;
- Deterring future violations of this Policy;
- Ending and preventing the recurrence of misconduct;
- Restoring students to their prior status, to the extent practical and possible.

## **G. Sanctions**

When a student is found responsible for violating this Policy, the Office of Nondiscrimination will provide the final Investigative Report to the Office of Student Conduct, which will determine sanctions and corrective actions based on its review of the Investigative Report and any recommendations. The Office of Student Conduct will notify the student of any sanctions imposed on them and provide a

summary of the rationale for the sanction(s). Students may appeal the sanction determination pursuant to the appeal procedures outlined in [the Student Code of Conduct](#).

Sanctions will be determined based on several factors, including the severity of the conduct and any prior violations of College policy. Sanctions and corrective actions may include, but are not limited to:

- Verbal warning
- Written warning
- Advisory letter
- Conduct review
- Disciplinary hold on academic and/or financial records
- Required counseling or coaching
- Required training or education
- Campus access restrictions
- No trespass order (with respect to campus locations)
- No-contact order (with respect to an individual)
- Loss of privileges
- Probation
- Revocation of Admission offer
- Expulsion
- Degree hold
- Degree revocation

Barnard College may assign other sanctions as appropriate to the particular situation.

In addition to imposing sanctions, the College may take steps to remediate the effects of a violation on the impacted parties and others. The College may offer additional measures and/or take other action designed to eliminate any Discrimination or Hostile Environment, prevent the recurrence of any such conduct, and remedy the effects of any such conduct on students and the community.

## **6. Alternative Resolution**

In matters where a complaint has been filed and has passed Initial Inquiry, the parties may elect to resolve the matter through an informal process called Alternative Resolution. Alternative Resolution is voluntary, and the College will not require parties to engage in this process. All parties will be asked to provide written consent to Alternative Resolution before it begins.

To move forward, the Office of Nondiscrimination must also determine that Alternative Resolution is an appropriate option. In assessing the appropriateness of Alternative Resolution, considerations may include, but are not limited to, the health and/or safety of the campus community, the severity of the conduct, and whether the accused student has committed any prior policy violations.

The College utilizes various forms of Alternative Resolution. Parties interested in Alternative Resolution will receive a written notice containing:

- The allegations;

- The requirements of the chosen Alternative Resolution process;
- The right to consult an Advisor; and
- Notice that at any time before agreeing to a resolution, any party has the right to withdraw from the Alternative Resolution process and resume the formal complaint resolution process.

The Office of Nondiscrimination may also terminate the Alternative Resolution process if the Office determines it is no longer an appropriate option for the parties. The decision to terminate an Alternative Resolution process will be based on factors such as the nature and/or severity of the conduct described in the report, concerns related to safety/risk to campus community, or if the parties are unable to reach a mutual resolution agreement.

Agreements reached as part of Alternative Resolution are final and cannot be appealed.

## 7. Records and Reporting

The Office of Nondiscrimination retains documentation generated during the course of its assessment of and response to reports for seven (7) years. This documentation may include initial reports, documentation of attempts to determine the identity(ies) of parties, written notices, interview notes and recordings, documentary evidence collected, documentation concerning Supportive Measures and Interim Measures, Investigative Reports, determination letters, sanction notices, and any other relevant documents or correspondence. Relevant portions of this documentation may become part of a student's conduct record or the College's files concerning a student group.

This Policy does not form a contract of any kind.

Any comments or suggestions concerning this Policy should be sent to the Office of Nondiscrimination at [nondiscrimination@barnard.edu](mailto:nondiscrimination@barnard.edu).

## III. Appendices

### Appendix A: NEW YORK STATE STUDENTS' BILL OF RIGHTS

New York State law requires that all institutions of higher education in New York publish the following Bill of Rights for all Students attending higher education institutions in the State.

All Students have the right to:

1. Make a report to local law enforcement and/or state police;

2. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
3. 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 pressure by the institution;
4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
5. Be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services, where available;
6. 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;
7. Describe the incident to as few institution representatives as practicable and not be required to unnecessarily repeat a description of the incident;
8. 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;
9. Access to at least one level of appeal of a determination;
10. 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
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the institution.

## **Appendix B: HYPOTHETICAL SCENARIOS**

The following hypothetical scenarios, which are based on U.S. Office of Civil Rights guidance and findings, are meant to help illustrate some applications of this Policy:

1. An undergraduate student files a report with the Office of Nondiscrimination alleging that she was subjected to a Hostile Environment because she is Jewish. In support of her report, she alleges that the dry-erase board on her dorm room door was defaced with swastikas. Additionally, she alleges that derogatory epithets referencing Jewish people were scrawled on the door and posted by fellow students as comments to her social media feed. The student informs her academic advisor of these incidents and tells her advisor she no longer feels comfortable going to her dorm. The advisor has a meeting with the student to discuss her concerns but fails to take any further action.

The alleged harassment appears based on the student's membership in one or more Protected Classes (e.g., her Jewish religion, as well as the shared ancestry and actual or perceived shared ethnic

characteristics of Jewish people). The use of swastikas and the graffiti/taunts are derogatory towards a particular race, religion, and group of people with shared ethnic characteristics. If the Office of Nondiscrimination's investigation confirms these allegations, the Office of Nondiscrimination would find that those who participated in these harassing actions engaged in Discriminatory Harassment. In addition, the Office of Nondiscrimination could find that the academic advisor failed to fulfill her duty to report the conduct that the student brought to her attention.

2. Student A is a Sikh student who wears a turban. One day, as she was crossing campus to get to class, another student ran up behind her, grabbed her turban off her head, whispered an anti-Sikh slur in Student A's ear, and ran away. Student A reported the incident to campus security, which was able to identify the student who took the turban off Student A's head as Student B. Student B is also Sikh. Student A had never met Student B.

Student B violated the Policy. He subjected Student A to unwelcome verbal and physical conduct based on Student A's membership in a Protected Class, thereby engaging in Discriminatory Harassment. The fact that Students A and B are members of the same Protected Class does not preclude a finding that Student B's conduct violated the Policy.

3. Student H has a visible disability. Some of Student H's classmates asked her about what it was like to live with a disability. Student H told her classmates that she was at college to learn and was not comfortable answering their questions. A few of Student H's classmates—Students I, J, and K—refused to let the subject go. They kept coming up to Student H before and after class with questions about whether she could succeed at school and whether her disability resulted from something wrong her parents had done. Student H repeated that she was not interested in talking about the subject. After a few weeks went by and her classmates did not change their behavior, Student H asked to switch to another section of the same course.

Students I, J, and K violated the Policy when they refused to stop asking Student H questions about her family and when they employed the stereotypes that persons with disabilities cannot succeed and that the parents of people with disabilities are to blame for their disabilities. Student H made it clear that their conduct was unwelcome. The conduct of Students I, J, and K was based on Student H's membership in a Protected Class (i.e., disability), and their refusal to respect Student H's wishes may have created or contributed to a Hostile Environment for Student H, as evidenced by her request to change course sections.

4. A group of Arab students receives College approval to form a new student group to empower and support Arab students. The student group hosts monthly meetings in an outdoor space and is open to all students.

As student group members begin gathering for one of the meetings, dozens of other students surround the student group members and refer to them as "terrorists" and "jihad supporters." The students participating in the meeting become fearful when they realize that they are unable to leave because the group of students has encircled them and shoved some of them. Some Arab students who are members of the student group recognize their classmates in the crowd of harassers and skip class the next day because they fear encountering the harassing students in class. The Arab students file a report with the Office of Nondiscrimination.

Members of the student group complain to College administrators about the harassing conduct they experience during their meeting. The administrators express sympathy and note that “college is difficult, and things are tense.” The administrators take no further actions. The student group members cancel all future meetings because they do not believe that they can safely hold them on campus.

If substantiated, the allegations made to the Office of Nondiscrimination would constitute prohibited Harassment—calling the students who attended the meeting terrorists, blocking their ability to leave the area, and shoving them—appear to be based on Protected Classes (i.e., the students’ actual or perceived race, color, or national origin, including their Arab shared ancestry or ethnic characteristics). The alleged threatening behavior of the encircling students, including shoving some students and physically restricting students from leaving the event, combined with the yelling of stereotyping language, caused the students to fear for their safety and limited or denied some members of the student group the ability to participate in or benefit from the College’s education activities on account of their membership in a Protected Class. In addition, the Office of Nondiscrimination could find that the College administrators failed to fulfill their duty to report the conduct that was brought to their attention.

5. A student wearing a kippah is walking to class. At the door of the classroom, he encounters a group of students who, immediately upon seeing him, surround him at close quarters and state: “No Zionists are welcome here. You support genocide.” The group refuses to move, and the student is prevented from attending class. The same thing happens the next time the student tries to attend class; this time, the other students say: “Colonizers aren’t welcome here,” and “go back to Europe.” After these incidents continue to repeat, the student meets with his Dean of Students to express that these incidents made him feel unsafe, unwelcome, and concerned about continuing his education at the College. No action is taken by the Dean, and the harassing conduct continues. The student subsequently makes a report to the Office of Nondiscrimination.

The students who harassed the student wearing a kippah violated the Policy. Even though the students used the word “Zionists” and other phrases, the alleged incidents of harassing conduct appear to be based on the Jewish student’s perceived membership in one or more Protected Classes (e.g., religion and national origin, including shared ancestry or ethnic characteristics). The other students’ alleged conduct repeatedly prevented another student from attending class, which limited his ability to participate in or benefit from an element of the College’s educational program. Blocking students from attending class and accusing them of supporting genocide on the basis that the students are perceived to be Jewish are discriminatory actions grounded in the perceived religion, national origin, and shared ancestry of these students. Therefore, the Office of Nondiscrimination would find that the other students engaged in Discriminatory Harassment and could find that the Dean of Students failed to fulfill his duty to report the conduct.

6. Student O, a Latino male, and Student P, a White male, were enrolled in the same sociology class. Student P often didn’t do the assigned readings and kept asking Student O to send him his notes. One day, Student O told Student M that he wouldn’t provide Student P with any more of his notes, explaining that Student P needed to do his own work. Student P responded by texting Student O the phrase “goody two-shoes” every half-hour for two days straight. Student O never responded. Then, starting on the third day, Student P started texting Student O an anti-Latino slur every half-hour. Student O still didn’t respond and blocked Student P’s number.

Student P violated the Policy. Text messages, phone calls, emails, and other forms of electronic communication fall within the scope of the Policy. Repeatedly texting Student O the phrase “goody

two-shoes” does not constitute Discriminatory Harassment (because the phrase is not related to Student O’s actual or perceived membership in or association with a Protected Class), although texting Student O repeatedly over the course of two days could violate other College policies. However, when Student P began repeatedly texting the racial slur, he engaged in Discriminatory Harassment.

7. A student files a complaint with the Office of Nondiscrimination alleging that she was subjected to a Hostile Environment because she is Chinese. The student alleged that a professor stated during office hours that “Chinese people don’t deserve to be in this country.” The student alleged that the professor made additional comments in subsequent classes and that students in those classes made similar comments. The student also stated that several Chinese students in the professor’s class reported the professor’s and classmates’ comments to administrators and noted that they felt threatened. The student alleged that the administrators declined to speak to any students who indicated they felt threatened by their professor’s or classmates’ conduct. Chinese students in the class stopped attending.

If substantiated, the Office of Nondiscrimination would find that the professor and the other students who made comments about Chinese students not deserving to be in the United States violated the Policy because they subjected the students to unwelcome conduct that created a Hostile Environment based on national origin and reasonably deterred Chinese students from attending class. In addition, the Office of Nondiscrimination could find that the administrators failed to fulfill their duty to report the conduct that was brought to their attention.

8. Students L, T and N, all members of the same student group, were asked to collaborate on a group project. Student L is Black; Students T and N are White. When the three students met to work on the project, every time Student L made a statement that Student T disagreed with, Student T made the “OK” hand gesture that is associated with white supremacist movements. Student T disagreed with Student N as well but did not make any hand gestures when expressing disagreement with Student N. Student N sat silently the whole time. Student L refused to continue working with Students T and N and complained about Student T’s behavior to the Office of Nondiscrimination. When Student T was notified of Student L’s report, she asked Student N to tell Student L that unless he dropped his report, Student T would not support Student L’s candidacy to be president of the student group. Student N relayed Student T’s message to Student L and told Student L to let the matter go.

If substantiated, the Office of Nondiscrimination could find that Student T violated the Policy by engaging in Discriminatory Harassment, and in addition, that Students T and N both violated the Policy by engaging in Retaliation. First, Student T’s use of a hand movement associated with white supremacist movements constituted a threatening, intimidating, or hostile act and an insulting or obscene gesture, both of which are forms of Discriminatory Harassment based on Student L’s race that could create a Hostile Environment. Second, Student T threatened to take adverse action against Student L because he complained about Student T’s conduct. By relaying Student T’s message and telling Student L that he should give in to Student T’s threat, Student N also took adverse action against Student L. Threatening Student L in this manner is conduct that would discourage a reasonable person from reporting alleged Discrimination prohibited by this Policy therefore constitutes Retaliation. The Policy prohibits Student N from engaging in Retaliation even though she was not a party in Student L’s original report.

