

# Barnard College



## **TITLE IX SEXUAL HARASSMENT POLICY & GRIEVANCE PROCEDURES**

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# I. TITLE IX SEXUAL HARASSMENT POLICY

## A. Introduction

Barnard College (the “College”) is committed to fostering an environment that is safe and secure and free from all conduct prohibited by Title IX of the Education Amendments of 1972 (“Title IX”). Barnard seeks to increase awareness of such misconduct, prevent its occurrence, and reduce its effects by supporting victims, dealing fairly with offenders, and investigating formal complaints of violations of Title IX.

Barnard adheres to all federal, state, and local laws and regulations prohibiting discrimination and harassment in institutions of higher education, including Title IX, the Violence Against Women Act (“VAWA”), and New York State Education Law 129-B.

This Title IX Sexual Harassment Policy & Grievance Procedures (this “Policy”) defines forms of sexual harassment that are prohibited at Barnard. This Policy applies to prohibited conduct committed by any student, faculty member, staff member, or third-party affiliate who has a formal (including contractual) relationship with the College that occurs in connection with the College’s Education Programs or Activities (as defined below); that occurs within the geographic boundaries of the United States; and where Barnard exercises substantial control over both a person accused of violating the Policy and the context where the alleged violation occurred, including in all Barnard buildings.<sup>1</sup>

Discriminatory conduct falling outside of the purview of this Policy is addressed under [Barnard’s Nondiscrimination Policy and Procedures Governing Complaints Against Students](#) and/or [Barnard’s Workplace Nondiscrimination Policy and Procedures Governing Complaints Against Employees](#). This Title IX Sexual Harassment Policy must be read and understood in conjunction with all College policies and procedures. The requirements and protections of this Policy apply equally regardless of sex, sexual orientation, gender, gender identity, gender expression, age, race, nationality, class status, ability, religion, and other protected classes covered by federal or New York State law.

When allegations are made concerning possible violations of any of Barnard’s nondiscrimination policies, the Director of Nondiscrimination will identify the applicable policy and procedures. Individuals who have experienced or witnessed any form of discrimination, harassment, retaliation, or sexual misconduct may contact the Office of Nondiscrimination to receive support, resources, and information without needing to identify the specific policy violated.

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<sup>1</sup> This Policy does not apply to Sexual Harassment committed by visitors or guests to the College or to Sexual Harassment that occurs outside the geographic boundaries of the United States, even if the Sexual Harassment occurs in connection with the College’s Education Programs or Activities (such as during a study-abroad program). Sexual Harassment that occurs outside the geographic boundaries of the United States is governed by Barnard’s Nondiscrimination Policies and Procedures.

## **B. Definitions and Important Concepts**

The following definitions and concepts are intended to give meaning to the terms appearing in this Policy. Capitalized terms found in this Policy are defined throughout this section.<sup>2</sup>

### **1. Covered Sexual Harassment**

This Policy prohibits “Covered Sexual Harassment,” which is defined as any conduct on the basis of sex that satisfies one or more of the following:

#### **a. Quid Pro Quo Sexual Harassment**

An individual conditioning the provision of an aid, benefit, or service of the College on an individual’s participation in unwelcome sexual conduct.

#### **b. Hostile Environment Sexual Harassment**

Unwelcome conduct that a reasonable person would determine is sufficiently severe, pervasive, and objectively offensive that it effectively denies a person equal access to Barnard’s Education Programs or Activities.

#### **c. Sexual Assault**

Any sexual act directed against another person without the Affirmative Consent of that person, including instances where a person is incapable of giving consent.

#### **d. Dating Violence**

Any violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship.

#### **e. Domestic Violence**

Felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under New York State’s domestic or family violence laws, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of New York State.

#### **f. Stalking**

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.

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<sup>2</sup> The definitions used in this Policy are in accordance with the Clery Act, the Violence Against Women Act, and the Federal Bureau of Investigation’s Uniform Crime Reporting Program.

Conduct that does not meet one or more of these criteria may still be prohibited under Barnard's Student Code of Conduct, Barnard's Nondiscrimination Policy and Procedures Governing Complaints Against Students, and/or Barnard's Workplace Nondiscrimination Policy and Procedures Governing Complaints Against Employees.

## **2. Retaliation**

This Policy prohibits Retaliation, defined as any intimidation, threats, coercion, or discrimination for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations. Specifically, no individual or group may intimidate, threaten, coerce, or discriminate against any individual because the individual has made a report or complaint pursuant to this Policy or has testified, assisted, participated in, or refused to participate in an investigation, proceeding, or hearing under this Policy.

## **3. Affirmative Consent**

This Policy prohibits sexual conduct without Affirmative Consent, and all forms of non-consensual sexual conduct constitute gender-based misconduct under New York law. Affirmative Consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Affirmative Consent may be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate Affirmative Consent. The definition of Affirmative Consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

In addition, this Policy's definition of Affirmative Consent adheres to the following:

- Under New York State law, a person under the age of 17 lacks the capacity to give consent.
- Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- Consent may be initially given but withdrawn at any time.
- Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by lack of consciousness or being asleep, being involuntarily restrained, or other situations when an individual cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.
- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
- When consent is withdrawn or can no longer be given, sexual activity must stop.

## 4. 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.

The Civil Rights Coordinator will not have a conflict of interest or bias for or against Complainants or Respondents (as defined below). Further, 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. All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process do not rely upon sex stereotypes and promote impartial investigations and adjudications of formal complaints under this Policy.

## 5. Education Program or Activity

The prohibitions in this Policy apply to conduct occurring in connection with the College's Education Programs or Activities, defined as the College's functions in the following locations and contexts:

- Any on-campus premises;
- Any off-campus premises over which Barnard has substantial control, including buildings or property owned or controlled by a recognized student organization; and
- Computer and internet networks, digital platforms, and computer hardware or software that is owned or operated by the College or used in the operations of the College's programs and activities over which Barnard has substantial control.

## 6. Participant Definitions

**Complainant:** An individual who is alleged to be the victim of conduct that could violate this Policy.

**Respondent:** An individual who has been reported to be the perpetrator of conduct that could violate this Policy.

**Third-Party Respondent:** Any Respondent who is not a Barnard student, faculty member, or staff member.

**Party:** An individual who is directly involved in a proceeding pursuant to this Policy. Complainants and Respondents are sometimes referred to collectively as "the Parties." Others,

such as witnesses and advisors, are not considered Parties. In a case where the Title IX Coordinator signs and files a complaint, the Title IX Coordinator is not a Party.

## **7. Disability Accommodations**

This Policy does not alter any of the College's obligations under federal disability laws, including the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973. At any point before or during the Title IX Grievance Process, Parties may ask the Title IX Coordinator for reasonable accommodations for disclosed disabilities that do not fundamentally alter the process. The Title IX Coordinator will not affirmatively provide accommodations that have not been specifically requested by the Parties, even where the Parties may be receiving accommodations in other institutional programs and activities.

## **8. Privacy and Confidentiality**

References made to *confidentiality* in this Policy refer to the obligation of designated confidential offices and employees to obtain the permission of the victim before reporting crimes or violations of this Policy to law enforcement or other College officials.

Resources that are identified as confidential may not report crimes or violations without the victim's permission except in extreme circumstances, such as a health and/or safety emergency or child abuse.

Resources that are not identified as confidential will still respect student privacy to the extent possible. College offices and employees who cannot guarantee confidentiality will generally disclose and relay information only as necessary to investigate potential misconduct, seek a resolution, or to track patterns and identify systemic issues.

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

It is a violation of this Policy for any person to submit a report that the person knows, at the time the report is submitted, to be false. 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.

# **C. Reporting Title IX Harassment**

Barnard College encourages reporting of any violation of this Policy, including Covered Sexual Harassment. Members of the Barnard community who believe they have experienced Covered Sexual Harassment have the right to choose whether or not to report the incident to the College, law enforcement, or both. They also have the right to choose whether to engage with the College once the College receives a report of Covered Sexual Harassment.

## **Reporting Obligations**

All Barnard employees, including student-employees, are obligated to promptly report any potential Covered Sexual Harassment about which they become aware. Failure to report will subject employees to corrective action. Please note that this reporting obligation does not require a person experiencing Covered Sexual Harassment to report their own experiences if they choose not to. Failure of employees to fulfill this reporting obligation will be referred to the appropriate office for corrective action.

## **Incidents Involving Minors**

All Barnard employees, students, volunteers, and contractors who learn of potential crimes or misconduct against individuals under the age of 18 must 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, please make sure to obtain an ID number and the name of the representative contacted. After submitting an oral report, reporters must also complete this [form](#) from the Office of Children and Family Services and send it to the local child protective services where the incident(s) occurred.

## **How to Report**

Employees may file reports electronically or via email.

To file a report electronically:

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

To file a report via email:

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

In addition, the staff members identified below are specially trained to work with individuals who report potential Covered Sexual Harassment:

### **The Office Nondiscrimination**

<https://barnard.edu/nondiscrimination>

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

Sara Olszak  
Associate Director, Office of Nondiscrimination  
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Elliott 106J  
212-853-6373  
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Director, Office of Nondiscrimination  
Elliott 106L  
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## **Amnesty for Covered Sexual Harassment Parties and Witnesses**

The College recognizes that a student who has been consuming alcohol (including underage consumption) or using drugs at the time of a potential incident may be hesitant to make a report because of potential consequences for that conduct. To encourage reporting, a student who makes a good-faith report of conduct that may be prohibited by this Policy or participates in an investigation as a witness or Party will not be subject to disciplinary action by the College for personal consumption of alcohol or drugs that is revealed in a report or investigation, unless the College determines that the consumption was serious and/or placed the health or safety of others at risk. Moreover, this amnesty does not extend to the distribution or sale of alcohol or drugs, or otherwise providing another individual with alcohol or drugs for the purposes of inducing incapacitation. This amnesty also does not preclude or prevent action by police or other legal authorities.

## **External Reporting**

An individual who has experienced Sexual Assault, Dating Violence, Domestic Violence, or Stalking has the right to choose whether to file a report with the New York City Police Department. The College and criminal justice systems work independently from one another. Law enforcement authorities do not determine whether a violation of Title IX or College Policy has occurred, and the criminal justice system uses different standards related to proof and evidence than those that apply under this Policy.

Complaints and inquiries regarding discrimination, harassment, and retaliation involving federal laws also may be directed to:

U.S. Department of Education  
Office for Civil Rights  
Lyndon Baines Johnson Department of Education Bldg  
400 Maryland Avenue, SW  
Washington, DC 20202-1100  
Telephone: 800-421-3481  
FAX: 202-453-6012; TDD: 800-877-8339  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)

## **D. Non-Investigatory Measures**

Once the College receives a report of a potential violation of this Policy, the College may engage in the following activities before opening an investigation or during an investigation.

### **1. Supportive Measures**

Complainants have the right to receive supportive measures even if they choose not to file a formal complaint. Respondents may also be entitled to supportive measures during an investigation.

Supportive measures are non-disciplinary and non-punitive. They may include but are not limited to:

- Counseling
- Assistance in seeking extensions of deadlines or other course-related adjustments
- Arranging access to counseling services and assistance in setting up initial appointments
- Assistance in arranging modifications of work or class schedules

- Assistance in arranging campus escort services
- Imposition of mutual restrictions on contact between the parties
- Assistance in arranging changes in work or 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 this support, the Office of Nondiscrimination will make every effort to avoid depriving any student of their education or access to the College's Education Programs or Activities. The support needed by each Party may change over time, and the Office of Nondiscrimination will communicate with Parties to ensure that any support remains necessary and effective based on the Parties' evolving needs.<sup>3</sup>

## **2. Interim Removal**

### **Student Respondents**

Barnard retains the authority to remove a Respondent from the College's Education Programs and Activities on an interim basis when Barnard (1) undertakes an individualized safety and risk analysis and (2) determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Covered Sexual Harassment justifies removal. Any interim removal of a student will involve consultation with the Division of Campus Life and Student Experience and the Office of General Counsel.

In the event the College imposes an interim removal, it will provide the Respondent with notice and an opportunity to challenge the removal decision. If the Respondent wishes to challenge the interim removal, the Respondent may do so, in writing, within two (2) business days of their receipt of the notice. The Director of Nondiscrimination or designee will review the challenge and determine whether the interim removal is with good cause and may continue. Any challenge or reevaluation of an interim removal will be based on both the original assessment and any new information collected as part of the challenge. The interim removal will remain in effect while a challenge is under review and, if upheld, will remain in effect until the conclusion of the Title IX Grievance Process or until the basis for imposing the emergency removal no longer exists.

### **Employee Respondents**

Barnard retains the authority to place a non-student employee Respondent on administrative leave during the Title IX Grievance Process consistent with Barnard's Office of Human Resources policies.

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<sup>3</sup> See: 85 Fed. Reg. 30401.

## **E. Alternative Resolution**

In matters where a complaint has been filed and has passed initial inquiry (see Section II.C below), 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 alleged conduct, and whether the accused individual has committed any prior policy violations.

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 (see Section II.D below); 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. 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, and whether the Parties are able to reach a mutual resolution agreement.

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

## **II. TITLE IX GRIEVANCE PROCESS**

### **A. Timeframe**

The timeframe for the Title IX Grievance Process begins with the filing of a Formal Complaint. The Grievance Process will be concluded within a reasonably prompt manner, generally within ninety (90) business days after the filing of the Formal Complaint, but the Process may be extended for good cause, including but not limited to the absence of a Party, a Party's Advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

### **B. Filing a Formal Complaint**

To file a Formal Complaint, a Complainant must provide the Title IX Coordinator with a written signed complaint describing the facts alleged. Complainants may file a Formal Complaint under this Policy only if they are currently participating in, or attempting to participate in, the Education Programs or Activities of Barnard College, including as an employee.

If a Complainant does not wish to file a Formal Complaint, the Title IX Coordinator will determine whether it is necessary for the Title IX Coordinator to file a Formal Complaint so that the College may respond to the reported conduct. If the Title IX Coordinator files a Formal Complaint, the College will inform the Complainant of this decision in writing. The Complainant will not be required to participate in the process but will receive all procedural notices issued under this Policy.

Nothing in this Policy prevents a Complainant from seeking the assistance of state or local law enforcement alongside the appropriate on-campus process.

The Office of Nondiscrimination 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, when the allegations of Covered Sexual Harassment arise out of the same facts or circumstances.

### **C. Initial Inquiry Prior to Commencement of Investigation**

In a case where the Complainant files a Formal Complaint, the Office of Nondiscrimination will first conduct an initial inquiry before beginning an investigation. An initial inquiry is an assessment of whether the allegations, if substantiated, would rise to the level of a violation of this Policy; a determination of the specific Policy provision implicated; a determination of whether the Office of Nondiscrimination has jurisdiction; and an assessment of appropriate College response.

#### **1. Jurisdiction**

The Office of Nondiscrimination will exercise jurisdiction when the alleged conduct: (i) occurred in the United States; (ii) occurred in a Barnard program or activity; and (iii) the alleged conduct, if true, would

constitute a violation of this Policy. If all of these elements are met, the Office of Nondiscrimination will investigate the allegations according to this Policy.

If any one of these elements is not met, the Office of Nondiscrimination will notify the Parties that the Formal Complaint is being dismissed. The College will promptly send written notice of the dismissal and the reason for the dismissal simultaneously to the Parties through their Barnard email accounts. It is the responsibility of Parties to maintain and regularly check their email accounts. Each Party may appeal this dismissal using the procedure outlined in “Appeals,” below.

## **2. Allegations Potentially Falling Under Two Policies**

If the alleged conduct, if true, includes conduct that would constitute a violation of this Policy and conduct that would not constitute a violation of this Policy but may constitute a violation of other College policies, this Policy will be applied in the investigation and adjudication of all of the allegations.

## **D. Formal Investigation**

### **1. Notice of Allegations**

For matters proceeding to formal investigation, the Title IX Coordinator will draft and provide the Notice of Allegations to all Parties. Such notice will occur within seven (7) business days or as soon as practicable after the Office of Nondiscrimination receives or makes a Formal Complaint if there are no extenuating circumstances.

The College will provide sufficient time for the parties to review the Notice of Allegations before conducting any initial interviews.

### **2. Contents of Notice of Allegations**

The Notice of Allegations will include the following:

- Notice of applicable policies and procedures.
- Notice of the allegations potentially constituting a violation of this Policy, including Covered Sexual Harassment, and details known at the time the Notice of Allegations is issued, such as:
  - the identities of the Parties involved in the incident, including the Complainant;
  - the conduct allegedly constituting Covered Sexual Harassment or other violations of this Policy; and
  - the date and location of the alleged conduct.
- A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the Grievance Process.

### **3. Ongoing Notice**

If, in the course of an investigation, additional allegations about the Complainant or Respondent are brought to the attention of the Office of Nondiscrimination, the Office will notify the Parties via their Barnard email account. The parties will be provided sufficient time to review the additional allegations before any initial interview regarding the additional allegations or charges.

### **4. Acceptance of Responsibility**

At any time before an investigation ends, a Respondent may elect to take responsibility for the alleged conduct 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 issue a brief outcome determination to the Parties summarizing the allegations and stating the Respondent has accepted responsibility, and will refer 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 a finding of responsibility as accepted by Respondent. In the event a Respondent decides to accept responsibility for some but not all of the allegations, the Office of Nondiscrimination will determine whether to sever the matter, sending the allegations for which the Respondent has accepted responsibility to the appropriate office for sanctioning and continuing with the formal or informal resolution process for the remaining allegations as appropriate.

### **5. Investigation Process**

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 perform an investigation under a reasonably prompt timeframe of the conduct alleged to constitute a violation of this Policy, including Covered Sexual Harassment, as set forth in the Notice of Allegations.

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, Parties will have an opportunity to describe and respond to allegations and present supporting evidence to the investigator(s). 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. Investigators will not access, consider, or disclose medical records without a waiver from the Party to whom the records belong or about whom the records include information.

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.

### **a. Advisors**

From the point a Formal Complaint is made and at all times during an investigation and the remainder of the Grievance Process, the Complainant and Respondent will have the right to be accompanied by an Advisor of their choice to all meetings, interviews, and hearings that are part of the investigation, adjudication, and appeal process. Advisors are governed by the following:

- An Advisor is a support person who may be present to provide support to a Complainant or Respondent.<sup>4</sup> The Advisor is not prohibited from having a conflict of interest or bias in favor of or against Complainants or Respondents generally, or in favor or against the parties to the particular case.
- Before a Party's Advisor may participate in any meeting or receive any documents as part of any process under this Policy, the Party must execute a FERPA waiver permitting the Advisor to have access to the Party's education records related to the process.
- It is the responsibility of each Party to coordinate scheduling with their Advisor for any meetings. The Office of Nondiscrimination will communicate directly with the parties (not with Advisors).

Advisors **may not**:

- Speak on behalf of Parties.
- Pose questions to the investigator(s).
- Answer questions posed to Parties.
- Make requests (outside of scheduling and accommodations).
- Provide information to the investigator(s).
- Be disruptive.

### **b. Inspection and Review of Evidence**

Before the investigation ends, the Parties will have an opportunity to inspect and review the evidence under consideration in the investigation.<sup>5</sup> The purpose of the inspection and review process is to allow each Party an equal opportunity to meaningfully respond to the evidence prior to conclusion of the investigation. All Parties must submit all evidence they would like the investigator(s) to consider prior to the Parties' time to inspect and review evidence.

Any evidence that is directly related to the allegations raised in the Formal Complaint will be available for inspection and review by the Parties. This will include:

- Evidence that is relevant, even if that evidence does not end up being relied upon by the institution in making a determination regarding responsibility;<sup>6</sup> and
- Inculpatory or exculpatory evidence (i.e., evidence that tends to prove or disprove the allegations) that is directly related to the allegations, whether obtained from a Party or other source.

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<sup>4</sup> An Advisor may be, but is not required to be, an attorney.

<sup>5</sup> Barnard has no obligation to use any specific process or technology to provide access to the evidence and retains discretion to determine the method and format and any restrictions or limitations on access.

<sup>6</sup> Evidence obtained in the investigation that the investigator determines is not directly related to the allegations in the Formal Complaint will be included in the appendices to the Investigative Report.

The Parties will have ten (10) business days to inspect and review the evidence and submit a written response by email to the investigator(s). The investigator(s) will consider the Parties' written responses before completing the Investigative Report.

Any evidence subject to inspection and review will be available at any hearing, including for purposes of cross-examination.

The Parties and their Advisors must sign an agreement not to disseminate, photograph, or otherwise copy any of the evidence subject to inspection and review or to use such evidence for any purpose unrelated to the Title IX Grievance Process.<sup>7</sup>

## **6. Investigative Report**

Investigators will produce a written Investigative Report that fairly summarizes relevant evidence, and will provide the Investigative Report to the Parties in electronic format at least ten (10) business days prior to the hearing. Each Party may submit a written response to the Investigative Report.

The Investigative Report is not intended to catalog all evidence obtained by the investigator(s), but only to provide a fair summary of that evidence. Only relevant evidence (including both inculpatory and exculpatory relevant evidence) will be referenced in the Investigative Report.

The investigator(s) may redact irrelevant information from the Investigative Report when that information is contained in documents or evidence that is/are otherwise relevant.<sup>8</sup>

## **7. Dismissal of Formal Complaint During Investigation or Hearing Process**

The College may, in its discretion, dismiss a Formal Complaint or any allegations within it at any point during the investigation or adjudication process if:

- The Complainant requests to withdraw the Formal Complaint or any allegations within it by contacting the Title IX Coordinator in writing;
- The College is unable to identify the accused individual(s) after taking reasonable steps to do so;
- The Respondent is no longer enrolled at, affiliated with, or employed by the College; or
- Specific circumstances prevent the College from gathering evidence sufficient to reach a determination regarding the Formal Complaint or the allegations within it.

Upon reaching a decision that the Formal Complaint will be dismissed, the College will promptly send written notice of the dismissal of the Formal Complaint or any specific allegation within the Formal Complaint, and the reason for the dismissal, simultaneously to the Parties through their Barnard email accounts. It is the responsibility of the Parties to maintain and regularly check their email accounts.

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<sup>7</sup> See: 85 Fed. Reg. 30026, 30435 (May 19, 2020).

<sup>8</sup> See: 85 Fed. Reg. 30026, 30304 (May 19, 2020).

## **E. Title IX Hearing**

### **1. General Rules of Hearings**

The Office of Nondiscrimination will not issue a finding of responsibility arising from an allegation of Covered Sexual Harassment without holding a live hearing unless the Respondent has voluntarily admitted responsibility or the matter has otherwise been resolved through Alternate Resolution. Otherwise, the Parties cannot waive the right to a live hearing.

The live hearing may be conducted with all Parties physically present in the same geographic location, or, at the Office of Nondiscrimination's discretion, any or all Parties, witnesses, and other participants may appear at the live hearing virtually. In the case of a virtual hearing, the Office of Nondiscrimination will utilize technology that enables participants simultaneously to see and hear each other.

The hearing will be recorded, and the recording or transcript will be made available to the Parties for inspection and review.

### **2. Continuances or Extensions**

The Office of Nondiscrimination may determine that multiple sessions or a continuance (a pause on the continuation of the hearing until a later date or time) are needed to complete a hearing. If so, the Office of Nondiscrimination will notify all participants and endeavor to accommodate all participants' schedules and complete the hearing as promptly as practicable.

### **3. Newly Discovered Evidence**

As a general rule, no new evidence may be submitted and no new witnesses may be presented during the live hearing.

If a Party identifies new evidence or witnesses that were not reasonably available prior to the live hearing and could affect the outcome of the matter, the Party may request that such evidence or witnesses be considered at the live hearing. The Decisionmaker (see Section II.E.4.a, below) will consider this request and make a determination regarding (1) whether such evidence or witness testimony was actually unavailable by reasonable effort prior to the hearing, and (2) whether such evidence or witness testimony could affect the outcome of the matter. The Party offering the new evidence or witness has the burden of establishing these elements by the preponderance of the evidence. If the Decisionmaker answers in the affirmative to both questions, then the Parties will be granted a reasonable pause in the hearing to review the new evidence or prepare for questioning of the new witness.

### **4. Participants in the Live Hearing**

Live hearings are not public, and only the following individuals are permitted to participate in hearings:

## **a. The Decisionmaker**

Upon completion of the investigation, the Office of Nondiscrimination will promptly appoint a trained Decisionmaker to conduct the hearing based on the following parameters:

- The hearing body will consist of a single Decisionmaker.
- The Decisionmaker will not have served as the Title IX Coordinator, Title IX investigator, or advisor to any Party in the case, nor may the Decisionmaker serve on the appeals body in the case.
- The Decisionmaker will not have a conflict of interest or bias in favor of or against Complainants or Respondents generally or in favor of or against the Parties to the particular case. The Parties will have an opportunity to raise any objections regarding a Decisionmaker's actual or perceived conflicts of interest or bias at the commencement of the live hearing.
- The Decisionmaker will be trained on topics including: how to serve impartially; issues of relevance, including how to apply the rape shield protections provided for Complainants; and any technology to be used at the hearing.

## **b. The Parties**

Parties generally must participate in hearings and have no right to waive a hearing. At the same time, the College will not threaten, coerce, intimidate, or discriminate against a Party in an attempt to secure the Party's participation.<sup>9</sup>

If a Party refuses to participate in a hearing or does not appear for a hearing, the Office of Nondiscrimination may proceed with the hearing in the Party's absence and may reach a determination of responsibility in their absence, including through any evidence gathered that does not constitute a "statement" by that Party.<sup>10</sup> If a Party does not submit to cross-examination, the Decisionmaker generally cannot rely on any prior statements made by that Party in reaching a determination regarding responsibility; the Decisionmaker may, however, reach a determination regarding responsibility based on evidence that does not constitute a "statement" by that Party.

Importantly, a verbal or written statement constituting part or all of the alleged Covered Sexual Harassment itself is not a prior statement that must be excluded if the maker of the statement does not submit to cross-examination about that statement. In other words, a prior statement would not include a document, audio recording, audiovisual reading, and digital media, including but not limited to text messages, emails, and social media postings, that constitute the conduct alleged in the Formal Complaint to have been the Covered Sexual Harassment.

The Decisionmaker will not draw an inference of responsibility based solely on a Party's absence from the live hearing or refusal to answer cross-examination or other questions.<sup>11</sup>

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<sup>9</sup> See: 34 C.F.R. § 106.71; see also 85 Fed. Reg. 30026, 30216 (May 19, 2020).

<sup>10</sup> See: 85 Fed. Reg. 30026, 30361 (May 19, 2020).

<sup>11</sup> See: 34 C.F.R. §106.45(b)(6)(i).

### **c. Witnesses**

The College will not compel witnesses to participate in a live hearing. Additionally, witnesses have the right not to participate in the hearing and may not be retaliated against for declining to participate.<sup>12</sup>

### **d. Advisors**

Advisors may be present at hearings, just as they may be present for other parts of the Grievance Process (see Section II.D.5). In the event a Party is unable to secure an Advisor to attend the live hearing specified in this Policy, the College will provide the Party an Advisor, without fee or charge, who will conduct questioning on behalf of the Party at the hearing. The College will have sole discretion to select the Advisor it provides. If a Party does not attend the live hearing, the Party's Advisor may appear and conduct cross-examination on their behalf.

## **5. Hearing Notice**

The Office of Nondiscrimination will transmit written notice to the Parties notifying the Parties of the Decisionmaker's appointment; setting a date for the pre-hearing conference (if any); setting a date and time for the hearing; and providing a copy of the College's hearing procedure as set forth below.

## **6. Pre-Hearing Conference**

Prior to the hearing, the Decisionmaker has the discretion to determine whether to conduct a pre-hearing conference with the Parties and their Advisors and the format for any pre-hearing conference. Generally, the pre-hearing conference will be conducted in person with the Parties and their Advisors. However, the Parties may be separated into different rooms upon request, with technology enabling the Parties to participate simultaneously and contemporaneously by video and audio.

In the Decisionmaker's discretion, the pre-hearing conference may be conducted virtually, by use of video and audio technology, where all participants participate simultaneously and contemporaneously by use of such technology.

During a pre-hearing conference, the Decisionmaker will discuss the hearing procedures with the Parties; address matters raised in the Parties' written responses to the investigation report as the Decisionmaker deems appropriate; discuss whether any stipulations may be made to expedite the hearing; discuss the witnesses whom the Parties have requested be served with Notices of Attendance and/or the witnesses whom the Parties plan to bring to the hearing without a Notice of Attendance; and resolve any other matters that the Decisionmaker determines, in their discretion, should be resolved before the hearing.

## **7. Issuance of Notices of Attendance**

After the pre-hearing conference, the Decisionmaker or the Office of Nondiscrimination will transmit Notices of Attendance to any College employee or student whose attendance is requested at the hearing as a witness. The Notice of Attendance will advise the subject of the date and time of the

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<sup>12</sup> See: 85 Fed. Reg. 30026, 30360 (May 19, 2020).

hearing and advise the subject to contact the Decisionmaker immediately if there is a material and unavoidable conflict.

The recipient of a Notice of Attendance should notify any manager, faculty member, coach, or other supervisor, as necessary, if attendance at the hearing will conflict with job duties, classes, or other obligations. All such managers, faculty members, coaches, and other supervisors are required to excuse the recipient of the obligation, or provide some other accommodation, so that the recipient may attend the hearing as specified in the notice.

The College will not issue a Notice of Attendance to any witness who is not a College employee, third-party affiliate, or a student.

## 8. Relevant Evidence and Questions

At the hearing, Parties may offer or raise “relevant” evidence and questions. Evidence and questions are relevant if they tend to make an allegation of Covered Sexual Harassment more or less likely to be true. Importantly:

- Evidence and questions about the Complainant’s sexual predisposition or prior sexual behavior are not relevant unless:
  - They are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant; or
  - They concern specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent and are offered to prove consent.<sup>13</sup>
- Evidence and questions that constitute, or seek disclosure of, information protected under a legally-recognized privilege are not considered relevant.
- Any Party’s medical, psychological, and similar records are not relevant unless the Party has given voluntary, written consent for their use during a hearing.<sup>14</sup>

## 9. Hearing Procedure

For all hearings conducted under this Policy, the procedure will be as follows:

- The Decisionmaker will open the hearing and establish rules and expectations for the hearing.
- The Parties will each be given the opportunity to provide opening statements.
- The Decisionmaker will ask questions of the Parties and witnesses.
- Parties will be given the opportunity for live cross-examination after the Decisionmaker conducts their initial round of questioning.
- During the Parties’ cross-examination, the Decisionmaker will have the authority to pause cross-examination at any time for the purposes of asking their own follow-up questions or as necessary to enforce the established rules of decorum.

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<sup>13</sup> 34 C.F.R. § 106.45(6)(i).

<sup>14</sup> 85 Fed. Reg. 30026, 30294 (May 19, 2020).

- Should a Party or the Party's Advisor choose not to cross-examine a Party or witness, the Party shall affirmatively waive cross-examination through a written or oral statement to the Decisionmaker. A Party's waiver of cross-examination does not eliminate the ability of the Decisionmaker to use statements made by the Party.

#### **a. 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 will ask the other Party or Parties and witnesses relevant questions and follow-up questions, including those challenging credibility, directly, orally, and in real time.

Before any cross-examination question is answered, the Decisionmaker will determine whether the question is relevant as set forth above. Cross-examination questions that are duplicative of those already asked may be deemed irrelevant if they have been asked and answered.

### **10. Determination Regarding Responsibility**

After the hearing, the Decisionmaker will make a finding of responsibility based on the following:

#### **a. Standard of Evidence**

Barnard uses the preponderance of the evidence standard for determinations of responsibility under this Policy. This means that the Decisionmaker determines whether it is more likely than not that a violation of the Policy occurred.

#### **b. General Considerations for Evaluating Testimony and Evidence**

Although the opportunity for cross-examination is required in all hearings, determinations regarding responsibility may be based in part, or entirely, on documentary, audiovisual, and digital evidence, as warranted in the reasoned judgment of the Decisionmaker.

A Decisionmaker shall not draw inferences regarding a Party's or witness's credibility based on the Party's or witness's status as a Complainant, Respondent, or witness, nor shall the Decisionmaker base their judgments on stereotypes about how a Party or witness would or should act under the circumstances.

Generally, credibility judgments should rest on the demeanor of the Party or witness, the plausibility of their testimony, the consistency of their testimony, and their reliability in light of corroborating or conflicting testimony or evidence. Credibility judgments should not rest solely on whether a Party's or witness's testimony is non-linear or incomplete or if the Party or witness is displaying stress or anxiety.

Decisionmakers will weigh both inculpatory and exculpatory evidence (tending to prove or disprove the allegations) in equal fashion. Decisionmakers will give the greatest weight relative to other testimony to first-hand testimony by Parties and witnesses regarding their own memory of specific facts that occurred. A witness's testimony regarding third-party knowledge of the facts at issue will be allowed but will generally be accorded less weight than testimony regarding direct knowledge of specific facts that occurred.

When a Party's or witness's conduct or statements demonstrate that the Party or witness is engaging in retaliatory conduct, including but not limited to witness tampering and intimidation, the Decisionmaker will draw an adverse inference as to the credibility of that Party or witness.

### **c. Components and Timing of the Determination Regarding Responsibility**

The Decisionmaker will issue a written Determination Regarding Responsibility simultaneously to all Parties through their Barnard email accounts. The Determination Regarding Responsibility will include:

- Identification of the allegations potentially constituting a violation of this Policy, including Covered Sexual Harassment;
- A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the Parties, interviews with Parties and witnesses, methods used to gather other evidence, and hearings held;
- For each allegation, a statement of and rationale for a determination regarding responsibility;
- Findings of fact supporting each determination; and
- Conclusions regarding which section of the Policy, if any, the Respondent has or has not violated.

If there are no extenuating circumstances, the Determination Regarding Responsibility will be issued within ten (10) business days of the completion of the hearing.

## **F. Consequences of Violating this Policy**

In the event the Decisionmaker concludes that this Policy was violated, the Office of Nondiscrimination will provide the written Determination Regarding Responsibility to the relevant sanction decision-maker. For students, the sanction decision-maker will be a member of the Office of Student Conduct. For staff member employees, the sanction decision-maker will be the Office of Human Resources in consultation with the employee's manager. For faculty member employees, the decision-maker will be the Vice Provost for Academic Programs or her designee, in consultation with the Office of Human Resources.

The sanction decision-maker will determine sanctions and corrective actions after reviewing the Determination Regarding Responsibility and any recommendations the report may contain. Sanctions are determined based on several factors, including the severity of the conduct and any prior policy violations. The sanction decision-maker, in deciding upon the sanction, will seek to:

- Promote safety and protect the Barnard community;
- End misconduct;
- Deter individuals from engaging in similar future behavior;
- Take steps reasonably calculated to prevent the future reoccurrence of the misconduct; and
- Restore the Complainant to their pre-deprivation status, to the extent practical and possible.

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
- Performance improvement/management process
- Required counseling or coaching
- Required training or education
- Campus access restrictions
- Referral to the Fitness for Duty process
- No-trespass order (with respect to campus locations)
- No-contact order (with respect to an individual)
- Loss of privileges
- Loss of oversight, teaching, or supervisory responsibility
- Probation
- Demotion
- Loss of pay increase
- Transfer (employment)
- Revocation of offer (employment or admissions)
- Disciplinary suspension
- Suspension with pay
- Suspension without pay
- Expulsion
- Termination of employment
- Revocation of tenure
- Degree hold
- Degree revocation
- Termination of contract (for contractors)

Barnard College may assign other sanctions as appropriate to the particular situation and in accordance with relevant policies and/or procedures or contracts.

## **G. Appeals**

Each Party may appeal: (1) the dismissal of a Formal Complaint or any included allegations, (2) a Determination Regarding Responsibility, or (3) a sanction imposed pursuant to a Determination Regarding Responsibility.

### **1. Appeal Procedure**

To appeal, a Party must submit a written appeal setting forth the grounds for appeal within five (5) business days of being notified of the decision. Failure to submit a written appeal within five (5) business days forfeits the right to appeal under this Policy, regardless of the outcome of any other Party's appeal (if submitted).

If a Party submits a timely appeal, the other Party or Parties will be notified in writing that the appeal has been filed, provided with a copy of the appeal, and given ten (10) business days to submit a written response. A written response is limited to fifteen (15) pages. The relevant appeal reviewer may, in their discretion, adjust the time limit for the appeal and/or response.

If both a Complainant and Respondent appeal, the appeals will be considered concurrently. In the event sanctions were imposed, the sanctions will be stayed pending resolution of an appeal.

**a. Grounds for Appeals**

An appeal must be based on one of the following grounds:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time of the dismissal, the Determination Regarding Responsibility, or the sanction decision that could affect the outcome; or
- A conflict of interest or bias on the part of the Title IX Coordinator, investigator(s), or decisionmaker(s) for or against Complainants or Respondents generally or for or against the individual Complainant or Respondent that affected the outcome of the matter.

In the event the appeal is not based upon one of these grounds, the appeal will be automatically dismissed. Disagreement with the finding or sanctions is not, by itself, grounds for appeal. In addition, the fact that any criminal charges based on the same conduct were dismissed, reduced, or resolved in favor of the Respondent does not require, and will not necessarily result in, a change in decisions and/or sanctions.

**b. Appeal Reviewers**

Appeals will be handled by the following Appeal Reviewers, who may delegate the review of an appeal to a designee and will delegate review in any case in which they cannot serve as an impartial reviewer:

- An appeal of a complaint against a student will be addressed by the Director of Student Conduct or their designee.
- An appeal of a complaint against a faculty member will be addressed by the Provost or their designee.
- An appeal of a complaint against a staff member or Respondent of any status not named above will be addressed by the Executive Vice President for Strategy and Chief Administrator Officer or their designee.

The Appeal Reviewer may not have a conflict of interest or bias and may not have served as the Title IX Coordinator or as an investigator or decisionmaker in the same matter.

The appeal is solely conducted via written statements. Appeals are decided upon the record of the original proceeding and any written information submitted by any of the Parties. Neither the Respondent nor the Complainant will be allowed to request an in-person meeting with the Appeal Reviewer.

The Appeal Reviewer may solicit written clarification on any issue raised on appeal from the investigator(s), the Decisionmaker, the sanctions decisionmaker assigned to the case, the Title IX Coordinator, the Complainant, or the Respondent. The Appeal Reviewer shall not substitute their own judgment for the decision of the original Decisionmaker or attempt to rehear the case.

### **c. Appeal Outcomes**

Following the Appeal Reviewer's review of information, in cases involving employees or third-party Respondents, the Appeal Reviewer will:

1. Affirm the finding; or
2. Remand the case for a new hearing.

In cases involving student Respondents, the Appeal Reviewer will:

1. Affirm the finding and sanction originally determined;
2. Affirm the finding and modify the sanction; or
3. Remand the case for a new hearing.

In cases involving student Respondents, sanctions will be modified only if they are found to be clearly disproportionate to the gravity of the violation and/or precedent for similar offenses. Cases should only be remanded for a new hearing if the specified procedural errors were so substantial they effectively denied the Respondent or Complainant a fair hearing, new information merits a new hearing, or a conflict of interest or bias is found to have affected the outcome.

The Appeal Reviewer will notify the Complainant and Respondent in writing simultaneously of the final decision on appeal including the rationale for the decision. Appeal decisions will be rendered within ten (10) business days after the time for the non-appealing Party to submit a written response to the appeal expires. All appeal decisions are final and not subject to further review.

### **d. Finality**

The determination regarding responsibility becomes final on either: (1) the date that the College provides the Parties with the written determination of the result of the appeal, if an appeal was filed consistent with the procedures and timeline outlined above; or (2) if an appeal is not filed, the date on which the opportunity to appeal expires.

## **H. Recordkeeping**

The Office of Nondiscrimination retains documentation generated during the course of its assessment of and response to reports under this Policy for seven (7) years. This includes, as applicable, documentation of attempts to determine the identity(ies) of Parties involved in reported incidents if not known to the reporter; copies of all notices, interview notes, and recordings; documentary evidence collected; documentation concerning Supportive Measures and Interim Measures; Investigative Reports; Determinations Regarding Responsibility; sanction notices; documentation pertaining to appeals, and any other relevant documents or correspondence. Relevant portions of this documentation may become part of a student Respondent's conduct record or the College's files.

## **I. Records Disclosure**

Disciplinary proceedings conducted by the College are subject to FERPA, a federal law governing the privacy of student information. FERPA generally prohibits disclosure of student educational records,

including disciplinary records, without the student’s consent, but it allows for the disclosure of student educational records without a student’s consent in certain circumstances. For example, FERPA allows schools to disclose to alleged victims of violence, including sexual violence, the final results of any College disciplinary proceeding involving the offense. Further, any information gathered in the course of an investigation may be subpoenaed by law enforcement authorities as part of a parallel investigation into the same conduct or required to be produced through other compulsory legal process.

*This Policy does not form a contract of any kind. Any comments or suggestions concerning this Policy should be sent to the Director of Nondiscrimination [nondiscrimination@barnard.edu](mailto:nondiscrimination@barnard.edu).*

### III. APPENDICES

#### Appendix A: Campus And Community Resources

##### 1. 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) <a href="https://www.health.columbia.edu/content/sexual-violence-response-columbia-university">https://www.health.columbia.edu/content/sexual-violence-response-columbia-university</a>
<b>Rosemary Furman Counseling Center</b>	100 Hewitt Hall   212-854-2092 For after-hours emergencies, call 855-622-1903 <a href="https://barnard.edu/healthwellness/student-counseling">https://barnard.edu/healthwellness/student-counseling</a>
<b>Primary Care Health Service</b>	Lower Level, Brooks Hall   212-854-2091 <a href="https://barnard.edu/primarycare">https://barnard.edu/primarycare</a>
<b>Office of Nondiscrimination</b>	First Floor, Elliott Hall   212-854-0037 <a href="https://barnard.edu/nondiscrimination">https://barnard.edu/nondiscrimination</a>
<b>Being Barnard</b>	107A LeFrak Center for Wellbeing-Barnard Hall   212-853-8191 <a href="https://barnard.edu/beingbarnard">https://barnard.edu/beingbarnard</a>
<b>Ombuds Office</b>	Virtual   212-854-1352 <a href="https://barnard.edu/ombuds-office">https://barnard.edu/ombuds-office</a>

<b>The Wellness Spot</b>	119 Reid Hall   212-854-3063 <a href="https://barnard.edu/TheWellnessSpot">https://barnard.edu/TheWellnessSpot</a>
<b>University Chaplain</b>	710 Lerner Hall   212-854-1474 <a href="https://ouc.columbia.edu/content/of-vice-university-chaplain">https://ouc.columbia.edu/content/of-vice-university-chaplain</a>

## 2. College Employee Resources

<b>Human Resources</b>	Interchurch Center (61 Claremont Ave.)   646-754-8350
<b>Office of Nondiscrimination</b>	First Floor, Elliott Hall   212-854-0037 <a href="https://barnard.edu/nondiscrimination">https://barnard.edu/nondiscrimination</a>
<b>Ombuds Office</b>	Virtual   212-854-1352 <a href="https://barnard.edu/ombuds-office">https://barnard.edu/ombuds-office</a>
<b>Employee Assistance Program</b>	Offered through Health Advocate. Provides referral services for counseling (24/7) as well as legal and financial advice.  Phone: 877-240-6863  <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>

## 3. Off-Campus Resources for Students and Employees:

To disclose confidentially the incident and obtain services from the New York State, New York City or county hotlines: <http://www.opdv.ny.gov/help/dvhotlines.html>. Additional disclosure and assistance options are catalogued by the Office for the Prevention of Domestic Violence and presented in several languages: <http://www.opdv.ny.gov/help/index.html> (or by calling 1-800-942-6906), and assistance can also be obtained through:

- [SurvJustice:](#)
- [Legal Momentum](#)
- [NYSCASA](#)
- [NYSCADV](#)
- [Pandora's Project](#)
- [GLBTQ Domestic Violence Project:](#)
- [RAINN](#)
- [Safe Horizons](#)

#### 4. Local NYC Resources

- New York City Anti-Violence Project  
116 Nassau Street, 3rd Floor | (212) 714-1141 (this is a 24-hour helpline)  
*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 helpline)  
*WomanKind helpline advocates are multilingual and speak English, Spanish, and 18+ Asian languages and dialects, including Chinese, Korean, Japanese, Tagalog, Hindi, Urdu, Bengali, and Vietnamese.*
- Sanctuary for Families  
P.O. 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 (24-hour helpline) *Safe Horizon is the largest survivor service nonprofit 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, 9 a.m.-5 p.m.) *The SAVI program is located in St. Luke's Hospital. Although their main line is only open during business hours, advocates from the program are available to survivors at the hospital 24/7.*

#### 5. 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 B: New York State Student's 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 C: Hypothetical Scenarios

The following scenarios are meant to illustrate some applications of this Policy:

1. Tat and Dana met at a party. They spent the entire party getting to know each other and dancing. Dana had four shots of tequila and four beers over the course of the evening. At one point, Dana went to the bathroom and Pat noticed that Dana stumbled when walking back into the room. Dana's friend told Pat that Dana had been vomiting. Pat volunteered to take Dana home. When they arrived at Dana's room, Pat began kissing Dana and proceeded to have sex with Dana. When Dana woke up in the morning, Dana asked Pat what happened that evening. Pat told Dana that they had sex and that Dana had asked to have sex.

*Pat having sex with Dana while Dana may have been incapacitated could be a violation of the Title IX Policy, depending upon where the incident happened. If it happened on campus, in a dorm room or College apartment, this could be a violation of the Title IX Policy. If it happened at an off-campus location or outside of the United States, including on a study-abroad program, it could be a violation of the **Nondiscrimination Policy and Procedures Governing Complaints Against Students**. A reasonable person could have concluded that Dana was incapacitated due to her alcohol use because Pat saw Dana stumbling and knew Dana had vomited in the bathroom. Dana was therefore not able to give consent.*

2. Taylor and Hong have been dating for a few months. On several occasions, Taylor and Hong have engaged in consensual sexual intercourse. One night in Taylor's on-campus apartment, Hong and Taylor were making out when Hong said, "I don't feel like having sex tonight." Taylor continued to kiss Hong and took off Hong's clothing despite Hong's verbal and physical objections. Eventually, Hong became silent and submitted to Taylor's insistence to have sex.

*Taylor did not have Hong's consent to engage in sexual intercourse, which is a violation of the **Nondiscrimination Policy and Procedures Governing Complaints Against Students**. Hong objected to having sex and Taylor ignored these objections. Although Taylor and Hong have previously had consensual sexual intercourse, Hong did not consent to sexual conduct on this particular evening. In addition, Hong's silence does not imply that Hong consented.*

3. Peyton and Jordan were in the hallway of their residence hall with a group of their neighbors on the floor, joking around and telling stories. Peyton placed his arms around Jordan's waist as they continued their conversation and then touched Jordan's breasts. Jordan removed Peyton's hands from her body. A few minutes later, Peyton stated he did not understand why Jordan was making such a big deal about Peyton touching her.

*Jordan did not consent to Peyton's sexual touching, which includes contact under or over clothes. Peyton's behavior constitutes intentional physical contact of a sexual nature without Affirmative Consent - a violation of the Title IX Sexual Harassment Policy because this contact took place in a College residence hall.*

4. Kai and Lee met at an on-campus location and quickly realized they were both Barnard students. Lee asked Kai for their number and suggested that they meet for lunch on campus. A few hours later, Lee began to call and text Kai, asking Kai out on a date. Kai told Lee repeatedly that they are not interested and did not want to date them. After that, Lee found Kai's campus address and began to send cards and flowers to Kai's room. Kai wrote to Lee after the first card arrived and asked Lee to leave them alone. Then Lee waited for Kai outside of their class to invite them to dinner.

*Lee's repeated contact with Kai may be prohibited stalking. Because this happened on campus, it would be a violation of the Title IX Policy. Kai declined Lee's multiple requests to go on a date. Additionally, Kai asked Lee to leave them alone and to stop visiting their dorm.*

5. Melissa and Joe are married and live in on-campus housing. After a stressful meeting with his advisor concerning his dissertation, Joe came back to the apartment and berated Melissa about the apartment being messy. Joe grabbed the dinner that Melissa ordered and threw it in her direction, though he did not hit her. When Melissa tried to leave the apartment, Joe grabbed her by the wrist. In the struggle to get away from Joe, Melissa fell and hit her head on the table.

*Joe's actions are domestic violence. The **Nondiscrimination Policy and Procedures Governing Complaints Against Students** applies to conduct on campus. Any use or threat of physical violence toward a domestic partner or spouse constitutes domestic violence.*

6. Bette and Tina had been dating for a few months. Tina, an aspiring photographer, asked Bette to pose in the nude for her portfolio. Bette and Tina got into an argument regarding Tina's photography. Shortly after they broke up, a mutual friend informed Bette that Tina had posted Bette's nude photographs on Facebook.

*This is a violation of **Nondiscrimination Policy and Procedures Governing Complaints Against Students**. The use and distribution of photographs of another person's unclothed body or body parts, without permission, regardless of whether they originally consented, is sexual exploitation.*

7. Noam and Xiang are two students who have been dating for a couple weeks. On several occasions, Noam and Xiang have engaged in consensual sexual intercourse with a condom. One night, Noam asked Xiang to have sex without a condom, and Xiang said no. Noam and Xiang began having consensual intercourse with a condom, but Noam removed the condom without Xiang's knowledge ("stealthing").

*Noam removing the condom while having sex with Xiang is a violation of either **Nondiscrimination Policy and Procedures Governing Complaints Against Students** or **the Title IX Policy**. The location is unclear and would determine which Policy applies. Xiang consented to sex with a condom. Contrary to Xiang's wishes, and knowing that Xiang would not have consented and did not consent to penetration without a condom, Noam deliberately removed the condom without Xiang's knowledge. This act would be prohibited under both policies because Noam did not have Affirmative Consent from Xiang to engage in this type of sexual interaction.*

8. Coco, the Director of the Drama Department and Faculty member, tells Leroy, a student in the dance department, that if he engages in sexual activity with her, she will cast him as the lead in the upcoming production of a play she is directing, entitled "Fame." Leroy agrees to participate in the sexual act, but doesn't really want to. Leroy is a big hit in the production. When the production is over, he files a complaint with the Office of Nondiscrimination.

*This an example of 'quid pro quo' sexual harassment and a violation under the **Title IX Policy**. Leroy agrees to participate in the sexual act but without the desire to do so. Coco, the drama faculty member, who is in a position of power relative to Leroy, has limited Leroy's ability to benefit from the College's education program by conditioning the benefit of receiving the lead role in the play on Leroy's submission to unwelcome sexual conduct.*