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
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.
Federal Law

- 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)
Clery
- Campus Property
- CSA
- Crime Statistics
- Notifications

VAWA/Campus SaVE
- Bystander Skills
- Disciplinary Procedures
- National Origin

NYC Human Rights Law

State Criminal Code

NY State 129a & b

Confidentiality Training
Education & Prevention Notification of Outcome Policies & procedures Dating Violence, Stalking, Gender Identity

Title IX
- Coordinator
- Investigation
- Notice of nondiscrimination
- Retaliation
- Interim measures
- Campus climate

Title VII
- Workplace nondiscrimination policy & response
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
“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
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.
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 prejudgement 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

Within the actual knowledge of the TIXC or an official with the authority to institute corrective measures.

- Quid pro quo harassment by an employee
- Unwelcome conduct that is so severe, pervasive, and objectively offensive denying access to the program or activity
- Sexual assault, stalking, dating violence, domestic violence

Directed against a person in the U.S.

Within the educational program or activity

Adapted from Saul Ewing Arnstein & Lehr LLP

Nondiscrimination Response

Information received

Title IX formal grievance process is inapplicable or offenses subject to the Title IX Formal grievance process have been dismissed;

OR

Alleged behavior is discrimination or harassment related to another protected status.
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
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
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
“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
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
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