

# **Barnard College**



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

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## Introduction

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

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

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

- Barnard College's Policy Against Discrimination and Harassment ("The Policy")
- Barnard College's Nondiscrimination and Harassment Resolution Process<sup>2</sup>
- Barnard College's Notice of Nondiscrimination under 2024 Amendments to Title IX Regulations
- Title IX Grievance Procedure for Complaints of Sex-Based Discrimination
- Title IX Grievance Procedure for Sex-Based Harassment Complaints Involving Students

Students, faculty, and staff at the College are subject to the behavioral standards and expectations outlined in the Policy. Questions about the Policy or related procedures may be directed to [nondiscrimination@barnard.edu](mailto:nondiscrimination@barnard.edu) or to the Interim Title IX Coordinator, Joanne Delgadillo.

## A. Barnard College Policy Against Discrimination and Harassment

### I. Overview

Barnard College is committed to providing an environment free from unlawful discrimination, harassment, or retaliation. As such, Barnard College adheres to all federal, state, and local civil rights laws and regulations prohibiting discrimination and harassment in institutions of higher education. Barnard prohibits discrimination against any employee, applicant for employment,

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<sup>1</sup> For the purposes of this Policy and related procedures, the term "College" includes Barnard College. The [Gender-Based Misconduct and Interim Title IX Policy](#) provides the policies and procedures applicable when a Columbia University and/or Teachers College student is a Respondent. In instances in which a Barnard student is a Respondent, the College's Policy and Procedures apply.

<sup>2</sup> This process shall be utilized when the Title IX Coordinator determines that the Title IX Grievance Procedures do not apply or offenses subject to the Title IX Grievance Procedures have been dismissed, or the alleged behavior is discrimination or harassment related to another protected status under the Policy Against Discrimination and Harassment.

student, or applicant for admission on the basis of race, pregnancy, color, religion, creed, national or ethnic origin, age, disability, sexual orientation, gender<sup>3</sup>, predisposed genetic characteristics, gender identity or expression, marital status, height, weight, military status, immigration or citizenship status, any other protected category under applicable local, state, or federal law, including protections for those opposing discrimination or participating in any grievance process on campus, with the Equal Employment Opportunity Commission, or other human rights agencies.

In addition, Barnard College does not discriminate in its employment practices on the basis of sexual and reproductive health decisions, credit history, unemployment status, arrest or conviction record, caregiver status, or victim status for the following offenses: domestic violence, stalking, and/or sex offense.

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

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

Pursuant to NY Education Law Article 129B, this policy also applies to cases involving allegations of sexual assault, dating violence, domestic violence or stalking against students that have a reasonable connection to the College, whether the alleged conduct occurred on campus, off campus or while studying abroad. When such conduct involves students from other institutions, the institutions may work collaboratively, while maintaining compliance with the Family Educational Rights and Privacy Act (FERPA).

## **II. Discrimination**

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<sup>3</sup> As a women's institution, Barnard College accepts applications from those who consistently live and identify as women.

Discrimination is any action that deprives or tends to deprive individuals of educational or employment access, benefits, or opportunities on the basis of the individual's actual or perceived protected status, as described above.

### **III. Discriminatory Harassment**

Discriminatory harassment is unwelcome conduct that creates an intimidating, hostile or abusive work, academic, student residential, or co-curricular environment; alters the conditions of employment or education or unreasonably interferes with an individual's work or academic performance on the basis of the individual's actual or perceived membership in a protected class. Harassment may include, but is not limited to:

- verbal abuse, epithets, slurs, or negative stereotyping
- threatening, intimidating, or hostile acts
- denigrating jokes
- obscene comments or gestures
- offensive or derogatory displays or circulations (including electronic) in the work, academic, or student residential environment
- written or graphic material that disparages or shows hostility or aversion toward an individual or group

Determinations of whether conduct is intimidating, abusive, or hostile will be based on objective and subjective factors, including the totality of the circumstances, as well as the nature of the conduct. A reasonable person in the complainant's position is the standard that determines whether the conduct created a hostile environment. Unlike under Title IX, harassment does not need to be severe or pervasive to violate Barnard's Policy Against Discrimination and Harassment.

### **IV. Non-Title IX Sexual Harassment**

Non-Title IX Sexual harassment is a form of discrimination that includes harassment on the basis of sex, gender, gender identity or expression, sexual orientation, or the status of being transgender. Sexual harassment includes unwelcome conduct of a sexual nature or which is directed at an individual because of that individual's sex, gender, gender identity or expression, sexual orientation, or the status of being transgender. It includes visual, verbal, non-verbal, or physical conduct and when:

- Submission to such conduct is implicitly or explicitly a term or condition of the individual's academic, co-curricular, student life, or employment status or used as a basis for academic, co-curricular, student life, or employment decisions affecting the individual ("quid pro quo"), or
- The conduct has the purpose or effect of unreasonably interfering with the individual's academic, social, student residential, or work performance by creating a hostile environment, regardless of whether the conduct is directed toward that or any specific individual, or
- Such conduct is intentional, serves no legitimate purpose, and involves contact with parts of another person's body and which causes the person to feel degraded or abused or is committed for the purpose of gratifying the other person's sexual desire.

### **V. Non-Title IX Hostile Environment**

A hostile environment occurs when the unwanted and objectionable conduct is based upon the individual's actual or perceived membership in a protected class and limits or denies or unreasonably interferes with an individual's work or academic experience (including student residential, campus life or co-curricular). A single or isolated incident of harassment or discrimination may create a hostile environment.

Examples of conduct that can constitute harassment include:

- Verbal or non-verbal unwelcome sexual advances, innuendos or propositions, racial or sexual epithets, derogatory slurs, offensive or denigrating jokes.
- Derogatory visual posters, cartoons or drawings, suggestive objects or pictures, graphic commentary, leering or obscene gestures.
- Threatening, intimidating or causing physical harm or other conduct that threatens or endangers the health or safety of any person on the basis of their actual or perceived membership in a protected class.

## **VI. Prohibited Retaliation**

Retaliation is an intentional adverse action or threatened action taken by an accused individual directly or indirectly that harms or attempts to harm another individual as reprisal for filing a complaint, supporting a complainant or otherwise participating in a proceeding pursuant to this policy. Retaliation includes intimidating, threatening, disparaging, coercing or in any way discriminating against an individual as reprisal for the individual's complaint or participation in an investigation or proceeding.

Retaliation is an offense separate and apart from the underlying policy violation and will be considered and acted upon independently. Barnard will not tolerate any retaliation against an individual or group for making a complaint of harassment or discrimination in good faith under this policy or for participating in an investigation.

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

### **I. Overview**

Anyone who has experienced or learned of potentially discriminatory and harassing behavior is encouraged to report these incidents. Discrimination and harassment in the context of this resolution process is defined within the Policy Against Discrimination and Harassment ("Policy"), which confirms that such discrimination is prohibited by the College in compliance with federal, state, and local laws.

**The Nondiscrimination and Harassment Resolution Process is applicable when the Title IX Coordinator determines the Title IX Grievance Procedures are inapplicable or offenses subject to the Title IX Grievance Procedures have been dismissed, or the alleged behavior is discrimination or harassment related to another protected status under the Policy Against Discrimination and Harassment.**

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

The procedures described below apply to all allegations of harassment, discrimination, and/or

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

## **II. Review of Reported Information**

Following a report, complaint, or disclosure of an alleged violation of the College's Policy Against Discrimination and harassment, the Title IX Coordinator<sup>4</sup> or designee completes a review of the information shared. This review may include:

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

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

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

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

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<sup>4</sup> If circumstances require, Nondiscrimination and Title IX/CARES Department Senior leadership will designate another person to oversee the process below should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.

### **III. Resolution Process Pool**

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

- To act as optional process advisors to the Parties
- To facilitate informal resolution
- To serve as a Decision-maker
- To serve on an appeal panel

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

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

### **IV. Advisors**

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

#### *Guidelines for Advisors of Choice*

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



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

Each party may choose an advisor<sup>5</sup> who is eligible and available<sup>6</sup> to accompany them throughout the process. The advisor can be anyone, including an attorney, but may not be someone who is also a witness in the process. A party may elect to change advisors during the process and is not obligated to use the same advisor throughout.

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

## **V. Resolution Options**

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

### *Informal Resolution*

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

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

### Personal Informal Resolution

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

- an in-person discussion
- a personal phone conversation
- email correspondence
- other forms of communication

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

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<sup>5</sup> This could include an attorney, advocate, or support person. Witnesses are not entitled to advisors within the process, though they can be advised externally.

<sup>6</sup> "Available" means the party cannot insist on an advisor who simply doesn't have inclination, time, or availability. Also, the advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must implement and monitor sanctions.

of resolution.

### College-Assisted Informal Resolution

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

Types of College-Assisted Informal Resolution include:

#### 1. Facilitated Conversation

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

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

#### 2. Formal Mediation

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

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

#### 3. Alternative Resolution

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

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

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

### *Formal Resolution*

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

Following the review of information, if an investigation is to commence, the Title IX Coordinator or designee will provide written notification of the investigation to the Parties at an appropriate time during the investigation. Advanced notice facilitates the Parties' ability to identify and choose an advisor, if any, to accompany them to the interview. Notification will include a meaningful summary of the allegations, will be made in writing, and may be delivered by one or more of the following methods: in person or emailed to the Parties' Barnard-issued email addresses. Once emailed, and/or received in person, notice will be presumptively delivered. The notification should include the policies allegedly violated, if known at the time. Alternatively, the policies allegedly violated can be provided at a later date, in writing, as the investigation progresses, and details become more apparent. The College aims to complete all investigations within sixty to one hundred twenty (60-120) business days, which can be extended as necessary by the Title IX Coordinator with notice to the Parties as appropriate. However, some investigations can take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc. The College will make a good faith effort to complete the investigation as promptly as circumstances permit and will communicate with the Parties to update them on the progress and timing of the investigation.

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

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

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

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

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

If the Respondent accepts responsibility for *all* of the alleged policy violations, and the Title IX Coordinator or designee has determined appropriate sanction(s) or responsive actions, which are promptly implemented, the process is over. The Complainant will be informed of this outcome. If the Respondent accepts responsibility for *some* of the alleged policy violations and the Title IX Coordinator has determined appropriate sanction(s) or responsive actions, which are promptly implemented for those violations, then the remaining allegations will continue to be investigated and resolved through the Formal Resolution process. The Parties will be informed of this outcome. The Parties are still able to seek Alternative Resolution on the remaining allegations, subject to the stipulations above.

## **VI. Investigation**

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

Participants are expected to cooperate fully and with the College investigation. Providing false or misleading information, or submitting a report or complaint in bad faith, may subject an individual to discipline under this Policy or related College Policies and Processes. All Parties

and witnesses involved in an investigative process are urged to respect the integrity of the procedures and legitimate privacy interests of the Parties and witnesses. This does not prohibit either a Complainant or Respondent from consulting with or obtaining support from family members, counselors, therapists, clergy, doctors, attorneys, or similar resources.

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

#### Evidentiary Rules

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

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

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

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

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

#### Written Investigative Report

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

Following their review of the draft investigation report, both the Complainant and Respondent will have the opportunity to submit to the investigative team written responses to the draft report.

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

The final investigation report will include a determination of whether the Respondent is responsible for the alleged (non-Title IX) misconduct. The investigative team will make this determination after consulting with the Title IX Coordinator. The investigative team will use “preponderance of the evidence” as the standard of proof to determine whether the Respondent is responsible. To find a Respondent responsible for violating the Policy, the investigative team must conclude that the Respondent was more likely than not to have engaged in the conduct at issue.

## **VII. Discipline**

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

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

The investigative team will generally render a disciplinary decision within ten (10) business days following issuance of the final investigation report. The investigative team will deliver a disciplinary decision in writing to the Title IX Coordinator, who will notify the Complainant and Respondent in writing.

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

## **VIII. Withdrawal or Resignation While Resolution Processes Are Pending**

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

**Employees:** Should an employee resign with unresolved allegations pending, the records of the Title IX Coordinator and Human Resources will reflect that status, and any College responses to future inquiries regarding employment references for that individual will include the former employee's unresolved status.

## **IX. Appeals**

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

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

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

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

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

- Decisions by the panel are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive

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

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

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

- Referral to counseling and health services; referral to the Employee Assistance Program
- Education to the individual and/or the community
- Permanent alteration of housing assignments; permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training
- Implementation of long-term contact limitations between the Parties



- Implementation of adjustments to academic deadlines, course schedules, etc.
- Recommendations to campus departments or teams related to practice, organizational structure, or workflows

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

#### **XI. Transcript Notation**

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

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

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

#### **XIII. Recordkeeping**

The College will maintain the following records for a period of at least seven years:

- (1) For each complaint of sex discrimination, records documenting the informal resolution process or the grievance procedures utilized and the outcome.
- (2) A record of each notification the Title IX Coordinator receives of information about conduct that reasonably may constitute sex discrimination under Title IX or this Policy, including records documenting the actions taken in response.
- (3) All materials used to provide training under section XI of this Policy. These training materials will be made available upon request for inspection by members of the public.

## **C. Notice of Nondiscrimination Under 2024 Amendments to Title IX Regulations**

Barnard College does not discriminate on the basis of sex and prohibits sex discrimination in any Education Program or Activity that it operates, as required by Title IX and its regulations, including in admission and employment.

Inquiries about Title IX may be referred to Barnard College's Title IX Coordinator, the U.S. Department of Education's Office for Civil Rights, or both. Barnard College's Interim Title IX Coordinator is Joanne Delgadillo, Milbank 115B, 212-854-0037, nondiscrimination@barnard.edu.

Barnard College's Nondiscrimination Policy is located in Section A of this policy. The Title IX Grievance Procedure for Complaints of Sex-Based Discrimination is located in Section D of this policy, and the Grievance Procedure for Sex-Based Harassment Involving Students is located in Section E of this policy.

To report information about conduct that may constitute sex discrimination or make a Complaint of sex discrimination under Title IX, please refer to the Title IX Grievance Procedures provided in Sections D and E herein.

## **D. Title IX Grievance Procedure for Complaints of Sex-Based Discrimination**

### **I. Effective Date<sup>7</sup>**

This Procedure applies to incidents that occur on or after August 1, 2024. Any incidents reported under this Procedure that occurred on or before July 31, 2024, will be processed through the institution's Policy Against Discrimination and Harassment Related Procedure.

### **II. Scope of Procedure**

Barnard College has adopted a Grievance Procedure that provides for the prompt and equitable resolution of sex discrimination Complaints made by students, employees, or other individuals who are participating or attempting to participate in its Education Program or Activity, or by the Title IX Coordinator, alleging any action that would be prohibited by Title IX or the Title IX regulations.

Sex discrimination, as defined by Title IX, includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

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<sup>7</sup> Should any portion of the 2024 Title IX Final Rule (89 Fed. Reg. 33474 (Apr. 29, 2024)), be stayed or held invalid by a court of law, or if the 2024 Title IX Final Rule is withdrawn or modified to not require elements of this Grievance Procedure, the Grievance Procedure in its entirety, or the invalidated elements of this Procedure, they will be deemed revoked as of the publication date of the opinion or order from the Court and for all reports after that date, as well as any elements of the process that occur after that date if a case is not complete by the date of the opinion or order publication by the Court. If this Procedure is revoked in this manner, any conduct covered under this Procedure shall be investigated and adjudicated under the previous 2020 Title IX Grievance Policy and/or the College's Policy Against Discrimination and Harassment and Related Procedures and/or the Student Code of Conduct. Barnard College will update this Grievance Procedure as soon as practicable to reflect any court rulings or changes that invalidate parts of the Grievance Procedure, if applicable.

Title IX's prohibition on sex discrimination includes Sex-Based Harassment in the form of quid pro quo harassment, hostile environment harassment, and four specific offenses (sexual assault, dating violence, domestic violence, and stalking). **For the prompt and equitable resolution of Complaints of Sex-Based Harassment involving a student Party, the institution will utilize Grievance Procedures for Sex-Based Harassment Complaints Involving Students (Section E, herein).**

### III. Jurisdiction of Procedure

- This Procedure applies to all sex discrimination occurring under Barnard College's Education Program or Activity in the United States.
- Conduct that occurs under Barnard College's Education Program or Activity includes, but is not limited to, conduct that occurs in a building owned or controlled by a student organization that is officially recognized by Barnard College and conduct that is subject to Barnard College's disciplinary authority.
- Barnard College has an obligation to address a sex-based hostile environment under its Education Program or Activity, even when some conduct alleged to be contributing to the hostile environment occurred outside the College's Education Program or Activity or outside the United States.
  - In the limited circumstances in which Title IX permits different treatment or separation on the basis of sex, Barnard College must not carry out such different treatment or separation in a manner that discriminates on the basis of sex by subjecting a person to more than de minimis harm, except as permitted by law.

### IV. Definitions

1. **Admission** means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an Education Program or Activity operated by Barnard College.

2. **Consent** means a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

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

nonconsent is not a burden placed on either party involved in an incident. Instead, the burden remains on the College to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred.

**Incapacitation:** A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent. It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

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

3. ***Complainant*** means:

- (a) a student or employee who is alleged to have been subjected to conduct that could constitute Sex-Based Harassment as defined in this procedure and who was participating or attempting to participate in Barnard College’s Education Program or Activity; or
- (b) a person other than a student or employee who is alleged to have been subjected to conduct that could constitute Sex-Based Harassment under these Grievance Procedures and who was participating or attempting to participate in Barnard College’s Education Program or Activity at the time of the alleged Sex-Based Harassment.

4. ***Complaint*** means an oral or written request to Barnard College that objectively can be understood as a request for Barnard College to investigate and make a determination about alleged sex discrimination at the institution.

5. ***Confidential Employee*** means:

- (1) an employee of Barnard College whose communications are privileged under federal or state law. The employee’s confidential status is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies;
- (2) an employee of Barnard College whom the College has designated as confidential for the purpose of providing services to persons related to sex discrimination. If the employee also has a duty not associated with providing those services, the

employee's confidential status is only with respect to information received about sex discrimination in connection with providing those services; or

(3) an employee of Barnard College who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about sex discrimination. The employee's confidential status is only with respect to information received while conducting the study.

6. ***Disciplinary Sanctions*** means consequences imposed on a Respondent following a determination under this Grievance Procedure that the Respondent violated Barnard College's prohibition on sex discrimination.
7. ***Education Program or Activity*** means all of the operations of a college, university, or other postsecondary institution, or a public system of higher education.
8. ***Party*** means Complainant or Respondent.
9. ***Peer Retaliation*** means retaliation by a student against another student.
10. ***Pregnancy or related conditions*** means
  - (a) Pregnancy, childbirth, termination of pregnancy, or lactation;
  - (b) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or
  - (c) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.
11. ***Relevant*** means related to the allegations of sex discrimination under investigation as part of this Grievance Procedure. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a Decision-maker in determining whether the alleged sex discrimination occurred.
12. ***Remedies*** means measures provided, as appropriate, to a Complainant or any other person Barnard College identified as having had their equal access to Barnard College's Education Program or Activity limited or denied by sex discrimination. These measures are provided to restore or preserve that person's access to Barnard College's Education Program or Activity after Barnard College determines that sex discrimination occurred.
13. ***Respondent*** means a person who is alleged to have violated Barnard College's prohibition on sex discrimination.
14. ***Retaliation*** means intimidation, threats, coercion, or discrimination by any person by Barnard College, a student, or an employee or other person authorized by Barnard College to provide aid, benefit, or service under Barnard College's Education Program or Activity, for the purpose of interfering with any right or privileged secured by Title IX, or because the person has reported information, made a Complaint, testified, assisted or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Grievance Procedure, including an informal resolution process.

15. ***Sex-Based Harassment*** means sexual harassment and other harassment on the basis of sex, including harassment because of gender identity, sexual orientation, sex characteristics, sex stereotypes, and/or pregnancy or other conditions, that is:

(1) *Quid pro quo harassment*. An employee, agent, or other person authorized by Barnard College's Education Program or Activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct;

(2) *Hostile environment harassment*. Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from Barnard College's Education Program or Activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

1. The degree to which the conduct affected the Complainant's ability to access Barnard College's Education Program or Activity;
2. The type, frequency, and duration of the conduct;
3. The Parties' ages, roles within Barnard College's Education Program or Activity, previous interactions and other factors about each Party that may be relevant to evaluating the effects of the conduct;
4. The location of the conduct and the context in which the conduct occurred;  
and
5. Other Sex-Based Harassment in Barnard College's Education Program or Activity.

(3) *Sexual Assault* (as defined in the Clery Act) means any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent;

(4) *Dating Violence* (as defined in the Violence Against Women Act [VAWA] Reauthorization of 2022 and the VAWA Amendments to the Clery Act) means 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: The length of the relationship; the type of relationship; and the frequency of interaction between the persons involved in the relationship.

(5) *Domestic Violence* means any felony or misdemeanor crimes committed by a person who:

(A) is a current or former partner of the victim under the family or domestic violence laws of New York, or a person similarly situated to a spouse of the victim;

- (B) is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
- (C) shared a child in common with the victim; or
- (D) commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of New York.

(6) *Stalking* means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- (A) fear for the person's safety or the safety of others; or
- (B) suffer substantial emotional distress.

16. ***Student*** means a person who has gained admission.

17. ***Supportive Measures*** means individualized measures offered as appropriate and reasonably available, without unreasonably burdening a Complainant or Respondent, not for punitive or disciplinary reasons, and without fee or charge to the Complainant or Respondent to:

- 1) Restore or preserve that Party's access to Barnard College's Education Program or Activity, including measures that are designed to protect the safety of the Parties or Barnard College's educational environment; or
- 2) Provide support during Barnard College's Grievance Procedure for sex discrimination or during the informal resolution process.

#### **V. Basic Requirements of Title IX Grievance Procedure:**

- 1. *Equitable Treatment*: Barnard College will treat Complainants and Respondents equitably.
- 2. *Conflicts and Bias*: Barnard College requires that any Title IX Coordinator, investigator, or Decision-maker not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. A Decision-maker may be the same person as the Title IX Coordinator or investigator.
- 3. *Presumption*: Barnard College presumes that the Respondent is not responsible for the alleged sex discrimination until a determination is made at the conclusion of its Grievance Procedure.
- 4. *Reasonably Prompt Time Frames*: Barnard College has established time frames for the major stages of the Grievance Procedures: (i) The Title IX Coordinator will evaluate whether the Complaint falls under the Grievance Procedure within five calendar days after the Complaint is made; (ii) The College will provide a Notice of Allegations within 10 calendar days after receiving a Complaint; (iii) The investigation shall take 90 calendar days to complete; iv) The determination regarding responsibility will be issued by the Decision-maker to the Title IX Coordinator within two (2) calendar days of the completion of the hearing and provided to the Parties within five (5) calendar days.
- 5. *Extensions*: Barnard College allows for the reasonable extension of time frames on a case-by-case basis for good cause with notice to the Parties that includes the reason for the delay.
- 6. *Privacy*: Barnard College will take reasonable steps to protect the privacy of the Parties and witnesses during its Grievance Procedure. These steps will not restrict the ability of the Parties to

obtain and present evidence, including by speaking to witnesses; consult with their family members, confidential resources, or advisors; or otherwise prepare for or participate in the Grievance Procedure. The Parties cannot engage in retaliation, including against witnesses.

7. *Objectivity*: Barnard College will objectively evaluate all evidence that is relevant and not otherwise impermissible, including both inculpatory and exculpatory evidence. Credibility determinations will not be based on a person's status as a Complainant, Respondent, or witness.
8. *Impermissible Evidence*: The following types of evidence, and questions seeking that evidence, are impermissible (i.e., will not be accessed or considered, except by Barnard College to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether they are relevant:
  - i) Evidence that is protected under a privilege recognized by federal or state law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
  - ii) A Party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the Party or witness, unless Barnard College obtains that Party's or witness's voluntary, written consent for use in its Grievance Procedures; and
  - iii) Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove consent to the alleged Sex-Based Harassment. The fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's consent to the alleged Sex-Based Harassment or preclude determination that Sex-Based Harassment occurred.

## **VI. Disability Accommodations**

### *1. Generally*

This Procedure does not alter any institutional obligations under federal, state, and local disability laws, including the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, the NYSHRL, and the NYCHRL. Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point before or during the Title IX Grievance Procedure that do not fundamentally alter the Procedure. The Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the Parties, even where the Parties may be receiving accommodations in other institutional programs and activities.

### *2. Supportive Measures*



If the Complainant or Respondent discloses a disability, the Title IX Coordinator may consult, as appropriate, with Center for Accessibility Resources and Disability Services (CARDS) to provide support to students with disabilities to determine how to comply with Section 504 of the Rehabilitation Act of 1973 in the implementation of any supportive measures.

## **VII. Reporting Sex Discrimination to the Institution**

### **1. Complaints**

The following people have a right to make a Complaint of sex-based discrimination, including Complaints of Sex-Based Harassment, requesting that Barnard College investigate and make a determination about alleged discrimination under Title IX:

- A “Complainant,” which includes a student or employee of Barnard College who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX; or
- A person other than a student or employee of Barnard College who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX at a time when that individual was participating or attempting to participate in Barnard College’s Education Program or Activity;
- A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a Complainant; or Barnard College’s Title IX Coordinator.

With respect to **Complaints of sex discrimination other than Sex-Based Harassment**, in addition to the people listed above, the following persons have a right to make a Complaint:

- Any student or employee of Barnard College; or
- Any person other than a student or employee who was participating or attempting to participate in Barnard College’s Education Program or Activity at the time of the alleged sex discrimination.

Types of Complaints that may be addressed under these Grievance Procedures include, but are not limited to, sex discrimination other than Sex-Based Harassment, such as:

- Complaints of retaliation;
- Complaints of sex discrimination that do not involve Sex-Based Harassment;
- Complaints regarding failure to make reasonable modifications to policies, practices, or procedures as necessary to ensure equal access and prevent sex discrimination on the basis of parental, family, or marital status, including pregnancy or related conditions; or
- Complaints that Barnard College’s policies or procedures discriminate on the basis of sex.

Complaints may be submitted in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person’s verbal or written report.

***Contact Information for the Title IX Coordinator at Barnard College:***

Name: Joanne Delgadillo  
Title: Interim Nondiscrimination and Title IX Coordinator  
Office Address: Milbank 115B  
Email Address: nondiscrimination@barnard.edu  
Telephone Number: 212-854-0037

## 2. *Confidential Reports*

The following officials at Barnard College will provide privacy, but not confidentiality, upon receiving a report of conduct prohibited by Title IX:

- Title IX Coordinator or designee(s)
- Officials with authority to institute corrective measures under Title IX
- Human Resources

The following officials at Barnard College may provide confidentiality:

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

## 3. *Public Awareness Events*

When the College's Title IX Coordinator is notified of information regarding conduct that reasonably may constitute Sex-Based Harassment under Title IX or this Policy, and such information was provided by a person during a public event to raise awareness about Sex-Based Harassment that was held on the College's campus or through an online platform sponsored by it (for example, a sexual assault survivor sharing their story during a Take Back the Night event), the College is not obligated to act in response to the information and/or initiate an investigation, unless the information shared indicates an imminent and serious threat to the health or safety of a Complainant, any students, employees, or other persons.

However, in all cases, the College must use this information to inform its efforts to prevent Sex-Based Harassment, including by providing tailored training to address alleged Sex-Based Harassment when information shared at such events indicates there may be multiple incidents of Sex-Based Harassment in a particular part of its Education Program or Activity or at a specific campus location.

Nothing in Title IX or this policy obligates the College to require its Title IX Coordinator or any other employee to attend such public awareness events.

## VIII. **Supportive and Interim Measures**

## 1. *Providing Supportive Measures*

Complainants who report allegations of Sex-Based Harassment have the right to receive supportive measures from Barnard College regardless of whether they file a Complaint. Supportive measures are nondisciplinary and nonpunitive. Supportive measures may vary depending upon what is reasonably available at Barnard College.

As appropriate, supportive measures may include but not be limited to:

- Counseling services;
- Extensions of deadlines or other course-related adjustments;
- Modifications of work or class schedules;
- Campus escort services, as available;
- Restrictions on contact applied to one or more Parties (no contact orders)
- changes in class, work, housing, or extracurricular, or any other activity, regardless of whether there is or is not a comparable alternative;
- Leaves of absence;
- Increased security and monitoring of certain areas of the campus; or
- Training and education programs related to Sex-Based Harassment.

Supportive measures must not unreasonably burden either Party and must be designed to protect the safety of the Parties or Barnard College's educational environment, or to provide support during Barnard College's Grievance Procedure under this policy or during informal resolution under these procedures.

Barnard College may modify or terminate supportive measures at the conclusion of the Grievance Procedure or at the conclusion of the informal resolution process or may continue them beyond that point within Barnard College's discretion.

Barnard College will not disclose information about any supportive measures to persons other than the person to whom they apply, including informing one Party of supportive measures provided to another Party, unless necessary to provide the supportive measure or restore or preserve a Party's access to Barnard College's Education Program or Activity, or there is an exception that applies, such as:

- Barnard College has obtained prior written consent from a person with the legal right to consent to the disclosure;
- When the information is disclosed to an appropriate third Party with the legal right to receive disclosures on behalf of the person whose personally identifiable information is at issue;
- To carry out the purpose of the policy when it is necessary to address conduct that reasonably may constitute Sex-Based Harassment under Title IX in Barnard College's Education Program or Activity;
- As required by federal law, federal regulations, or the terms and conditions of a federal award; or
- To the extent such disclosures are not otherwise in conflict with Title IX, when required by State or local law or when permitted under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g, or its implementing regulations, 34 CFR Part 99).

## 2. *Process for Review of Supportive Measures*

Barnard College provides for a Complainant or Respondent to seek modification or reversal of Barnard College's decision to provide, deny, modify, or terminate a supportive measure.

This review will be done by an impartial employee of Barnard College who did not make the challenged decision on the original supportive measure request. The impartial employee of Barnard College who makes this determination will have the authority to modify or reverse the decision if that impartial employee determines that the decision to provide, deny, modify, or terminate the supportive measure was inconsistent with the procedure as outlined above for providing supportive measures in accordance with the Title IX regulations.

Parties are only allowed to challenge their own individual supportive measures. Challenges by one Party will not be heard to supportive measures afforded to the opposite Party, unless that supportive measure directly impacts the Party making such challenge (i.e., two-way no-contact orders).

### 3. *Emergency Removal*

Barnard College's retains the authority to remove a Respondent from Barnard College's Education Program or Activity on an emergency basis, where Barnard College (1) undertakes an individualized safety and risk analysis, and (2) determines that an imminent and serious threat to the health or safety of a Complainant or any students, employees, or other persons arising from the allegations of Sex-Based Harassment justifies removal.

Barnard College will provide the Respondent with notice and an opportunity to challenge the decision immediately following the removal under the following process:

#### *Show Cause Meeting*

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

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

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

The College will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. At the discretion of the Title IX Coordinator, alternative coursework or work options may be pursued to ensure as minimal an academic and employment impact as possible on the Parties. Where the Respondent is an employee, existing provisions for

interim action are applicable instead of the above emergency removal process. Barnard retains the authority to place a nonstudent employee Respondent on a paid or unpaid administrative leave during any Grievance or Resolution procedure.

#### 4. *Administrative Leave*

Barnard College retains the authority to place a nonstudent employee Respondent on administrative leave during the Title IX Grievance Procedure, consistent with the relevant employee handbooks and/or collective bargaining agreements.

Note on student employees: when a Complainant or Respondent is both a student and an employee of Barnard College, Barnard College must make a fact-specific inquiry to determine whether these procedures apply to that student employee. If the Complainant or Respondent's primary relationship with Barnard College is to receive an education and whether the alleged Sex-Based Harassment occurred while the Party was performing employment-related work.

### **IX. The Title IX Grievance Procedure for Sex Discrimination**

#### 1. *Filing a Complaint*

*Who can make a Complaint?*

- A Complainant, which includes a student or employee of Barnard College who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX; or a person other than a student or employee of Barnard College who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX at a time when that individual was participating or attempting to participate in Barnard College's Education Program or Activity;
- A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a Complainant; or
- The Title IX Coordinator.

*Title IX Coordinator-initiated Complaints:* In the absence of a Complaint or the withdrawal of any or all of the allegations in a Complaint, and in the absence or termination of an informal resolution process, the Title IX Coordinator must determine whether to initiate a Complaint of Sex-Based Harassment. This determination is fact-specific, and the Title IX Coordinator must consider:

- The Complainant's request not to proceed with the initiation of a Complaint;
- The Complainant's reasonable safety concerns regarding initiation of a Complaint;
- The risk that additional acts of Sex-Based Harassment would occur if a Complaint were not initiated;
- The severity of the alleged Sex-Based Harassment, including whether the Sex-Based Harassment, if established, would require the removal of a Respondent from campus or imposition of another Disciplinary Sanction to end the Sex-Based Harassment and prevent its recurrence;
- The age and relationship of the Parties, including whether the Respondent is an employee of the College;

- The scope of the alleged Sex-Based Harassment, including information suggesting a pattern, ongoing Sex-Based Harassment, or Sex-Based Harassment alleged to have impacted multiple individuals;
- The availability of evidence to assist a Decision-maker in determining whether Sex-Based Harassment occurred; and
- Whether Barnard College could end the alleged Sex-Based Harassment and prevent its recurrence without initiating these Grievance Procedures.

If after considering these and other relevant factors, the Title IX Coordinator determines that the conduct as alleged presents an imminent and serious threat to the health or safety of the Complainant or other person, or that the conduct as alleged prevents Barnard College from ensuring equal access on the basis of sex to its Education Program or Activity, the Title IX Coordinator may initiate a Complaint.

If the Title IX Coordinator does initiate the Complaint after making this determination, the Title IX Coordinator must notify the Complainant prior to doing so and appropriately address reasonable concerns about the Complainant's safety or the safety of others, including by providing supportive measures as listed in Section VI of these procedures.

#### *Format of Complaint*

As defined in IV(4) of these procedures, a Complaint can be an oral or written request to Barnard College that objectively can be understood as a request for Barnard College to investigate and make a determination about alleged sex discrimination at the institution.

#### *Who can I report a Complaint to?*

- On-Campus Student Resources
- \*Columbia Sexual Violence Response & Rape Crisis/Anti-Violence Support Center
- \*Rosemary Furman Counseling Center
- \*Primary Care Health Service
- Nondiscrimination and Title IX Office
- \*Being Barnard
- \*Ombuds Office
- \*The Wellness Spot Health Promotion Program
- \*University Chaplain
- Human Resources
- \*Employee Assistance Program

\*Indicates confidential resource

## **X. Consolidation of Complaints**

Barnard College may consolidate Complaints of sex discrimination against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against another Party, when the allegations of sex discrimination arise out of the same facts or circumstances. When more than one Complainant or more than one Respondent is involved, references below to a Party, Complainant, or Respondent include the plural, as applicable.

## **XI. Allegations Potentially Falling Under Two Policies:**

If the alleged conduct, if true, includes conduct that would constitute covered sexual harassment and conduct that would not constitute covered sexual harassment, the Title IX Grievance Process will be applied to investigation and adjudication of only the allegations that constitute covered sexual harassment.

## **XII. Notice of Allegations**

Upon initiation of Barnard College's Title IX Grievance Procedure, Barnard College will notify the Parties of the following:

- Barnard College Title IX Grievance Procedure and any informal resolution process;
- Sufficient information available at the time to allow the Parties to respond to the allegations, including the identities of the Parties involved in the incident(s), the conduct alleged to constitute sex discrimination, and the date(s) and location(s) of the alleged incident(s);
- That Retaliation is prohibited; and
- The Parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence.

If, in the course of an investigation, Barnard College decides to investigate additional allegations of sex discrimination by the Respondent toward the Complainant that are not included in the notice provided or that are included in a Complaint that is consolidated, Barnard College will notify the Parties of the additional allegations.

## **XIII. Investigation**

Barnard College will provide for adequate, reliable, and impartial investigation of Complaints. The burden is on Barnard College — not on the Parties — to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred.

Barnard College will provide an equal opportunity for the Parties to present fact witnesses and other inculpatory and exculpatory evidence that is relevant and not otherwise impermissible. Barnard College will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.

Barnard College will provide each Party with an equal opportunity to access the evidence that is relevant to the allegations of sex discrimination and not otherwise impermissible, in the following manner:

College will provide an equal opportunity to access the relevant and not otherwise impermissible evidence.

### *Access to and Review of the Investigative Report*

The Title IX Coordinator will provide each Party and their advisors of choice with an equal opportunity to access and review an accurate description of the relevant evidence collected throughout the investigation that is not otherwise impermissible in the form of an investigative report.

The Parties and their advisors of choice will also have an equal opportunity to access and review the underlying relevant and not otherwise impermissible evidence summarized in the investigative report upon the request of any Party.

The Title IX Coordinator will provide each Party and their advisors of choice with a reasonable opportunity to respond to the investigative report. Both Parties will have the opportunity to respond to the investigative report prior to and during the live hearing.

Barnard College will take reasonable steps to prevent and address the Parties' and their advisors of choice's unauthorized disclosure of information and evidence obtained solely through this Grievance Procedure. Participating individuals who engage in the unauthorized disclosure of information and evidence obtained solely through this Grievance Procedure may be subject to any other College policies and/or procedures that may apply.

Disclosures of information and evidence for purposes of administrative proceedings or litigation related to the Complaint of Sex-Based Harassment are authorized and not considered unauthorized disclosures potentially subject to other disciplinary action.

#### *Impermissible Evidence*

The following types of evidence, and questions seeking that evidence, are impermissible (i.e., will not be accessed or considered, except by Barnard College, to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether they are relevant:

- Evidence that is protected under a privilege recognized by federal or state law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- A Party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the Party or witness, unless Barnard College obtains that Party's or witness's voluntary, written consent for use in its Grievance Procedure; and
- Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove consent to the alleged Sex-Based Harassment. The fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's consent to the alleged sex discrimination or preclude determination that sex discrimination occurred.

#### *Questioning Parties and Witnesses to Aid in Evaluating Allegations and Assessing Credibility*

When a Party's or witness's credibility is in dispute, and such dispute is relevant to evaluating one or more allegations of sex discrimination, the investigator and/or Decision-maker must have an opportunity to question any party or witness whose credibility is in dispute in a live format.



The investigator/Decision-maker will question Parties and witnesses to adequately assess a Party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex discrimination. This will occur during individual meetings with a Party or witness.

Each Party shall have the opportunity to propose questions that the Party wants asked of any Party or witness and have those questions asked by the investigator/Decision-maker during one or more individual meetings, including follow-up meetings, with a Party or witness, subject to the appropriate procedures outlined herein regarding the Decision-maker's advance evaluation of all questions. Each Party will be provided with an audio or audiovisual recording or transcript with enough time for the Party to have a reasonable opportunity to propose follow-up questions.

#### **XIV. Determination Regarding Responsibility**

Following an investigation and evaluation of all relevant and not otherwise impermissible evidence, Barnard College will:

- Use the preponderance of the evidence standard of proof to determine whether sex discrimination occurred. The standard of proof requires the Decision-maker to evaluate relevant and not otherwise impermissible evidence for its persuasiveness. If the Decision-maker is not persuaded by the evidence, under the applicable standard, that sex discrimination occurred, whatever the quantity of the evidence is, the Decision-maker will not determine that sex discrimination occurred.
- Notify the Parties in writing of the determination whether sex discrimination occurred under Title IX, including the rationale for such determination, and the procedures and permissible bases for the Complainant and Respondent to appeal, if applicable;
- Not impose discipline on a Respondent for sex discrimination prohibited by Title IX unless there is a determination at the conclusion of the Grievance Procedure that the Respondent engaged in prohibited sex discrimination.
- If there is a determination that sex discrimination occurred, the Title IX Coordinator will, as appropriate:
  - Coordinate the provision and implementation of Remedies to a Complainant and other people Barnard College identifies as having had equal access to Barnard College's Education Program or Activity limited or denied by sex discrimination;
  - Coordinate the imposition of any Disciplinary Sanctions on a Respondent, including notification to the Complainant of any such Disciplinary Sanctions; and
  - Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within Barnard College's Education Program or Activity.
- Comply with the Grievance Procedure before the imposition of any Disciplinary Sanctions against a Respondent; and
- Not discipline a Party, witness, or others participating in the Grievance Procedure for making a false statement or for engaging in consensual sexual conduct based solely on the determination whether sex discrimination occurred.

#### **XV. Informal Resolution**

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

At any time prior to determining whether Sex-Based Harassment occurred under this Grievance Procedure, including prior to making a Complaint, Parties may instead seek Barnard College's assistance to resolve allegations of Sex Discrimination and may elect to enter the informal resolution process.

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

No Party may be required to participate in informal resolution, and Barnard College may never condition enrollment, employment, or enjoyment of any other right or privilege upon agreeing to informal resolution.

The Parties may elect to leave the informal resolution process at any point until the informal resolution process is concluded. If a Party elects to leave the informal resolution process, the Grievance Procedure that the Parties paused will continue. In participating in the informal resolution process, the Parties understand that the time frames governing the Grievance Procedure will temporarily cease and reinstate only upon reentry into the Grievance Procedure.

Supportive Measures will be available, or continue to be available if already provided, during an informal resolution process, if elected to proceed. The Title IX Coordinator will also, to the extent necessary, take other appropriate prompt and effective steps to ensure that Sex Discrimination does not continue or recur within Barnard College's Education Program or Activity.

### *Notice Prior to Entry Into Informal Resolution Process*

Before the initiation of an informal resolution process, the Title IX Coordinator must provide to the Parties a written notice that explains:

- The allegations;
- The requirements of the informal resolution process;
- That, prior to agreeing to a resolution, any Party has the right to withdraw from the informal resolution process and to initiate or resume Barnard College's Grievance Procedure;
- That the Parties' agreement to a resolution at the conclusion of the informal resolution process would preclude the Parties from initiating or resuming Barnard College's Grievance Procedure arising from the same allegations;
- The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the Parties; and
- What information Barnard College will maintain and whether and how Barnard College could disclose such information for use in its Grievance Procedure if they are initiated or resumed.

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

Even where the Parties agree to submit a matter to informal resolution, the Title IX Coordinator or other designated official may approve the decision to move the matter to the informal resolution process and may determine that informal resolution is not appropriate under the circumstances.

Factors that the Title IX Coordinator may weigh in considering the appropriateness of the informal resolution process include, but are not limited to, the gravity of the allegations, whether there is an ongoing threat of harm or safety to the campus, whether the Respondent is a repeat offender, whether the alleged conduct would present a future risk of harm to others, and whether the Parties are participating in good faith. This determination is not subject to appeal.

Informal resolution processes may never be applied where the allegations include sexual abuse of a minor by an employee.

At any time after the commencement of the informal resolution process, the Title IX Coordinator may determine that the informal resolution process is not an appropriate method for resolving the matter and may require that the matter be resolved through the Grievance Procedure. This determination is not subject to appeal.

If an informal resolution is approved or denied, Barnard College will provide the outcome in writing simultaneously to the Parties. If informal resolution is approved, the Title IX Coordinator shall also provide the information of the facilitator in writing to the Parties in a reasonable time frame once the facilitator is assigned.

#### *Role of the Facilitator*

Informal resolution processes are managed by trained facilitators. All facilitators must not be the same person as the investigator or the/a Decision-maker(s) in Barnard College's Grievance Procedure. Any person designated to facilitate informal resolution must not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. The Title IX Coordinator may serve as the facilitator, subject to these restrictions.

All facilitators must have specialized training, required by law and regulation. Such training includes:

- Barnard College's obligation to address sex discrimination, including Sex-Based Harassment, in its Education Program or Activity;
- The scope of conduct that constitutes sex discrimination, including Sex-Based Harassment, under Title IX, including the definition of Sex-Based Harassment;
- All applicable notification and information requirements related to parental, family, or marital status, including pregnancy or related conditions, and Barnard College's response to sex discrimination;
- The rules and practices associated with Barnard College's informal resolution process; and
- How to serve impartially, including by avoiding conflicts of interest and bias.

#### *Contents of Informal Resolution Agreements*

Potential terms that may be included in an informal resolution agreement between the Parties include but are not limited to:

- Restrictions on contact; and
- Restrictions on the Respondent's participation in one or more of Barnard College's education programs or activities or attendance at specific events, including restrictions Barnard College could have imposed as Remedies or Disciplinary Sanctions had Barnard College determined at the conclusion of the Grievance Procedure that Sex-Based Harassment occurred.

#### *Breach of Informal Resolution Agreements*

If a Party breaches the resolution or if Barnard College has other compelling reasons, such as if it learns of any fraud by a Party in entering into the agreement, Barnard College may void the agreement and initiate or resume the Grievance Procedure.

*Confidentiality:*

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

*Informal Resolution Options*

Barnard College offers the following informal resolution procedures for addressing Complaints of Sex-Based Harassment described under this Grievance Procedure:

1. Administrative Resolution

Should the Parties mutually determine to enter the informal resolution process, and the Respondent elects to accept responsibility for the allegations of the Complaint at any point during the informal resolution process, the institution may administratively resolve the Complaint.

Where the Respondent admits responsibility, the Parties will receive simultaneous written notification of the acceptance of responsibility, and a decision-maker(s) will convene to determine the Respondent's sanction and other Remedies, as appropriate and consistent with institutional policy. The Parties will be given an opportunity to be heard at the sanctions hearing, including without limitation, the submission of impact statements, and the Parties may be accompanied by their advisor, but questioning of Parties or witnesses will not be permitted. The Parties will receive simultaneous written notification of the decision regarding sanctions and Remedies, which may be appealed according to the process described below.

**XVI. Dismissal of a Complaint**

*Bases for Dismissal*

Barnard College may dismiss a Complaint of sex discrimination for any of the following reasons:

- Barnard College is unable to identify the Respondent after taking reasonable steps to do so;
- The Respondent is not participating in Barnard College's Education Program or Activity and is not employed by Barnard College;
- The Complainant voluntarily withdraws any or all of the allegations in the Complaint, the Title IX Coordinator declines to initiate a Complaint under the bases described in these procedures, and Barnard College determines that, without the Complainant's withdrawn allegations, the conduct that remains alleged in the Complaint, if any, would not constitute sex discrimination under Title IX or these Grievance Procedures even if proven; or

- Barnard College determines that the conduct alleged in the Complaint, even if proven, would not constitute sex discrimination under Title IX or these procedures. **Note:** Barnard College must make reasonable efforts to clarify the allegations with the Complainant before dismissing under this basis.

### *Notice of Dismissal*

Upon dismissal, Barnard College will promptly notify the Complainant of the basis for the dismissal. If the dismissal occurs after the Respondent has been notified of the allegations, then Barnard College will also notify the Respondent of the dismissal and the basis for the dismissal promptly following notification to the Complainant, or simultaneously if notification is in writing.

Barnard College will notify the Complainant that a dismissal may be appealed and will provide the Complainant with an opportunity to appeal the dismissal of a Complaint. If the dismissal occurs after the Respondent has been notified of the allegations, then Barnard College will also notify the Respondent that the dismissal may be appealed. Dismissals may be appealed on the following bases:

- Procedural irregularity that would change the outcome;
- New evidence that would change the outcome and that was not reasonably available when the dismissal was made; and
- The Title IX Coordinator, investigator, or Decision-maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that would change the outcome.

Appeal rights must also be outlined in any notification of dismissal of a Complaint, as outlined below.

## **XVII. Appeal of Dismissals and Determinations**

Barnard College offers the following process for appeals from a dismissal or a determination whether sex discrimination occurred:

If the dismissal or determination is appealed, Barnard College will:

- notify the Parties of any appeal, including notice of the allegations, if notice was not previously provided to the Respondent;
- implement appeal procedures equally for the Parties;
- ensure that the Decision-maker for the appeal did not take part in an investigation of the allegations or dismissal of the Complaint;
- ensure that the Decision-maker for the appeal has been trained consistent with the Title IX regulations;
- provide the Parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
- notify the Parties of the result of the appeal and the rationale for the result.

When a Complaint is dismissed, Barnard College will, at a minimum:

- offer supportive measures to the Complainant as appropriate.

- offer supportive measures to the Respondent as appropriate, if the Respondent has been notified of the allegations; and
- take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that sex discrimination does not continue or recur within Barnard College's Education Program or Activity.

The submission of appeal stays (or pauses) any sanctions for the pendency (or duration while the appeal is being deliberated and decided upon) of an appeal. Supportive measures and remote learning opportunities remain available during the pendency of the appeal.

If a Party appeals, the institution will as soon as practicable notify the other Party in writing of the appeal; however, the time for appeal shall be offered equitably to all Parties and shall not be extended for any Party solely because the other Party filed an appeal.

Appeals may be no longer than five pages, double spaced (including attachments). Appeals should be submitted in electronic form using Arial or Times New Roman, 12-point font. Appeals should use footnotes, not endnotes. Appeals that do not meet these standards may be returned to the Party for correction, but the time for appeal will not be extended unless there is evidence that technical malfunction caused the appeal document not to meet these standards.

Appeals will be decided by an Appeal Panel who will be free of conflict of interest and bias and will not serve as investigator, Title IX Coordinator, or hearing Decision-maker in the same matter.

The outcome of the appeal will be provided in writing simultaneously to both Parties and include the rationale for the decision. The determination of the appeal decision-making body is final.

## **XVIII. Retaliation**

Barnard College prohibits retaliation, including peer retaliation, in its Education Program or Activity. Upon receiving a Complaint alleging retaliation or upon receiving information about conduct that reasonably may constitute retaliation under Title IX, Barnard College will initiate its Grievance Procedure or, as appropriate, an informal resolution process.

## **XIX. Education and Training Programs**

All College students and employees are expected to read, understand, and adhere to this Policy. The College provides educational and training programs for faculty and staff concerning conduct that may constitute a violation of College policies and the procedures applicable to alleged violations. Similarly, all students receive access to this information during New Student Orientation Programs (NSOP) and through participation in a pre-arrival module developed and distributed by the Nondiscrimination and Title IX Office. All College employees are required<sup>8</sup> to participate in training programs offered to them and to be knowledgeable about the College's policies and procedures.

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

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<sup>8</sup> All Barnard College employees are required to complete annual online discrimination, harassment, and gender-based misconduct training. Access to the training platform may be found in the Workday portal and is sent via email annually.

## **XX. Resources**

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

### **E. Title IX Grievance Procedure for Sex-Based Harassment Complaints Involving Students**

#### **I. Effective Date<sup>9</sup>**

This Grievance Procedure applies to incidents that occur on or after August 1, 2024. Any incidents reported under this Grievance Procedure that occurred on or before July 31, 2024, will be processed through the institution's Policy Against Discrimination and Harassment and Related Procedures.

#### **II. Scope of Procedure**

Sex-Based Harassment is considered discrimination on the basis of sex if it includes harassment due to actual or perceived sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and/or gender identity.

#### **III. Jurisdiction of Procedure**

Barnard College's Title IX Coordinator will determine if this Grievance Procedure applies to a Complaint. This Grievance Procedure will apply when the following elements are met, in the reasonable determination of the Title IX Coordinator:

- The conduct alleged occurred on or after August 1, 2024;
- The conduct alleged occurred in the United States or the conduct alleged occurred on campus, off campus, or while studying abroad;
- The conduct alleged occurred in Barnard College's Education Program or Activity;
- One of the Parties was an enrolled student at Barnard College at the time of the alleged conduct; and
- The conduct alleged, if true, would constitute Sex-Based Harassment as defined in this Grievance Procedure.

Barnard College has an obligation to address a sex-based hostile environment under its Education Program or Activity, even when some conduct alleged to be contributing to the hostile environment occurred outside Barnard College's Education Program or Activity, or outside of the United States.

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<sup>9</sup> Should any portion of the 2024 Title IX Final Rule (89 Fed. Reg. 33474 (Apr. 29, 2024)) be stayed or held invalid by a court of law, or if the 2024 Title IX Final Rule is withdrawn or modified to not require elements of this Grievance Procedure, the Grievance Procedures in their entirety, or the invalidated elements of this Procedure, they will be deemed revoked as of the publication date of the opinion or order from the Court and for all reports after that date, as well as any elements of the process that occur after that date if a case is not complete by the date of the opinion or order publication by the Court. If this Procedure is revoked in this manner, any conduct covered under this Procedure shall be investigated and adjudicated under the previous 2020 Title IX Grievance Policy and/or the College's Policy Against Discrimination and Harassment and Related Procedures. Barnard College will update this Grievance Procedure as soon as practicable to reflect any court rulings or changes that invalidate parts of the Grievance Procedure, if applicable.

Barnard College's Title IX Coordinator will work with all Complainants to assess such Complaints that may fall under these criteria and direct them to the appropriate College Policies and Procedures that may apply if this Grievance Procedure does not. Barnard College will communicate all such decisions in writing to the Complainant. Any such dismissals shall be subject to appropriate appeal rights under this Grievance Procedure as outlined in the Dismissals section.

Conduct that occurs under Barnard College's Education Program or Activity includes, but is not limited to, conduct that occurs in a building owned or controlled by a Student organization that is officially recognized by Barnard College and conduct that is subject to Barnard College's disciplinary authority under the Student Code of Conduct.

If all elements of jurisdiction are met, Barnard College will investigate the allegations according to this Grievance Procedure as appropriate, unless informal resolution is pursued or unless there are grounds for dismissal of the Complaint.

#### **IV. Nondiscrimination in Application**

The requirements and protections of this Policy apply equally regardless of sex, sexual orientation, gender identity, gender expression, race, color, national origin, religion, creed, age, disability, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, criminal conviction, or other protected classes covered by applicable federal, state, or local law. All requirements and protections are equitably provided to individuals regardless of such protected status(es) or status as a Complainant, Respondent, or Witness. Individuals who wish to file a Complaint about the institution's policy or process may contact the U.S. Department of Education's Office for Civil Rights using contact information available at <https://ocras.ed.gov/contact-ocr>. Individuals may also file complaints with the New York State Division of Human Rights (DHR), using contact information available at <https://dhr.ny.gov/complaint>.

#### **V. Students' Bill of Rights**

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 or Complainant, 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.

## VI. Definitions

1. **Accused** means a person accused of a violation who has not yet entered an institution's judicial or conduct process.
2. **Admission** means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an Education Program or Activity operated by Barnard College.
3. **Bystander** means a person who observes a crime, impending crime, conflict, potentially violent or violent behavior, or conduct that is in violation of the rules or policies of an institution.
4. **Code of conduct** means the written policies adopted by an institution governing student behavior, rights, and responsibilities while such student is matriculated in the institution.
5. **Consent** means: 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. Incapacitation occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise 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. "Consent" and "affirmative consent" may be used interchangeably under this Grievance Procedure.
6. **Complainant** means:
  - (1) a Student or employee who is alleged to have been subjected to conduct that could constitute Sex-Based Harassment as defined in this Grievance Procedure and who was participating or attempting to participate in Barnard College's Education Program or Activity; or
  - (2) a person other than a Student or employee who is alleged to have been subjected to conduct that could constitute Sex-Based Harassment under this Grievance Procedure and who was participating or attempting to participate in Barnard College's Education Program or Activity at the time of the alleged Sex-Based Harassment.

7. **Complaint** means an oral or written request to Barnard College that objectively can be understood as a request for Barnard College to investigate and make a determination about alleged Sex-Based Harassment at the institution.
8. **Confidential Employee** means:
  - (1) an employee of Barnard College whose communications are privileged under federal or state law. The employee's confidential status is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies;
  - (2) an employee of Barnard College whom the institution has designated as confidential for the purpose of providing services to persons related to Sex-Based Harassment. If the employee also has a duty not associated with providing those services, the employee's confidential status is only with respect to information received about Sex-Based Harassment in connection with providing those services; or
  - (3) an employee of Barnard College who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about Sex-Based Harassment. The employee's confidential status is only with respect to information received while conducting the study.
9. **Disciplinary Sanctions** mean consequences imposed on a Respondent following a determination under this Grievance Procedure that the Respondent violated Barnard College's prohibition on Sex-Based Harassment.
10. **Education Program or Activity** means any academic, extracurricular, research, occupational training, or other Education Program or Activity operated by Barnard College that receives federal financial assistance.
11. **Party** means Complainant or Respondent.
12. **Peer Retaliation** means Retaliation by a Student against another Student.
13. **Relevant** means related to the allegations of Sex-Based Harassment under investigation as part of this Grievance Procedure. Questions are relevant when they seek evidence that may aid in showing whether the alleged Sex-Based Harassment occurred, and evidence is relevant when it may aid a Decision-maker in determining whether the alleged Sex-Based Harassment occurred.
14. **Remedies** means measures provided, as appropriate, to a Complainant or any other person Barnard College identifies as having had their equal access to Barnard College's Education Program or Activity limited or denied by Sex-Based Harassment. These measures are provided to restore or preserve that person's access to Barnard College's Education Program or Activity after Barnard College determines that Sex-Based Harassment occurred.
15. **Respondent** means a person who is alleged to have violated Barnard College's prohibition on Sex-Based Harassment.

16. **Retaliation** means intimidation, threats, coercion, or discrimination by any person, by Barnard College, a Student, or an employee or other person authorized by Barnard College to provide aid, benefit, or service under Barnard College's Education Program or Activity, for the purpose of interfering with any right or privileged secured by Title IX, or because the person has reported information, made a Complaint, testified, assisted or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Grievance Procedure.

17. **Sex-Based Harassment** means sexual harassment and other harassment on the basis of sex, including harassment because of gender identity, sexual orientation, sex characteristics, sex stereotypes, and/or pregnancy or other conditions, that is:

(1) *Quid pro quo harassment*. An employee, agent, or other person authorized by Barnard College's Education Program or Activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct;

(2) *Hostile environment harassment*. Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from Barnard College's Education Program or Activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following: (i) the degree to which the conduct affected the Complainant's ability to access Barnard College's Education Program or Activity; (ii) the type, frequency, and duration of the conduct; (iii) the Parties' ages, roles within Barnard College's Education Program or Activity, previous interactions and other factors about each Party that may be relevant to evaluating the effects of the conduct; (iv) the location of the conduct and the context in which the conduct occurred; and (v) other Sex-Based Harassment in Barnard College's Education Program or Activity;

(3) *Sexual assault* (as defined in the Clery Act, 20 U.S.C. 1092(f)) means any sexual act directed against another person, without the Consent of the victim, including instances where the victim is incapable of giving Consent;

(4) *Dating violence* (as defined in the Violence Against Women Act (VAWA) Reauthorization of 2022 and the VAWA Amendments to the Clery Act) means 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.

(5) *Domestic violence* means any felony or misdemeanor crimes committed by a person who: (A) is a current or former partner of the victim under the family or Domestic Violence laws of New York, or a person similarly situated to a spouse of the victim; (B) is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner; (C) shared a child in common with the victim; or (D) commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of New York.

(6) *Stalking* means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (A) fear for the person's safety or the safety of others; or (B) suffer substantial emotional distress.

18. *Student* means a person who has gained Admission.

19. *Supportive Measures* means individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a Complainant or Respondent, not for punitive or disciplinary reasons, and without fee or charge to the Complainant or Respondent to: (1) restore or preserve that Party's access to Barnard College's Education Program or Activity, including measures that are designed to protect the safety of the Parties or Barnard College's educational environment; or (2) provide support during Barnard College's Grievance Procedure for Sex-Based Harassment or during the informal resolution process.

## **VII. Disability Accommodations**

### *Generally*

This Grievance Procedure does not alter any institutional obligations under applicable federal, state, and/or local disability laws, including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973, and New York State and City Human Rights Laws. Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point before or during the Title IX Grievance Procedure that do not fundamentally alter the Procedure. The Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the Parties, even where the Parties may be receiving accommodations in other institutional programs and activities.

### *Requests for Reasonable Accommodations During the Title IX Grievance Procedure*

If the Complainant or Respondent discloses a disability, the Title IX Coordinator may consult, as appropriate, with the Center for Accessibility Resources and Disability Services (CARDS) to provide support to students with disabilities to determine how to comply with applicable law, including, without limitation, Section 504 of the Rehabilitation Act of 1973 in the implementation of any Supportive Measures, or any other reasonable accommodations requested during the Grievance Procedure.

## **VIII. Policy for Alcohol and/or Drug Use Amnesty**

The health, safety, and welfare of Barnard College students and our community are of primary concern. In addition to making healthy choices, students are encouraged to look out for not only their own health and safety but also that of their peers. All Barnard students are expected to enlist support from Barnard Public Safety/CU-EMS in the event of a medical emergency, specifically those involving extreme intoxication or other ill effects related to the use of alcohol or drugs.

The student who receives medical assistance, the student who reported the medical emergency, others involved, or the group/organization that actively seeks assistance will not be subject to disciplinary action for use or possession of alcohol or other substances. This policy does not preclude disciplinary action for other violations beyond the context of the medical emergency such as causing or threatening physical harm, sexual misconduct, damage to property, harassment, or

hazing. Students should also be aware that this policy does not prevent action by local and state authorities. Public Safety or other College staff will record the name of the student receiving medical assistance and may record the name of the student who reported the medical emergency and others involved to enable relevant educational follow-up that may be deemed necessary.

Barnard College also recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including, but not limited to, domestic violence, dating violence, stalking, or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. Barnard College strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to institution officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to Barnard College's officials or law enforcement will not be subject to Barnard College's Code of Conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.

A copy of Barnard College's full Amnesty Policy can be found [here](#).

## **IX. Basic Requirements of the Grievance Procedure**

Barnard College is required to:

- treat Complainants and Respondents equitably;
- ensure that any person designated by Barnard College as a Title IX Coordinator, investigator, or Decision-maker does not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent;
- establish reasonably prompt time frames for the major stages of this Grievance Procedure, including a process that allows for the reasonable extension of time frames on a case-by-case basis for good cause with notice to the Parties that includes the reason for the delay;
- ensure that reasonable steps to protect the privacy of the Parties and witnesses during the pendency of the Grievance Procedure are taken, provided that the steps do not restrict the abilities of the Parties to obtain and present evidence, including by speaking to witnesses (as long as such does not result in Retaliation), consult with their family members, confidential resources, or advisors, or otherwise prepare for or participate in this Grievance Procedure;
- ensure an objective evaluation of all evidence that is relevant and not otherwise impermissible under this procedure, including both inculpatory and exculpatory evidence, and provide that credibility determinations must not be based on a person's status as a Complainant, Respondent or Witness;
- exclude impermissible evidence from consideration as defined in the Grievance Procedure; and
- clearly articulate principles for how Barnard College will determine which policies and procedures apply if not all such Complaints are handled under this institutional Grievance Procedure.

Per New York State Law, Barnard College is also required to additionally ensure that Complainants are advised of their right to:

- notify Campus Safety, local law enforcement, and/or state police;
- have emergency access to a Title IX Coordinator or other appropriate official trained in interviewing victims of sexual assault who shall be available upon the first instance of disclosure by a Complainant to provide information regarding options to proceed, and, where

applicable, the importance of preserving evidence and obtaining a sexual assault forensic examination as soon as possible, and detailing that the criminal justice process utilizes different standards of proof and evidence and that any questions about whether a specific incident violated New York Penal Law should be addressed to law enforcement or to the district attorney, who shall also explain whether he or she is authorized to offer the reporting individual confidentiality or privacy, and shall inform the Complainant of other reporting options;

- disclose confidentially the incident to institution representatives, who may offer confidentiality pursuant to applicable laws and can assist in obtaining services for Complainants;
- disclose confidentially the incident and obtain services from the state or local government;
- disclose the incident to institution representatives who can offer privacy or confidentiality, as appropriate, and can assist in obtaining resources for reporting individuals;
- file a report of sexual assault, domestic violence, dating violence, and/or stalking and the right to consult the Title IX Coordinator and other appropriate institution representatives for information and assistance, ensure that Complainants know that reports shall be investigated in accordance with this Grievance Procedure and/or any other institutional policies that may be applicable, and ensure that a Complainant's identity will remain private at all times if said Complainant wishes to maintain privacy;
- disclose, if the accused is an employee of Barnard College, the incident to Barnard College's Human Resources Department or request that a confidential or private employee assist in reporting to the appropriate representative for the Human Resources Department, at which point such referral shall be handled according to the appropriate policies and procedures related to employee complaints;
- receive assistance from appropriate Barnard College representatives in initiating legal proceedings in family court or civil court (this does not include providing legal representation); and
- withdraw a Complaint or involvement from Barnard College's Grievance Procedure at any time.

## **X. Reporting Sex-Based Harassment to the Institution**

*It is Barnard's policy to maintain confidentiality and privacy of individuals involved in these Grievance Procedures to the greatest extent possible, consistent with the College's commitment and legal obligations to investigate and respond to allegations of Sex-Based Harassment. A copy of Barnard's Nondiscrimination Policy can be found in Section A of this policy.*

### *Nonconfidential Reports*

Any person may report sex discrimination, including Sex-Based Harassment (whether or not the person reporting is the person alleged to be the victim of the conduct that may constitute sex discrimination or Sex-Based Harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.

#### ***Contact Information for the Title IX Coordinator at Barnard College:***

Name: Joanne Delgadillo

Title: Interim Nondiscrimination and Title IX Coordinator

Office Address: Milbank 115B

Email Address: nondiscrimination@barnard.edu

Telephone Number: 212-854-0037

### *Confidential Reports*

The following officials at Barnard College will provide privacy, but not confidentiality, upon receiving a report of conduct prohibited by Title IX:

- Title IX Coordinator or designee(s)
- officials with authority to institute corrective measures under Title IX
- all other employees at Barnard College that are not designated as confidential resources

The following officials at Barnard College may provide confidentiality:

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

There are other confidential options available for crisis intervention, resources, and referrals, but these are not reporting mechanisms to the institution, meaning that disclosure on a call to one of the hotlines listed below does not provide any information to Barnard College. Complainants are encouraged to additionally contact a campus confidential or private resource so that Barnard College can take appropriate action. Some resources for confidential disclosure that will **NOT** share information with Barnard College are:

- The New York State Office for the Prevention of Domestic Violence hotlines: <http://www.opdv.ny.gov/help/dvhotlines.html>. Additional disclosure and assistance options, in several languages, can also be found here: <http://www.opdv.ny.gov/help/index.html> (or by calling 1-800-942-6906).
- SurvJustice: <http://survjustice.org/our-services/civil-rights-complaints/>
- Legal Momentum: <https://www.legalmomentum.org/>
- NYSCASA: <https://nyscasa.org/responding>
- NYSCADV: <http://www.nyscadv.org/>
- Pandora's Project: <http://www.pandys.org/lgbtsurvivors.html>
- GLBTQ Domestic Violence Project: <http://glbtqdv.org/>
- RAINN: <https://www.rainn.org/get-help>
- Safe Horizons: <http://www.safehorizon.org/>

### *Privacy vs. Confidentiality*

- References made to *confidentiality* refer to the ability of identified confidential resources to not report crimes and violations to law enforcement or College officials without permission, except for extreme circumstances, such as a health and/or safety emergency or child abuse. References made to *privacy* mean Barnard College offices and employees who cannot guarantee confidentiality but will maintain privacy to the greatest extent possible, and information disclosed will be relayed only as necessary to investigate and/or seek a resolution and to notify the Title IX Coordinator or designee, who is responsible for tracking patterns and spotting systemic issues. Barnard College will limit the disclosure as much as practicable, even if the Title IX Coordinator determines that the request for confidentiality cannot be honored.

### *At the First Instance of Disclosure of a Report*

- Barnard College shall ensure that, at a minimum, at the first instance of disclosure by a Complainant to a Barnard College representative, the following information shall be presented to the Complainant: “You have the right to make a report to University police or campus security, local law enforcement, and/or state police or choose not to report; to report the incident to your institution; to be protected by the institution from retaliation for reporting an incident; and to receive assistance and resources from your institution.”

## **XI. Supportive and Interim Measures**

### *Providing Supportive Measures*

Complainants who report allegations of Sex-Based Harassment have the right to receive Supportive Measures from Barnard College regardless of whether they file a Complaint. Supportive Measures are nondisciplinary and nonpunitive. Supportive Measures may vary depending upon what is reasonably available at Barnard College.

As appropriate, Supportive Measures may include without limitation:

- Counseling services
- Extensions of deadlines or other course-related adjustments
- Modifications of work or class schedules
- Campus escort services, as available
- Restrictions on contact applied to one or more Parties (no-contact orders)
- Changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative
- Leaves of absence
- Increased security and monitoring of certain areas of the campus
- Training and education programs related to Sex-Based Harassment
- Assistance by Barnard College security or other officials in obtaining an order of protection or, if outside of New York state, an equivalent protective or restraining order

Supportive Measures must not unreasonably burden either Party and must be designed to protect the safety of the Parties or Barnard College’s educational environment, or to provide support during Barnard College’s Sex-Based Harassment Grievance Procedure under this policy or during informal resolution under this procedure.

Barnard College may modify or terminate Supportive Measures at the conclusion of the Grievance Procedure or at the conclusion of the informal resolution process, or may continue them beyond that point within Barnard College’s discretion.

Barnard College will not disclose information about any Supportive Measures to persons other than the person to whom they apply, including informing one Party of Supportive Measures provided to another Party, unless necessary to provide the supportive measure or restore or preserve a Party’s access to Barnard College’s Education Program or Activity, or there is an exception that applies, such as:

- Barnard College has obtained prior written consent from a person with the legal right to consent to the disclosure;
- When the information is disclosed to an appropriate third party with the legal right to receive disclosures on behalf of the person whose personally identifiable information is at issue;



- To carry out the purpose of the policy when it is necessary to address conduct that reasonably may constitute Sex-Based Harassment under Title IX in Barnard College’s Education Program or Activity;
- As required by federal law, federal regulations, or the terms and conditions of a federal award; or
- To the extent such disclosures are not otherwise in conflict with Title IX, when required by state or local law or when permitted under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g, or its implementing regulations, 34 CFR Part 99).

***Note on Orders of Protection and their equivalent:*** Barnard College must provide a copy of the order of protection or equivalent when it is received by Barnard College, and Parties shall have the opportunity to meet or speak with the Title IX Coordinator, who can explain the order and answer questions about it, including information from the order about the Accused’s/Respondent’s responsibility to stay away from the protected person or persons. Parties are entitled to an explanation of the consequences for violating these orders, including, without limitation, arrest, additional conduct charges, and interim suspension or emergency removal, as applicable. A Complainant is also entitled to receive assistance from Campus Security in effecting an arrest when an individual violates an order of protection or, if Campus Security does not possess arresting powers, then to call on and assist local law enforcement in effecting an arrest for violating such order, in accordance with limits on current law enforcement jurisdiction and procedures.

#### *Process for Review of Supportive Measures*

Barnard College provides for a Complainant or Respondent to seek modification or reversal of Barnard College’s decision to provide, deny, modify, or terminate a Supportive Measure. Grounds for challenge of Supportive Measures include, but are not limited to:

- whether a Supportive Measure is reasonably burdensome;
- whether a Supportive Measure is reasonably available;
- whether a Supportive Measure is being imposed for punitive or disciplinary reasons;
- whether the Supportive Measure is being imposed without fee or charge; and
- whether the Supportive Measure is effective in meeting the purposes for which it is intended, including to restore or preserve access to the Education Program or Activity, provide safety, or provide support during the Grievance Procedure.

Requests for a modification or reversal of a Supportive Measure must be reasonably timely. Barnard College will conduct a fact-specific inquiry into timeliness.

This review will be conducted by an impartial employee of Barnard College, who did not make the challenged decision on the original Supportive Measure request. The impartial employee of Barnard College who makes this determination will have the authority to modify or reverse the decision if that impartial employee determines that the decision to provide, deny, modify, or terminate the Supportive Measure was inconsistent with the procedures as outlined above for providing Supportive Measures in accordance with the Title IX regulations.

Parties are only allowed to challenge their own individual Supportive Measures. Challenges by one Party will not be heard to Supportive Measures afforded to the opposite Party, unless that Supportive Measure directly impacts the Party making such challenge (i.e., two-way no-contact orders).

### *Emergency Removal*

Barnard College retains the authority to remove a Respondent from all or part of Barnard College's Education Program or Activity on an emergency basis, where Barnard College (1) undertakes an individualized safety and risk analysis, and (2) determines that an imminent and serious threat to the health or safety of a Complainant or any Students, employees, or other persons arising from the allegations of Sex-Based Harassment justifies removal.

Barnard College will provide the Respondent with notice and an opportunity to challenge the decision immediately following the removal under the following process:

### *Show Cause Meeting*

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

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

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

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

The Decision-maker who hears a challenge to an emergency removal must not be involved in any decision regarding responsibility or appeal of a determination.

Emergency removals will not be considered relevant evidence that can be considered in reaching a determination of whether Sex-Based Harassment occurred.

### *Administrative Leave*

Barnard College retains the authority to place a nonstudent employee Respondent on administrative leave during the Title IX Grievance Procedures, consistent with relevant employee handbooks and/or collective bargaining agreements.

**Note on Student Employees:** When a Complainant or Respondent is both a Student and an employee, Barnard College must make a fact-specific inquiry to determine whether these procedures apply to that Student employee. Barnard College will consider if the Complainant or Respondent's primary relationship with Barnard College is to receive an education and whether the alleged Sex-Based Harassment occurred while the Party was performing employment-related work.

## **XII. The Title IX Grievance Procedure for Allegations of Sex-Based Harassment**

### **1. Filing a Complaint**

*Who can make a Complaint?*

- A Complainant (as defined in Section VI(3) of this policy); or
- The Title IX Coordinator.

*Note on Title IX Coordinator-initiated Complaints:* In the absence of a Complaint or the withdrawal of any or all of the allegations in a Complaint, and in the absence or termination of an informal resolution process, the Title IX Coordinator must determine whether to initiate a Complaint of Sex-Based Harassment. This determination is fact-specific, and the Title IX Coordinator must consider:

- The Complainant's request not to proceed with the initiation of a Complaint;
- Whether the accused has a history of violent behavior or is a repeat offender;
- Whether the incident represents escalation in unlawful conduct on behalf of the accused from previously noted behavior;
- The increased risk that the accused will commit additional acts of violence;
- Whether the accused used a weapon or force;
- Whether the reporting individual is a minor;
- Whether the institution possesses other means to obtain evidence such as security footage, and whether available information reveals a pattern of perpetration at a given location or by a particular group;
- The Complainant's reasonable safety concerns regarding initiation of a Complaint;
- The risk that additional acts of Sex-Based Harassment would occur if a Complaint is not initiated;
- The severity of the alleged Sex-Based Harassment, including whether the Sex-Based Harassment, if established, would require the removal of a Respondent from campus or imposition of another Disciplinary Sanction to end the Sex-Based Harassment and prevent its recurrence;
- The age and relationship of the Parties, including whether the Respondent is an employee of the College;
- The scope of the alleged Sex-Based Harassment, including information suggesting a pattern, ongoing Sex-Based Harassment, or Sex-Based Harassment alleged to have impacted multiple individuals;
- The availability of evidence to assist a Decision-maker in determining whether Sex-Based Harassment occurred; and
- Whether Barnard College could end the alleged Sex-Based Harassment and prevent its recurrence without initiating a Grievance Procedure.

If after considering these and other relevant factors, the Title IX Coordinator determines that the conduct as alleged presents an imminent and serious threat to the health or safety of the Complainant or other person, or that the conduct as alleged prevents Barnard College from ensuring equal access on the basis of sex to its Education Program or Activity, the Title IX Coordinator may initiate a Complaint.

If the Title IX Coordinator does initiate the Complaint after making this determination, the Title IX Coordinator must notify the Complainant prior to doing so and appropriately address reasonable concerns about the Complainant's safety or the safety of others, including by providing Supportive Measures as listed in Section VI of these procedures.

*Is there a particular format that the Complaint needs to be in?*

As defined in VI(4) of these procedures, a Complaint can be an oral or written request to Barnard College that objectively can be understood as a request for Barnard College to investigate and make a determination about alleged Sex-Based Harassment at the institution.

*Who can I report a Complaint to?*

Any reports of Sex-Based Harassment may be made directly to Joanne Delgadillo, Interim Nondiscrimination and Title IX Coordinator, Milbank 115B, [nondiscrimination@barnard.edu](mailto:nondiscrimination@barnard.edu), 212-854-0037. There are other ways in which a Party may report a Complaint.

Barnard College requires that any employee who is not a Confidential Employee and who either has the authority to institute corrective measures on behalf of Barnard College or has responsibility for administrative leadership, teaching, or advising in Barnard College's Education Program or Activity must notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination, including Sex-Based Harassment.

All other employees at Barnard College who are not Confidential Employees and are not employees as identified above are required to notify the Title IX Coordinator when the employee has information about conduct that reasonably may constitute sex discrimination, including Sex-Based Harassment.

**Note:** If an employee has personally been subject to conduct that reasonably may constitute sex discrimination under Title IX or any institutional policy or this Grievance Procedure, these requirements do not apply to an employee reporting a personal Complaint.

*What is the time frame for Barnard College to evaluate if the Title IX Coordinator is initiating an investigation under this Grievance Procedure?*

The Title IX Coordinator must evaluate whether the Complaint falls under this Grievance Procedure five (5) calendar days after the Complaint is made and must issue the Notice of Allegations as soon as practicable after the Complaint is evaluated. If there are any delays or extensions, the Title IX Coordinator must appropriately notice the Parties in writing, on a case-by-case basis, with good cause and the rationale for the extension or delay.

*Can I make a Complaint and request initiation of the Grievance Procedure even if I have made a complaint to law enforcement?*

Yes. Barnard College has an obligation to appropriately evaluate all Complaints, regardless of whether there is a concurrent Complaint before law enforcement. This process is an administrative process that is different from the criminal justice process.

## 2. **Multi-Party Situations and Consolidation of Complaints**

Barnard College may consolidate Complaints alleging Sex-Based Harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against the other Party, where the allegations of Sex-Based Harassment arise out of the same facts or circumstances.

Barnard College can consider factors when making this fact-specific determination, which include, but are not limited to:

- the facts and circumstances of the particular Complaints when deciding whether to consolidate, including the toll of separate proceedings on the Parties; and
- any risks to the fairness of the investigation or outcome.

## 3. **Dismissal of a Complaint**

### *Grounds for Dismissal*

Barnard College may dismiss a Complaint of Sex-Based Harassment for any of the following reasons:

- Barnard College is unable to identify the Respondent after taking reasonable steps to do so;
- The Respondent is not participating in Barnard College's Education Program or Activity and is not employed by Barnard College;
- The Complainant voluntarily withdraws any or all of the allegations in the Complaint, the Title IX Coordinator declines to initiate a Complaint through this Grievance Procedure, and Barnard College determines that, without the Complainant's withdrawn allegations, the conduct that remains alleged in the Complaint, if any, would not constitute Sex-Based Harassment under Title IX or this Grievance Procedure even if proven; or
- Barnard College determines that the conduct alleged in the Complaint, even if proven, would not constitute Sex-Based Harassment under Title IX or these procedures. Barnard College must make reasonable efforts to clarify the allegations with the Complainant before dismissing under this basis.

### *Notice of Dismissal*

If Barnard College dismisses a Complaint, Barnard College is required to promptly notify the Complainant of the basis for dismissal.

If the dismissal of the Complaint occurs before a Notice of Allegations is issued to the Respondent, the Title IX Coordinator does not need to notice the Respondent at that time. However, if the Complainant appeals the dismissal, the Respondent will need to be noticed of the Complaint allegations and given an opportunity to respond to the dismissal. If the dismissal occurs after the Respondent has been notified of the allegations, then Barnard College must notify the Respondent and Complainant of the dismissal and the basis for the dismissal simultaneously in writing.

Appeal rights must also be outlined in any notification of dismissal of a Complaint, as included below under *Appeals of Dismissals*.

### *Appeals of Dismissals*

Barnard College must notify the Complainant that a dismissal may be appealed and provide the Complainant with an opportunity to appeal the dismissal of a Complaint on the following grounds:

- **Procedural irregularity:** A procedural irregularity that affected the outcome of the matter (i.e., a failure to follow Barnard College's own policy to a degree that had material effect on the outcome of the matter);
- **New evidence:** New evidence that would change the outcome and that was not reasonably available when the determination whether Sex-Based Harassment occurred or dismissal of the Complaint was made; and
- **Bias or Conflict of Interest:** The Title IX Coordinator, investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that would change the outcome of the matter.

If the dismissal occurs after the Respondent has been notified of the allegations, then Barnard College must also notify the Respondent that the dismissal may be appealed on the grounds set out above.

The submission of appeal stays (or pauses) any sanctions for the pendency of an appeal.

Supportive Measures and remote learning opportunities remain available during the pendency of the appeal.

If a Party appeals, the institution will as soon as practicable notify the other Party in writing of the appeal; however, the time for appeal shall be offered equitably to all Parties and shall not be extended for any Party solely because the other Party filed an appeal.

Appeals may be no longer than five double-spaced typed pages. Appeals should be submitted in electronic form using Arial or Times New Roman, 12-point font. Appeals should use footnotes, not endnotes. Appeals that do not meet these standards may be returned to the Party for correction, but the time for appeal will not be extended unless there is evidence that technical malfunction caused the appeal document not to meet these standards.

Appeals will be decided by a three-person appeal panel who will be free of conflict of interest and bias and will not serve as investigator, Title IX Coordinator, or hearing Decision-maker in the same matter. On receipt of the appeal, the Title IX Coordinator will designate a three-member appeal panel in the matter and will forward the appeal to the panel for review. The appeal panel will be composed of members of the Pool (see p. 6) and/or senior administrators from the College. Thereafter, the Title IX Coordinator will notify the party who is not appealing that an appeal was filed, the grounds for the appeal asserted, and the identity of the appeal panel members. Outcome of appeal will be provided in writing simultaneously to both Parties and will include the rationale for the decision.

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

If the alleged conduct, if true, includes conduct that would constitute covered sexual harassment and conduct that would not constitute covered sexual harassment, the Title IX Grievance Process will be

applied to investigation and adjudication of only the allegations that constitute covered sexual harassment.

## 5. **Notice of Allegations**

Upon initiating Barnard College's Grievance Procedure, the Title IX Coordinator shall provide a Notice of Allegations in writing to the Parties whose identities are known. Such notice will occur as soon as practicable after Barnard College receives a Complaint; if there are no extenuating circumstances, Barnard College will provide the Notice of Allegations within ten (10) calendar days after receiving a Complaint.

*What does the Notice of Allegations include?*

The written Notice of Allegations must include:

- Barnard College's Grievance Procedure and Barnard College's Informal Resolution process;
- Sufficient information available at the time of the issuance of the Notice of Allegations to allow the Parties to respond to the allegations, which includes the identities of the Parties involved in the incident(s), the conduct alleged to constitute Sex-Based Harassment under the Grievance Procedure, and the time, date(s) and location(s) of the alleged incident(s), to the extent that information is available to Barnard College;
- A statement that the Parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence;
- A statement that the Respondent is presumed not responsible for the alleged Sex-Based Harassment until a determination is made at the conclusion of Barnard College's Grievance Procedure and that prior to the determination, the Parties will have an opportunity to present relevant and not otherwise impermissible evidence to a trained, impartial Decision-maker;
- A statement explaining the sanction(s) that may be imposed on the Respondent based upon the outcome of the judicial or conduct process (reference to Appendix B);
- Parties may have an advisor of their choice and that the advisor may be, but is not required to be, an attorney;
- Barnard College prohibits knowingly making false statements or knowingly submitting false information during Barnard College's Grievance Procedure; and
- If, in the course of an investigation, Barnard College decides to investigate additional allegations of Sex-Based Harassment by the Respondent toward the Complainant that are not included in the original written Notice of Allegations provided, Barnard College is required to provide written notice of any additional allegations to the Parties whose identities are known.

*What if Barnard College decides to investigate additional allegations of Sex-Based Harassment?*

If, in the course of an investigation, Barnard College decides to investigate additional allegations of Sex-Based Harassment by the Respondent toward the Complainant that are not included in the original issued written Notice of Allegations, or that are included in a Complaint that is consolidated under this Grievance Procedure, Barnard College shall provide notice of the additional allegations to the Parties whose identities are known.

*What if I have safety concerns about a Notice of Allegations being issued to a Respondent?*

To the extent that Barnard College has reasonable concerns for the safety of any person as a result of providing a written Notice of Allegations, Barnard College, through the Title IX Coordinator, may reasonably delay providing the written Notice of Allegations in order to address the safety concern

appropriately. Reasonable concerns must be based on individualized safety and risk analysis and not on mere speculation or stereotypes.

#### **6. Advisor of Choice and Participation of Advisor of Choice**

A Party's advisor of choice may accompany the Party to any meeting or proceeding, and Barnard College cannot limit the choice of who that advisor may be or their presence for the Parties in any meeting or proceeding unless such advisor does not follow Barnard College's established rules.

#### **7. Investigation**

##### *General Rules of Investigations*

The Title IX Coordinator and/or an investigator designated by the Title IX Coordinator will perform an investigation of the conduct alleged to constitute Sex-Based Harassment in a reasonably prompt time frame, after issuing the Notice of Allegations.

Barnard College, and not the Parties, have the burden to conduct an investigation that gathers sufficient evidence to determine whether Sex-Based Harassment occurred under this Grievance Procedure. This burden does not rest with either Party, and either Party may decide not to share their account of what occurred or may decide not to participate in the investigation or hearing. This does not shift the burden of proof away from Barnard College and does not indicate responsibility.

Barnard College cannot access, consider, or disclose medical records without a waiver from the Party (or parent, if applicable) to whom the records belong or of whom the records include information. Barnard College will provide an equal opportunity for the Parties to present witnesses, including fact and expert witnesses, and other inculpatory or exculpatory evidence, as described below.

##### *Notice of Participation*

Barnard College will provide written notice of the date, time, location, participants, and purpose of all meetings or proceedings with sufficient time for the Party to prepare to participate, if a Party is invited or expected to participate in any such meeting or proceeding.

##### *Advisors of Choice and Participation of Advisors of Choice*

Barnard College will provide the Parties with the same opportunities to be accompanied to any meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of the advisor for the Complainant or Respondent in any meeting or proceeding.

##### *Expert Witnesses*

Parties may present expert witnesses as part of an investigation.

Parties are allowed to call expert witnesses for direct examination and credibility assessment by the hearing board and cross examination. While the expert witness will be allowed to testify, the Decision-maker will be instructed to afford lower weight to nonfactual testimony of the expert relative to fact witnesses, and any expert testimony that is not directed to the specific facts that



occurred in the case will be afforded lower weight relative to fact witnesses regardless of whether all Parties present experts as witnesses.

#### *Access to and Review of the Investigative Report*

The Title IX Coordinator will provide each Party and their advisors of choice with an equal opportunity to access and review an accurate description of the relevant evidence collected throughout the investigation that is not otherwise impermissible in the form of an investigative report.

The Parties and their advisors of choice will also have an equal opportunity to access and review the underlying relevant and not otherwise impermissible evidence summarized in the investigative report upon the request of any Party.

The Title IX Coordinator will provide each Party and their advisors of choice with a reasonable opportunity to respond to the investigative report. Both Parties will have the opportunity to respond to the investigative report prior to and during the live hearing.

Barnard College will take reasonable steps to prevent and address the Parties' and their advisors of choice's unauthorized disclosure of information and evidence obtained solely through this Grievance Procedure. Participating individuals who engage in the unauthorized disclosure of information and evidence obtained solely through this Grievance Procedure may be subject to and other College policies and/or procedures that may apply.

**Note:** Disclosures of information and evidence for purposes of administrative proceedings or litigation related to the Complaint of Sex-Based Harassment are authorized and not considered unauthorized disclosures potentially subject to other disciplinary action.

#### *Review and Access to Relevant and Not Otherwise Impermissible Evidence*

Each Party will have an equal opportunity to present fact witnesses, and other inculpatory and exculpatory evidence that is relevant and not otherwise impermissible, to the Title IX Coordinator. The Title IX Coordinator will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance, consistent with this Grievance Procedure.

Each Party and their advisors of choice will have an equal opportunity to review and access the evidence that is relevant to the allegations of Sex-Based Harassment and not otherwise impermissible regardless of relevance prior to the conclusion of the investigation. The Title IX Coordinator will provide each Party with a reasonable opportunity to respond to the evidence. Both Parties will have the opportunity to respond to the evidence prior to and during the live hearing.

Barnard College will take reasonable steps to prevent and address the Parties' unauthorized disclosure of information and evidence obtained solely through this Grievance Procedure. Participating individuals who engage in the unauthorized disclosure of information and evidence obtained solely through this Grievance Procedure may be subject to the Barnard Student Code of Conduct, if applicable and other College policies and/or procedures that may apply.

**Note:** Disclosures of information and evidence for purposes of administrative proceedings or litigation related to the Complaint of Sex-Based Harassment are authorized and not considered unauthorized disclosures potentially subject to other disciplinary action.

### *Relevant Evidence*

Evidence is relevant when it is related to the allegations of Sex-Based Harassment under investigation as part of this Grievance Procedure.

Questions are relevant when they seek evidence that may aid in showing whether the alleged Sex-Based Harassment occurred, and evidence is relevant when it may aid a Decision-maker in determining whether the alleged Sex-Based Harassment occurred.

### *Impermissible Evidence*

The following types of evidence, and questions seeking that evidence, are excluded as impermissible (i.e., must not be accessed or considered, except by Barnard College to determine whether an exception applies, must not be disclosed, and must not otherwise be used), regardless of whether they are relevant:

- Evidence that is protected under a privilege as recognized by federal or state law or evidence provided to a Confidential Employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- A Party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the Party or witness, unless Barnard College obtains that Party's or witness's voluntary, written Consent for use in Barnard College's Grievance Procedure; and
- Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove Consent to the alleged Sex-Based Harassment. **Note:** The fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's Consent to the alleged Sex-Based Harassment or preclude determination that Sex-Based Harassment occurred.

### *Time Frames*

An investigation shall take 90 calendar days to complete. If there are any delays or extensions, the Title IX Coordinator must appropriately notice the Parties in writing, as detailed below.

### *Extensions and Delays*

Barnard College allows for the reasonable extension of time frames on a case-by-case basis for good cause with written notice to the Parties that includes the reason for the extension or delay.

## **8. Live Hearing**

### *General Rules for Live Hearings*

Barnard College will not issue a finding or Disciplinary Sanction arising from an allegation of Sex-Based Harassment without holding a live hearing unless otherwise resolved through an informal resolution process as outlined in this Grievance Procedure.

The live hearing may be conducted with the Parties physically present in the same geographic location. Barnard College has the discretion to conduct the live hearing with the Parties physically present in separate locations, with technology enabling the Decision-maker and Parties to simultaneously see and hear the Party or the witness while that person is speaking. A Party may also request this option prior to the hearing.

Barnard College shall create an audio or audiovisual recording or transcript of any live hearing and make it available to the Parties for inspection and review.

### *Participants in the Live Hearing*

Live hearings are not public, and the only individuals permitted to participate in the hearing are as follows:

#### *Complainant and Respondent (The Parties)*

If a Party chooses not to participate in the process or the hearing, the live hearing may still proceed in the absence of a Party, and Barnard College may reach a determination of responsibility in their absence, including through any evidence gathered and other witness statements. Barnard College will not threaten, coerce, intimidate, or discriminate against any Party in an attempt to secure the Party's participation. The Decision-maker cannot draw an inference about the determination regarding responsibility based solely on a Party's absence from the live hearing or a refusal to answer questions.

The Parties shall be subject to Barnard College's rules of decorum. A copy of the rules of decorum can be found in Appendix A.

#### *The Decision-maker*

The hearing body will consist of a single Decision-maker. No member of the hearing body will have served as the Title IX Coordinator, Title IX investigator, or advisor to any Party in the case, nor may any member of the hearing body serve on the appeals body in the case. No member of the hearing body will 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 hearing body will be trained prior to serving during any hearing. The Parties will have an opportunity to raise any objections regarding a Decision-maker's actual or perceived conflicts of interest or bias at the commencement of the live hearing.

#### *Advisor of Choice*

The Parties have the right to select an advisor of their choice, who may be, but is not required to be, an attorney. The advisor of choice may accompany the Parties to any meeting or hearing they are permitted to attend but may not speak for the Party. An advisor of choice is not prohibited from

being a witness in the hearing. Advisors of choice are subject to Barnard College's rules of decorum and may be removed upon violation of those rules. A copy of the rules of decorum can be found in Appendix A.

The advisor of choice may accompany the Parties to any meeting or hearing they are permitted to attend but may not speak for the Party, except for the purpose of cross-examination and direct examination. In addition to selecting an advisor to conduct cross-examination, the Parties may select an advisor who may accompany the Parties to any meeting or hearing they are permitted to attend but may not speak for the Party. The Parties are not permitted to conduct cross-examination; it must be conducted by the advisor of choice. As a result, if a Party does not select an advisor to serve in this role for the limited purpose of conducting cross-examination, one will be appointed at no fee or charge to the Party. The advisor of choice 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. If a Party does not attend the live hearing, the Party's advisor of choice may appear and conduct cross-examination on their behalf.

### Witnesses

Witnesses cannot be compelled to participate in the live hearing and have the right not to participate in the hearing free from Retaliation. Witnesses are subject to Barnard College's rules of decorum and may be removed upon violation of those rules.

### *Hearing Procedures*

For all live hearings conducted, the Decision-maker will open and establish rules and expectations for the hearing. The Parties will each be given an opportunity to provide opening statements. Questioning of the Parties and witnesses will occur according to the procedures below.

### *Questioning Parties and Witnesses*

During a live hearing, each Party's advisor is allowed to ask relevant and not otherwise impermissible questions and follow-up questions of the Parties and witnesses through the Decision-maker. No questioning of another Party or witness will be conducted by a Party personally.

Where questioning is advisor-conducted and a Party does not have an advisor to ask questions on their behalf, Barnard College will provide the Party with an advisor of Barnard College's choice, without charge to the Party, for the purpose of advisor-conducted questioning. Such an appointed advisor will not be a Confidential Employee, and Barnard College may appoint, but is not required to appoint, an attorney to serve as an advisor.

### *Procedures for Decision-makers' Evaluation of Questions and Limitation on Questions*

The Decision-maker will determine whether a proposed question is relevant and not otherwise impermissible as described in this Grievance Procedure, prior to the question being posed, and will explain any decision to exclude a question as not relevant or otherwise impermissible.

If a single Decision-maker determines that a Party's question is relevant and not otherwise impermissible, then the question must be asked unless such question is unclear or harassing of the Party or witness being questioned. The single Decision-maker must give a Party an opportunity to

clarify or revise a question that a single Decision-maker has determined is unclear or harassing and, if the Party sufficiently clarifies or revises a question so that it is no longer unclear or harassing, the question must be asked.

#### *Refusal to Respond to Questions and Inferences Based on Refusal to Respond to Questions*

A single Decision-maker may choose to place less or no weight upon statements by a Party or witness who refuses to respond to questions deemed relevant and not impermissible.

The single Decision-maker must not draw an inference about whether Sex-Based Harassment occurred based solely on a Party's or witness's refusal to respond to such questions.

#### *Continuances or Granting Extensions*

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

### **9. Determination Regarding Responsibility**

#### *Standard of Proof*

Barnard College uses the preponderance of the evidence standard of proof to determine whether or not Sex-Based Harassment occurred. This means that the investigation and hearing determine whether it is more likely than not that a violation occurred.

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

The Decision-maker is required to evaluate relevant and not otherwise impermissible evidence for its persuasiveness. If the Decision-maker is not persuaded under the applicable standard by the evidence that Sex-Based Harassment occurred, whatever the quantity of the evidence is, the Decision-maker must not determine that Sex-Based Harassment occurred.

Determinations regarding responsibility may be based in part, or entirely, on documentary, audiovisual, and digital evidence, as warranted in the reasoned judgment of the Decision-maker. Decision-makers shall not draw inferences regarding a Party or witness' credibility based on the Party or witness's status as a Complainant, Respondent, or witness, nor shall it base its 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 its reliability in light of corroborating or conflicting testimony or evidence. However, credibility judgments should not rest on whether a Party or witness's testimony is nonlinear or incomplete, or if the Party or witness is displaying stress or anxiety.

Decision-makers will afford the highest weight relative to other testimony to firsthand testimony by Parties and witnesses regarding their own memory of specific facts that occurred. Both inculpatory

and exculpatory (i.e., tending to prove and disprove the allegations) evidence will be weighed in equal fashion.

A witness's testimony regarding third-Party knowledge of the facts at issue will be allowed but will generally be accorded lower weight than testimony regarding direct knowledge of specific facts that occurred.

### *Expert Witnesses*

Parties may present expert witnesses as part of an investigation.

Parties are allowed to call expert witnesses for direct examination and credibility assessment by the hearing board and cross examination. While the expert witness will be allowed to testify, the Decision-maker will be instructed to afford lower weight to nonfactual testimony of the expert relative to fact witnesses, and any expert testimony that is not directed to the specific facts that occurred in the case will be afforded lower weight relative to fact witnesses regardless of whether all Parties present experts as witnesses.

Where a Party or witness's conduct or statements demonstrate that the Party or witness is engaging in retaliatory conduct, including, without limitation, witness tampering and intimidation, the Decision-maker may draw an adverse inference as to that Party or witness's credibility.

### *Communication of the Determination in Writing*

All determinations on whether Sex-Based Harassment occurred will be communicated to the Parties in writing, simultaneously.

The written determination will include:

- a description of the alleged Sex-Based Harassment;
- information about the policies and procedures that Barnard College used to evaluate the allegations;
- the Decision-maker's evaluation of the relevant evidence and determination on whether Sex-Based Harassment occurred;
- any Disciplinary Sanctions Barnard College will impose on the Respondent, whether Remedies other than the imposition of Disciplinary Sanctions will be provided by Barnard College to the Complainant, and, to the extent appropriate, other Students identified by Barnard College to be experiencing the effects of Sex-Based Harassment, if there is a finding that Sex-Based Harassment occurred; and
- Barnard College's procedures for Complainant and Respondent to appeal.

### *Timeline of Determination Regarding Responsibility*

If there are no extenuating circumstances, the determination regarding responsibility will be issued by the Decision-maker to the Parties within five (5) calendar days of the completion of the hearing.

### *Determination of Disciplinary Sanctions After a Finding of Responsibility*

Per New York state law, past findings of domestic violence, dating violence, stalking, or sexual assault may be admissible in the disciplinary stage that determines sanction. However, it is not admissible prior to determination of responsibility. In addition, the Complainant will have an opportunity to make an impact statement during the point in the proceeding where the Decision-maker is deliberating on appropriate sanctions.

#### *Finality of Determination*

The determination regarding responsibility becomes final either on the date that Barnard College provides the Parties with the written determination of the result of any appeal, or, if no Party appeals, the date on which an appeal would no longer be considered timely.

#### *Disclosures of Outcome by the Parties*

The Complainant and Respondent have the right to choose whether to disclose or discuss the outcome of a conduct or judicial process related to sexual assault, dating violence, domestic violence, or stalking.

The Complainant and Respondent have the right to have all information obtained during the course of the conduct or judicial process be protected from public release until the appeals panel makes a final determination, unless otherwise required by law.

### **10. Appeals**

Each Party may appeal a determination regarding responsibility. To appeal, a Party must submit their written appeal within five (5) business days of being notified of the decision, indicating the grounds for appeal. The appeal must be made in writing and may be no longer than five double-spaced typed pages. Failure to meet the deadline for appeal shall result in waiver of the right to appeal. The College reserves the right to investigate and take any necessary action of its own accord based on new information or events that were not known during the course of the initial investigation.

For appeals resulting from dismissal of a Complaint, please see the section on *Dismissal of Complaints*.

#### *Grounds for Appeal*

The limited grounds for appeal available are as follows:

- Procedural irregularity that would change the outcome;
- New evidence that would change the outcome and that was not reasonably available when the determination whether Sex-Based Harassment occurred or dismissal was made; and
- The Title IX Coordinator, investigator, or Decision-maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that would change the outcome.
- Belief by either party that the severity of the sanction is substantially disproportionate given the details of the case.

#### *Additional Procedures for Appeal Process*

Barnard College will notify the Parties of any appeal, provide the Parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome, and will notify the Parties of the result of the appeal and the rationale for the result.

The submission of an appeal stays (or pauses) any sanctions for the period during which an appeal determination is being assessed. Supportive Measures and remote learning opportunities remain available while an appeal is being deliberated and before a final decision has been made.

Appeals should be submitted in electronic form using Arial or Times New Roman, 12-point font, and limited to five double-spaced typed pages. Appeals should use footnotes, not endnotes. Appeals that do not meet these standards may be returned to the Party for correction, but the time for appeal will not be extended unless there is evidence that technical malfunction caused the appeal document not to meet these standards.

Appeals will be decided by the Appellate Panel, who will be free of conflict of interest and bias, and will not serve as investigator, Title IX Coordinator, or hearing Decision-maker in the same matter.

## **11. Informal Resolution**

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

At any time prior to determining whether Sex-Based Harassment occurred under this Grievance Procedure, including prior to making a Complaint, Parties may instead seek Barnard College's assistance to resolve allegations of Sex-Based Harassment and may elect to enter the informal resolution process.

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

No Party may be required to participate in informal resolution, and Barnard College may never condition enrollment, employment, or enjoyment of any other right or privilege upon agreeing to informal resolution.

The Parties may elect to leave the informal resolution process at any point until the informal resolution process is concluded. If a Party elects to leave the informal resolution process, the Grievance Procedure that the Parties paused will continue. In participating in the informal resolution process, the Parties understand that the time frames governing the Grievance Procedure will temporarily cease and will reinstate only upon reentry into the Grievance Procedure.

Supportive Measures will be available, or continue to be available if already provided, during an informal resolution process, if elected to proceed. The Title IX Coordinator will also, to the extent necessary, take other appropriate prompt and effective steps to ensure that Sex-Based Harassment does not continue or recur within Barnard College's Education Program or Activity.

### *Notice Prior to Entry Into Informal Resolution Process*



Before the initiation of an informal resolution process, the Title IX Coordinator must provide to the Parties a written notice that explains:

- the allegations;
- the requirements of the informal resolution process;
- that, prior to agreeing to a resolution, any Party has the right to withdraw from the informal resolution process and to initiate or resume Barnard College's Grievance Procedure;
- that the Parties' agreement to a resolution at the conclusion of the informal resolution process would preclude the Parties from initiating or resuming Barnard College's Grievance Procedure arising from the same allegations;
- the potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the Parties; and
- what information Barnard College will maintain and whether and how Barnard College could disclose such information for use in its Grievance Procedure if it is initiated or resumed.

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

Even where the Parties agree to submit a matter to informal resolution, the Title IX Coordinator may approve the decision to move the matter to the informal resolution process and may determine that informal resolution is not appropriate under the circumstances.

Factors that the Title IX Coordinator may weigh in considering the appropriateness of the informal resolution process include, but are not limited to, the gravity of the allegations, whether there is an ongoing threat of harm or safety to the campus, whether the Respondent is a repeat offender, whether the alleged conduct would present a future risk of harm to others, and whether the Parties are participating in good faith. This determination is not subject to appeal.

*Informal resolution processes may never be applied where the allegations include sexual abuse of a minor by an employee.*

At any time after the commencement of the informal resolution process, the Title IX Coordinator may determine that the informal resolution process is not an appropriate method for resolving the matter and may require that the matter be resolved through the Grievance Procedure. This determination is not subject to appeal.

If informal resolution is approved or denied, Barnard College will provide the outcome in writing simultaneously to the Parties. If informal resolution is approved, the Title IX Coordinator shall also provide the information of the facilitator in writing to the Parties in a reasonable time frame once the facilitator is assigned.

#### *Role of the Facilitator*

Informal resolution processes are managed by trained facilitators. All facilitators must not be the same person as the investigator or the Decision-maker(s) in Barnard College's Grievance Procedure. Any person designated to facilitate informal resolution must not have a conflict of interest or bias for or against Complainants or Respondents generally or for or against an individual Complainant or Respondent. The Title IX Coordinator may serve as the facilitator, subject to these restrictions.

All facilitators must have specialized training, required by law and regulation. Such training includes:

- Barnard College’s obligation to address sex discrimination, including Sex-Based Harassment, in its Education Program or Activity;
- The scope of conduct that constitutes sex discrimination, including Sex-Based Harassment, under Title IX, including the definition of Sex-Based Harassment;
- All applicable notification and information requirements related to parental, family, or marital status, including pregnancy or related conditions, and Barnard College’s response to sex discrimination;
- The rules and practices associated with Barnard College’s informal resolution process; and
- How to serve impartially, including by avoiding conflicts of interest and bias.

### *Contents of Informal Resolution Agreements*

Potential terms that may be included in an informal resolution agreement between the Parties include, but are not limited to:

- restrictions on contact; and
- restrictions on the Respondent’s participation in one or more of Barnard College’s education programs or activities or attendance at specific events, including restrictions Barnard College could have imposed as Remedies or Disciplinary Sanctions had Barnard College determined at the conclusion of the Grievance Procedure that Sex-Based Harassment occurred.

### *Breach of Informal Resolution Agreements*

If a Party breaches the resolution or if Barnard College has other compelling reasons, such as if it learns of any fraud by a Party in entering into the agreement, Barnard College may void the agreement and initiate or resume the Grievance Procedure.

### *Confidentiality*

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

### *Informal Resolution Options*

Barnard College offers the following informal resolution procedures for addressing Complaints of Sex-Based Harassment described under this Grievance Procedure:

#### 1. Administrative Resolution

Should the Parties mutually determine to enter the informal resolution process, and the Respondent elects to accept responsibility for the allegations of the Complaint at any point during the informal resolution process, the institution may administratively resolve the Complaint.

Where the Respondent admits responsibility, the Parties will receive simultaneous written notification of the acceptance of responsibility, and a Decision-maker(s) will convene to determine the Respondent's sanction and other Remedies, as appropriate and consistent with institutional policy. The Parties will be given an opportunity to be heard at the sanctions hearing, including, without limitation, the submission of impact statements, and the Parties may be accompanied by their advisor, but questioning of Parties or witnesses will not be permitted. The Parties will receive simultaneous written notification of the decision regarding sanctions and Remedies, which may be appealed according to the process described in Barnard College's Grievance Procedure.

### **XIII. Transcript Notations**

For crimes of violence, including, without limitation, sexual violence, defined as crimes that meet the reporting requirements pursuant to the Clery Act (20 U.S.C. 1092(f)(1)(F)(i)(I)-(VIII)), Barnard College is required to make a notation on the transcript of a student found responsible for suspension or expulsion, per Barnard College's Transcript Notation Policy.

### **XIV. Retaliation**

When Barnard College has information about conduct that reasonably may constitute Retaliation under Title IX or its Grievance Procedure, Barnard College is obligated to initiate its Grievance Procedure or, as appropriate, Barnard College's informal resolution process.

Barnard College will keep the identity of any individual who has made a report or Complaint of sex discrimination confidential, including the identity of any individual who has made a report or filed a Complaint of Sex-Based Harassment or sex discrimination under Barnard College's Title IX Grievance Procedure, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding under Barnard College's Title IX Grievance Procedure.

No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX of the Education Amendments of 1972 or its implementing regulations.

No person may intimidate, threaten, coerce, or discriminate against any individual because the individual has made a report or Complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing under Barnard College's Grievance Procedure.

Any intimidation, threats, coercion, or discrimination, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations constitutes Retaliation. This includes any charges filed against an individual for Code of Conduct violations that do not involve sex discrimination or Sex-Based Harassment but that arise from the same facts or circumstances as a report or Complaint of sex discrimination or a report or Complaint of Sex-Based Harassment.

Complaints alleging Retaliation may be filed according to the Nondiscrimination Policy and Discrimination Procedure.

## **APPENDIX A: RULES OF DECORUM**

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

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

### **Rules of Decorum**

1. If an advisor, Party, or witness is referencing another person, including the hearing participants, as much as possible the person's name or role (i.e. Complainant, Respondent) should be used.
2. If an advisor, Party, or witness is referencing another person, including the hearing participants, it is the expectation that the person is referenced by their gender as they identify it. No participant shall intentionally misgender another person.
3. During cross-examination, the Decision-maker must approve all questions before the Party or witness responds. As much as possible, the Decision-maker and Advisors are expected to restrict the use of compound, redundant, irrelevant, or otherwise impermissible questions.
4. The advisor may not use profanity or make irrelevant ad hominem attacks on a Party or witness. Questions are meant to be interrogative statements used to test knowledge or understand a fact; they may not include accusations within the text of the question.
5. Hearing participants are prohibited from:
  - Interrupting other participants;
  - Using profanity directed toward another participant;
  - Objectively offensive or aggressive gestures;
  - Harassing another participant;
  - Yelling, screaming, badgering;
  - Physically "leaning in" to the personal space of another participant;
  - Approaching a participant without the express permission of the Decision-maker;
  - Taking any action that a reasonable person may see as intended to intimidate a participant or meaningfully modify someone's participation in the process; and
  - Engaging in any other behavior to deliberately disrupt the live hearing.

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

If a hearing participant violates the Rules of Decorum, the Decision-maker may issue a penalty to that hearing participant. Specifically, the Decision-maker may give a verbal warning, pause

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

### **Removal Process**

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

## APPENDIX B: SANCTION EXAMPLES

### Student Sanctions

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

- *Warning*: A formal statement that the conduct was unacceptable and a warning that further violation of any Barnard policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Required Counseling*: A mandate to meet with and engage in either Barnard-sponsored or external counseling to better comprehend the misconduct and its effects.
- *Access or Activity Restrictions*: A mandate to restrict access to specific space or activities for a specified period of time.
- *Probation*: A written reprimand for violation of institutional policy, providing for more severe Disciplinary Sanctions in the event that the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- *Suspension*: Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at Barnard. The appropriate transcript notation will apply.<sup>10</sup>
- *Expulsion*: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend Barnard-sponsored events. This sanction will be noted permanently as a Conduct Expulsion on the student's official transcript, subject to any applicable expungement policies.
- *Withholding Diploma*: The College may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities as a sanction if the student is found responsible for an alleged violation.
- *Revocation of Degree*: The College reserves the right to revoke a degree previously awarded from Barnard for fraud, misrepresentation, and/or other violation of College policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- *Organizational Sanctions*: Deactivation, loss of recognition, loss of some or all privileges (including Barnard registration) for a specified period of time.
- *Other Actions*: In addition to or in place of the above sanctions, the College may assign any other sanctions as deemed appropriate.

### Employee Sanctions

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

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<sup>10</sup> For crimes of violence, including but not limited to sexual violence, defined as crimes that meet the reporting requirements pursuant to the federal Clery Act established in 20 U.S.C. 1092(f)(1)(F)(i)(I)-(VIII), institutions shall make a notation on the transcript of students found responsible after a conduct process that they were "suspended after a finding of responsibility for a code of conduct violation" or "expelled after a finding of responsibility for a code of conduct violation." For the respondent who withdraws from the institution while such conduct charges are pending, and declines to complete the disciplinary process, institutions shall make a notation on the transcript of such students that they "withdrew with conduct charges pending."

- *Warning – Verbal or Written*
- *Performance Improvement Plan/Management Process*
- *Enhanced Supervision, Observation, or Review*
- *Required Counseling; Required Training or Education*
- *Probation; Denial of Pay Increase/Pay Grade*
- *Loss of Oversight or Supervisory Responsibility; Demotion*
- *Transfer; Reassignment*
- *Delay of Tenure-Track Progress*
- *Assignment to New Supervisor*
- *Restriction of Stipends, Research, and/or Professional Development Resources*
- *Suspension With Pay; Suspension Without Pay*
- *Termination*
- *Other Actions:* In addition to or in place of the above sanctions, the College may assign any other responsive actions as deemed appropriate.

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

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

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

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

b. **Employees:** Should an employee Respondent resign with unresolved allegations pending, the resolution process ends with dismissal, as the College no longer has disciplinary jurisdiction over the resigned employee. However, the College will continue to address and remedy any systemic issues or concerns that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation. The employee who resigns with unresolved allegations pending is not eligible for admission or rehire with the College, and the records retained by the Title IX Coordinator will reflect that status. All responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

## APPENDIX C: BARNARD COLLEGE RESOURCES

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



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

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

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

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

#### **Local NYC Resources**

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

individual choose to file a report with the NYPD.

- **New York City Anti-Violence Project**  
116 Nassau Street, 3rd Floor | (212) 714-1141 (this is a 24-hour 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. While their main line is only open during business hours, advocates from the program are available to survivors at the hospital 24/7.*

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

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

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

- [Love Is Respect](#): Provides comprehensive information and support services (including helpline and online chat) for young adults who are concerned about dating relationships. They also provide more information for those individuals supporting someone experiencing relationship violence.
- [RAINN](#): RAINN is the nation's largest anti-sexual-violence organization. They offer a 24/7 helpline and online chat services as well as information and resources related to

sexual violence.

- [The Network/La Red](#): The Network/La Red is a survivor-led organization dedicated to ending partner abuse in LGBTQIA+, Polyamorous, and BDSM communities. Though physically based in Massachusetts, they provide a 24/7 toll-free helpline and online resources.
- [FORGE](#): FORGE is a national transgender anti-violence organization. They provide referrals to local providers, a peer support listserv for survivors, and guided survivor healing programs.

## APPENDIX D: SCENARIO EXAMPLES

The following scenarios help illustrate some applications of the Policy.<sup>11</sup>

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

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

- Amanda and Jamie meet at a party. They spend the evening dancing and getting to know each other. Jamie convinces Amanda to come up to their room. From 11 p.m. until 3 a.m., Jamie uses every line they can think of to convince Amanda to have sex with them, but she adamantly refuses. Despite her clear communications that she is not interested in doing anything sexual with them, Jamie keeps at her, questions her religious convictions, and accuses her of being "a prude." Jamie brings up several rumors that they've heard about how

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<sup>11</sup> Some of these illustrative scenarios are adapted from the Columbia University policy.

she performed oral sex on a number of other students. Finally, it seems to Jamie that Amanda's resolve is weakening, and he convinces her to perform oral sex on them. Amanda would have never done it but for Jamie's incessant coercion.

- Jiang is a junior. Beth is a sophomore. Jiang comes to Beth's residence hall room with some mutual friends to watch a movie. Jiang and Beth, who have never met before, are attracted to each other. After the movie, everyone leaves, and Jiang and Beth are alone. They hit it off, soon become more intimate, and start to make out. Jiang verbally expresses his desire to have sex with Beth. Beth, who was abused by a babysitter at the age of 5 and avoids sexual relations as a result, is shocked at how quickly things are progressing. As Jiang takes her by the wrist over to the bed, lays her down, undresses her, and begins to have intercourse with Beth, Beth has a severe flashback to her childhood trauma. She wants to tell Jiang to stop but cannot. Beth is stiff and unresponsive during the intercourse.

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

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

All students have the right to:

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