



Nondiscrimination and Title IX Compliance

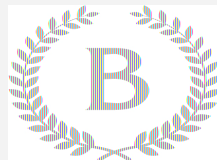
Annual Pool Member Training 2022



Nondiscrimination and Title IX Compliance at Barnard

Oversight of the Policy Against Discrimination and Harassment

- Prevention, outreach, and education
 - Supportive Consultation
 - Response and Case Management
-
- Deputy Coordinators
 - Trained Pool Members
 - Compliance





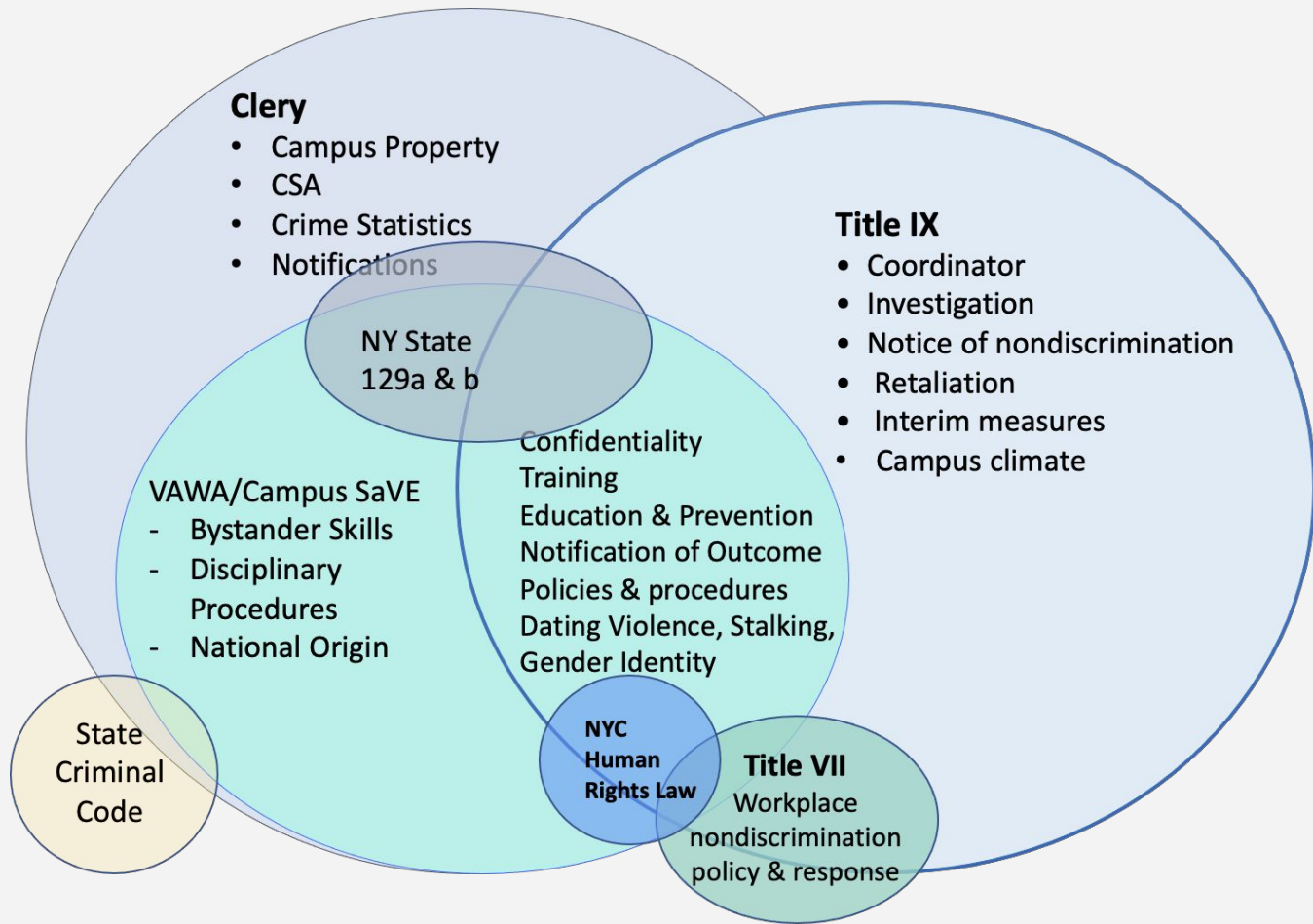
Notice of Nondiscrimination

In compliance with Title VI and Title VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and other federal, state and local laws, and in accordance with our values, Barnard College does not discriminate on the basis of **race, color, religion, creed, national or ethnic origin, sexual orientation, age, pregnancy, disability, or sex, gender identity or expression**, in the administration of any of its educational programs and activities or in its employment practices.

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



- Title IV of the Higher Education Act of 1965
- Title IX of the Education Amendments of 1972
- Title VI of the Civil Rights Act of 1964
- Title VII of the Civil Rights Act of 1964
- Americans with Disabilities Act (1990)
- Section 504 of the Rehabilitation Act of 1973
- Clery Act
 - Amended by the Violence Against Women Act (VAWA) Reauthorization of 2013
(also referred to as Section 304, elements of CampusSaVE)



Spectrum of Sexual Violence



- Sexual Assault, Domestic Violence, Dating Violence, and Stalking
 - Egregious form of sexual harassment (Title IX may apply)
 - VAWA amendments to Clery Act and NY State law set specific expectations
- Incidence of Campus Sexual Violence
 - Assess campus climate
 - Consider pattern recognition

Title IX



“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any education program or activity receiving Federal financial assistance...”

- Sex, gender, gender identity and/or expression, gender stereotyping, pregnancy

Title IX of the Education Amendments of 1972



- Applicable to faculty, staff, students, applicants/prospective, visitors (including minors), and vendors
- Must designate a Title IX Coordinator
- Must have policy and grievance procedures- easily understood and widely shared
 - Prompt and equitable, consistent with regulatory requirements and OCR guidance; provide accessibility, fair and timely process, maintain proper documentation
 - Information for employees and students (prevention & training, consultation)
 - Specific notifications of nondiscrimination statement, resources, and reporting options



What Guides Our Work?

**Legislation
and
Regulations**

**Best Practice
in the Field**

Case Law

**Institutional
Mission and
Vision**

What does this mean at Barnard?



- What is prohibited?
- By whom?
- What are our obligations?
- How do we know?
- What else factors into that complexity?

What Is Prohibited?



- **Values and aspirational statements**
 - Commitment to community
- **Code of Conduct/ Other Handbooks**
- **Policy Against Discrimination and Harassment**
 - Discriminatory Harassment
 - Discrimination
 - Sexual Harassment/Spectrum of Sexual Violence
 - Behavior motivated by protected status



By Whom?



- **Jurisdiction-** over whom we have control (disciplinary or other behavioral expectations)
 - Columbia Respondents
- Policy Against Discrimination and Harassment applies to behaviors that take place on campus, at College-sponsored events (including travel abroad*), and may also apply off-campus and to online behavior when the Director determines that the off-campus or online conduct affects a substantial College interest.

*jurisdictional considerations for Title IX apply.



What are our obligations?



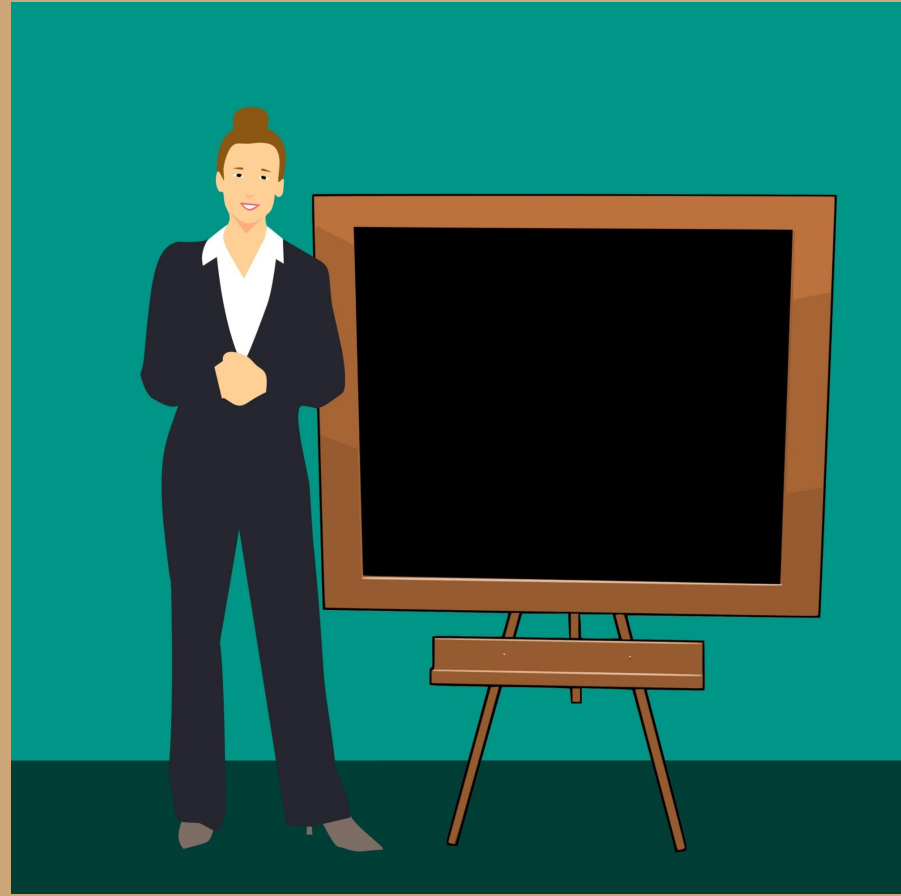
- Access to education/ workplace-supportive measures, accommodations
- Measures to stop behavior, remedy the effects, and prevent recurrence
 - Informal Resolution
 - Facilitated dialogue
 - Restorative practices
 - Directed education and training efforts
 - Administrative Resolution
 - Investigation (prompt, thorough, and impartial)
 - Training or other structural/systemic response (climate considerations)



How do we know?



- Compliance- doing what we say we are going to do
- Following our training
- Documenting our actions (centralized records)





Resolution Processes

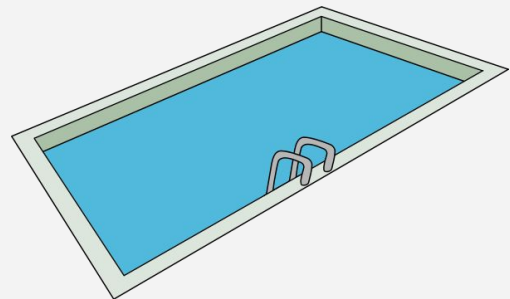
Review: Response Obligations



- Once Barnard is aware that a violation may have occurred, the Director of Nondiscrimination and Title IX must:
 - Promptly contact the Complainant to discuss availability of supportive resources
 - Consider the Complainant's wishes with respect to supportive measures
 - Inform the Complainant of the availability of supportive measures with or without the filing of a formal complaint/report, and
 - Explain to the complainant the process for filing a formal complaint and the corresponding resolution options.



What is the “Pool?”



Barnard’s Discrimination and Harassment Resolution Process and Formal Title IX Grievance Process relies on a pool of faculty and staff (“the Pool”) to carry out the processes.

Nondiscrimination and Title IX

Nondiscrimination and Harassment Resolution Process

Reporting

Formal Title IX Grievance Process

Nondiscrimination and Harassment Resolution Process

Responsible Community Action Policy

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

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

Nondiscrimination and Title IX

Formal Title IX Grievance Process

Reporting

Formal Title IX Grievance Process

Nondiscrimination and Harassment Resolution Process

Responsible Community Action Policy

Federally-Mandated Final Rule Under Title IX

On May 30, 2020, Barnard College informed its community that the U.S. Department of Education’s Office of Civil Rights had issued a Final Rule under Title IX of the Education Amendments of 1972. The Final Rule defines the meaning of “sexual harassment” (including forms of sex-based violence), describes how schools **must** respond to reports of misconduct falling within the new definition of sexual harassment, and sets forth a grievance process that schools **must** follow in these specific covered cases before issuing a disciplinary sanction against a person accused of sexual harassment.

On August 14, despite the repeated objections of many of those institutions – including Barnard – and tens of thousands of individuals, the Final Rule took effect.



Roles that Pool Members May Assume

- Investigator
- Decision-Maker (previously “adjudicator”)
- Appeal Decision-Maker
- Advisor
- Hearing Facilitator
- Facilitator of Informal or Alternative Resolution processes



Deputy Compliance Coordinator Team



Elizabeth Scott-Francis

Director of Nondiscrimination and Title IX
Title IX Coordinator



Danielle-Hope Cabral

Deputy Compliance Coordinator



Deputy Compliance Coordinator Team



Saskia Hamilton

Deputy Compliance Coordinator for
Faculty



Kathleen Veteri

Deputy Compliance Coordinator for Staff



Madeline Camacho

Deputy Compliance Coordinator for
Students



Training: Compliance Requirements

Title IX Coordinators, Investigators, Decision-makers, and any individual who facilitates an informal resolution process must receive training on:

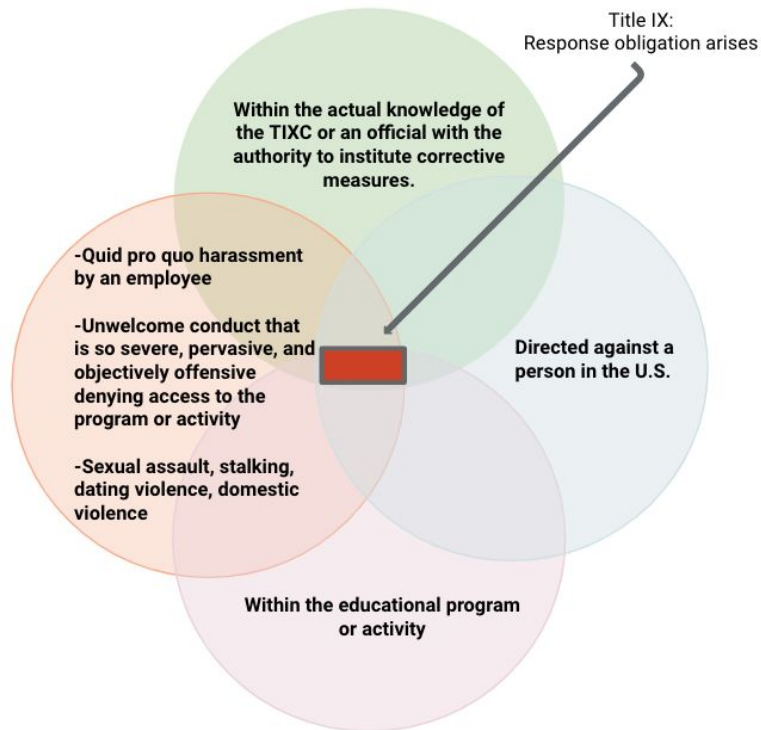
Title IX Final Rule

- The definition of sexual harassment in the regulations,
- The scope of the College's education program or activity,
- How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes as applicable, and
- How to serve impartially, including avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

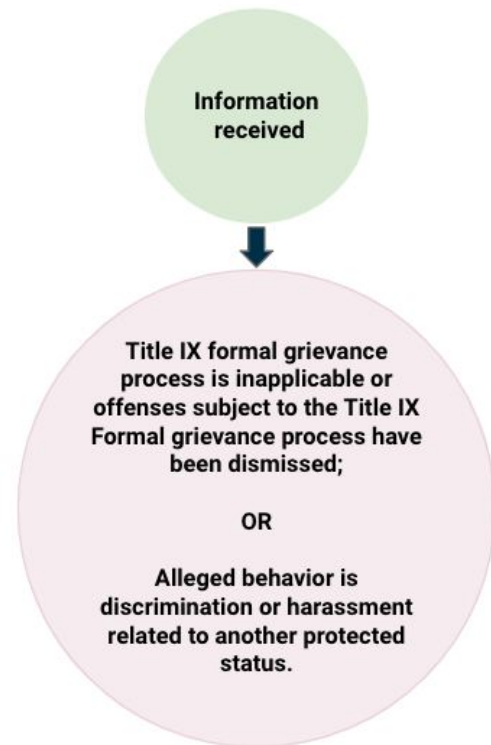
NY 129-B

- Interviewing those impacted by sexual assault
- Conducting investigations of sexual violence
- The effects of trauma
- The rights of the respondent (including the right to a presumption that the respondent is "not responsible" until a finding of responsibility is made).
- Other issues including domestic violence, dating violence, stalking, or sexual assault

Title IX Response



Nondiscrimination Response



♥ Resolution Processes

Informal Resolution

**Nondiscrimination
and Harassment
Resolution Process**

**Formal Title IX
Grievance Process**

Resolution Process



- Intake and Resource-sharing
- Inquiry/ Initial Assessment
- Notice of Investigation
- Initial Interviews
- Review of Information
- Review of Investigation Summary/ Report

Resolution Process



- Convening of Decision-Maker(s)
- Analysis of Facts or Live hearing (if Title IX)
- Rationale for Findings
- Outcome Notification
 - If responsible finding, consequences/ corrective action
 - Remedy and education/ efforts to prevent recurrence



Investigations

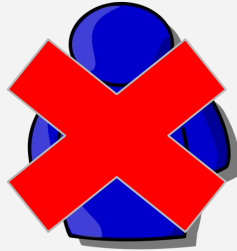
♥ How Many Hats can an Investigator Wear?



Investigator(s)

Person (or team) designated to investigate, gather evidence and compile an investigative report.

Investigator MAY also be the Title IX Coordinator.



Decision-Maker

Person who issues a written determination regarding responsibility.

Cannot be the same person as the Title IX Coordinator or Investigator.



Appeals Designee

Must offer both respondent and complainant an opportunity to appeal.

Cannot be the same person as the Title IX Coordinator, Investigator, or Decision-Maker.



Impartiality



What Constitutes Bias?



- We must conduct a fact-specific, objective inquiry based in common sense to determine bias.
- Bias can include:
 - Decision-making grounded in stereotypes
 - Different treatment based on a person's sex or other protected characteristic
 - A decision based on something other than the facts

Conflict of Interest



- Avoid Prejudgement of the Facts
 - Requires that individuals involved in the resolution process refrain from making a judgement on individual facts, the allegations, or whether a policy violation occurred until they have had the opportunity to consider all of the evidence.

An Impartial Investigation

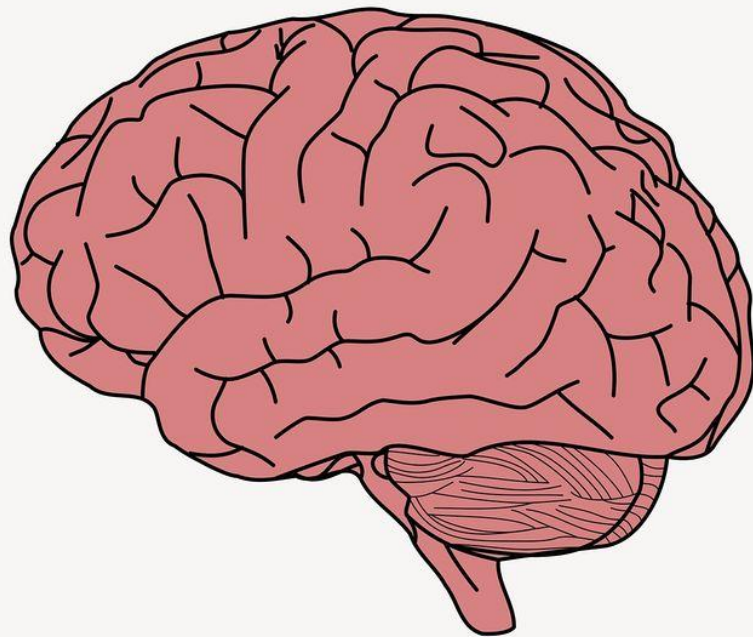
Not influenced by bias or conflict of interest.

Committed to decisions based on an objective view of the facts and evidence as you know them and as they evolve.

Truth seeking, not “your truth” confirming.



Applying Trauma Informed Practices



♥ Trauma informed practices
provide tools and techniques
for interviewing and
engaging with the
Complainant, Respondent, and
Witnesses

Format and Structure of the interview(s)

Format of Questions

Approach to Clarification

♥ Trauma Informed Practices are Designed to:

Encourage
complete and
thorough
investigations

Assist with
recollection

Assist with
recounting

Reduce
potential for
false
information

Minimize
unnecessary
re-traumatization

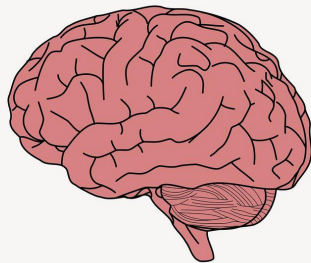
Reduce Bias



Trauma:

An event that is experienced as terrifying, horrifying, or threatening and that is coupled with an actual or perceived lack of control.





When trauma occurs, there are very real changes in brain function that may affect a person's ability to make memory and recount their experience.

Investigation Process



- Issue spotting
- Strategy
- Note taking- review of notes
- Report preparation
- Initial analysis
- Parties review summary report
- Resolution/ decision making team
- Final outcome report



Issue Spotting



Careful review of the information provided and applicable policy

- Wide net of concerns
- Open to additional information
- Clarifying information
- Pattern recognition

Strategy

- Director of Nondiscrimination and Title IX assists in developing the overall investigation strategy.
 - Order of interviews
 - Approach to interviews
 - Development of questions/line of questioning
 - Key information to share at the beginning and closing of interviews
 - Planning review of notes and proper documentation
 - Timeline considerations

AND strategy changes based on information you receive during the investigative process.



Evidence Collection, Note taking, Review of Notes



The Investigator must **gather all evidence sufficient to reach a determination** regarding responsibility.

The Investigator should:

- Undertake a thorough search
- For relevant facts and evidence
- While operating under the constraints of completing the investigation under designated, reasonable prompt timeframes

Interview Objectives:

- Connect
- Listen
- Clarify
- Preserve

Investigative Interviews



**Set
Expectations**

**Elicit a
Narrative**

Listen

**Interview for
Clarification**

Listen

Prior to the Interview

- Secure an appropriate meeting location (we have a conference room in Elliott)
- Allow enough time to conduct the meeting
- If interviewing a party, inform them of their right to have an advisor present.
- Prepare for the meeting (areas of focus, other evidence, review what you have).
- Provide written notice of the meeting (advise parties/witnesses that you will be collecting evidence).



Elicit a Narrative

Where would you like to begin?

Start where you are comfortable and share what you are able to remember.

What are you able to tell me about your experience?



Interview for Clarification

Help me understand

Can you tell me more about...?

Is there anything else you
can share about...?



The Hard Questions

- Details about the sexual contact/discrimination or harassment
 - Seemingly inconsistent behaviors
 - What they were wearing
 - Alcohol or drug consumption
 - Probing into reports of lack of memory
 - Inconsistent evidence or information
-



What Questions Do You Have for Jamie?

“When I got to the party, I was already super lit. I didn’t care and just kept letting Joel get me drinks anyway. I think at some point my memory just completely went away. I was so out of it. Then I woke up in Joel’s bed and it was light outside, and I don’t remember a thing. I was wearing all my clothes from the night before, but I knew that someone had sex with me because I could just feel it, you know? I wanted to leave, so I got up and left. Joel was still asleep. When I was leaving, Joel woke up and tried to talk to me, but I wasn’t about to stay there and listen to him. He looked really guilty and I could tell he felt bad about the night before, so I know that he violated me.”



After the Interview

- Memorialize the interview in writing (notes, summary, transcript)
- Provide opportunity for the party or witness to review
- Provide opportunity for the party or witness to respond
- Incorporate the response

Report Writing



- At the conclusion of an investigation, we must create an investigative report that fairly summarizes the relevant evidence collected.
- Essential Elements of the Report:
 - Intentionally organized to enhance comprehension
 - Factually accurate
 - Concise
 - Without opinion or editorializing
 - Consistent format



Structure of the Report

- Overview of the Investigation
- Statement of Jurisdiction
- Identity of Investigators
- Objective of the Investigation and the Investigation Report
- Prohibited Conduct Alleged
- Witnesses
- Evidence Collected
- Summary of Evidence
- Conclusion

Decision Making



**Live Hearing
(Title IX)**

**Administrative
Review and
Decision-Making**

Decision Making



At the conclusion of the hearing or administrative review, the Decision-maker(s) must make a determination regarding responsibility.

- Preponderance of Evidence
 - “More likely than not” that is, whether a policy violation is more likely than not to have occurred.
 - 50.01 percent or 50 percent and a feather
- Is there sufficient or insufficient information to meet this standard of proof?
 - Weight and credibility
 - Circumstantial and direct evidence
- Outcomes
 - Educational/Restorative
 - Punitive

Written Determination- Key Elements



- Identification of the allegations
- The procedural steps taken throughout the process (from initial complaint to determination regarding responsibility).
- Findings of fact supporting the determination.
- Conclusions regarding the application of the College's Policy Against Discrimination and Harassment to the facts.
- The rationale for the result of each allegation, including rationale for the determination regarding responsibility.
- Any disciplinary sanctions the College imposes on the Respondent and whether the College will provide remedies to the Complainant.
- Information about the appeals process.



Outcome Notification & Follow-Up

- Notification to the Parties
- Information sharing (with those who need to know, what they need to know)
- Case Management
 - Closure
 - Continued support
 - Continued oversight
 - Appeals if applicable



Questions?

Reminder: Monthly Trainings

- Monday, September 26, 2022; 1-2 pm
- Monday, October 31, 2022; 1-2 pm
- Monday, November 28, 2022; 1-2 pm
- ***No December Meeting- Winter Recess***
- Monday, January 30, 2023; 1-2 pm
- Monday, February 27, 2023; 1-2 pm
- Monday, March 27, 2023; 1-2 pm
- Monday, April 24, 2023; 1-2 pm
- Monday, May 29, 2023; 1-2 pm