

Barnard College



WORKPLACE NONDISCRIMINATION POLICY AND PROCEDURES GOVERNING COMPLAINTS AGAINST EMPLOYEES

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I. Policy Against Workplace Discrimination

A. Introduction

Barnard College (the “College”) does not tolerate discrimination or harassment based upon actual or perceived membership in a Protected Class. A “Protected Class” is a group of people with a common characteristic or status and who are protected from discrimination on the basis of that characteristic or status. Protected Classes include: age, national origin, immigration or citizenship status, race, color, disability, sex, gender, gender identity, sexual orientation, marital or partnership status, pregnancy and related conditions, lactation, religion, creed, height, weight, and sexual and reproductive health decisionmaking. The College also does not discriminate or tolerate discrimination based upon salary history; pay transparency; arrest or conviction record¹; credit history; the results of pre-employment marijuana testing; status as a veteran or active military service member; caregiver roles; unemployment status; status as a victim of domestic violence, stalking, or sex offenses; or any other applicable legally protected class or status.

This Nondiscrimination Policy and Procedures Governing Complaints Against Employees (this “Policy”) governs allegations of discrimination, harassment, and retaliation in the workplace and against Barnard employees (other than those allegations covered by Barnard’s separate Title IX Sexual Harassment Policy).² Reports of misconduct outside the scope of this Policy may be addressed by other Barnard policies, and this Policy must be read and understood in conjunction with all College policies and procedures.

Individuals affected by any form of sexual misconduct, irrespective of whether it falls under this Policy, may contact the Office of Nondiscrimination to receive support, resources, and information. All complaints will be evaluated by the Office of Nondiscrimination, which will determine whether the alleged conduct falls within the scope of the policies maintained by the Office.

When allegations are made against third parties concerning possible violation of this Policy, the Director of Nondiscrimination will identify the appropriate procedures that apply based on the role of the third party and the nature of any relationship between the third party and the College.

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

¹ Protection from discrimination based on arrest or conviction record applies only to applicants for employment and does not limit the College from invoking the processes set forth in Section 129-A of the New York Corrections Law.

² When allegations of discrimination and or harassment based upon sexual assault, dating violence, domestic violence, stalking, or sex offenses are made against one or more Barnard students and or employees, the matter will be investigated and resolved using the College’s separate Title IX Sexual Harassment Policy.

The “Policy” portion of this document defines the scope of this Policy and describes the forms of prohibited conduct. The “Procedures” portion of this document sets forth the rights and responsibilities of parties and others involved in the process, reporting options and obligations, and the initial steps that the Office of Nondiscrimination may take upon receiving a report of alleged prohibited conduct, including providing Supportive Measures and imposing interim actions.³ The “Procedures” portion of the document also describes the resolution of matters, the range of available sanctions and the process by which Sanctions are determined.

B. Nondiscrimination Statement

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

Barnard is committed to providing a learning, living, and working environment free from discrimination and harassment and to fostering a professional atmosphere that promotes equal employment opportunities and prevents discrimination and harassment. Barnard College recruits, employs, retains, promotes, and provides benefits to employees without regard to Protected Classes. The College also provides reasonable accommodations to individuals with disabilities, individuals observing religious practices, employees who have pregnancy or childbirth-related conditions, or employees who are victims of domestic violence, stalking, or sex offenses.

All Barnard employees are expected to read, understand, and adhere to this Policy. The College also provides mandatory and recommended online and in-person training programs and briefings for employees on preventing and responding to potential discrimination. All College employees are expected to participate in required programs and to be knowledgeable about this Policy. Requests for workshops and briefings, as well as any questions about nondiscrimination policies, should be addressed to the Office of Nondiscrimination.

C. Reporting

Barnard College encourages all community members to report discrimination, harassment, and retaliation prohibited by this Policy. Barnard will keep information received in connection with alleged violations of this Policy as private and confidential as possible, consistent with legal requirements and the College’s obligation to conduct a thorough review.

Employees (including student-employees) are required to report allegations of discrimination they receive or potential discrimination they witness. Failure to fulfill this reporting obligation will be referred to the appropriate office for corrective action. This reporting obligation does not require individuals experiencing harm to report their own experiences. In addition, this reporting requirement does not

³ Please see Section 5 of this Policy for the definition of the term Supportive Measures.

require employees designated as “confidential resources,” such as medical staff, to disclose reports to the Office of Nondiscrimination under any circumstance or to law enforcement (except in very limited situations, such as when failure to disclose the information would result in imminent danger to the individual or to others or as otherwise required by law).

How to Report

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

https://barnard-gme-advocate.symlicity.com/public_report

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

nondiscrimination@barnard.edu

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

The Office of Nondiscrimination

<https://barnard.edu/nondiscrimination>

nondiscrimination@barnard.edu

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D. Conduct Prohibited by this Policy

It is a violation of this Policy for Barnard employees to commit the following acts:

- **Discrimination:** Treating individuals differently because of their actual or perceived membership in a Protected Class. Discrimination includes treating an individual differently on the basis of their actual or perceived membership in a Protected Class in the workplace without a legitimate, nondiscriminatory reason.
- **Discriminatory Harassment:** Denigrating or showing hostility or aversion toward an individual because of their actual or perceived membership in a Protected Class. This may include verbal abuse; epithets or slurs; negative stereotyping (including, but not limited to, stereotypes about

how an individual looks, including skin color, physical features, or style of dress that reflects ethnic traditions; a foreign accent; a foreign name, including names commonly associated with a particular shared ancestry or ethnic characteristics; or speaking a foreign language); threatening, intimidating, or hostile acts; denigrating jokes; insulting or obscene comments or gestures; and calls for violence or genocide. Such conduct may be communicated orally or through the display or circulation of written or graphic material in any form, including but not limited to social media. Phone calls, text messages, emails, and social media usage may create or contribute to a hostile work environment or otherwise constitute Discriminatory Harassment, even if the communications occur away from Barnard premises.

A single incident of inappropriate behavior may be enough to rise to the level of Discriminatory Harassment under this Policy. Conduct that a reasonable person would consider nothing more than “petty slights” or “trivial inconveniences” may not amount to Discriminatory Harassment under this Policy. However, such conduct may still violate other College policies or expectations for appropriate and professional employee conduct and, accordingly, may result in discipline as determined by the College. Whether conduct rises to the level of Discriminatory Harassment will depend on the circumstances and the parties involved, as well as the nature and duration of the conduct.

- Hostile Environment: Engaging in unwelcome conduct directed at individuals or groups based on their actual or perceived Protected Class(es) that unreasonably interferes with a person’s ability to perform their job or creates an intimidating, threatening, or demeaning work environment.
- Retaliation: Any adverse action taken, made, or threatened, personally or through a third party, against any individual because the individual has reported discrimination pursuant to this Policy, engaged with the Nondiscrimination Office, or participated in a resolution process pursuant to this Policy. Retaliation may also include violations of a no-contact directive or other Supportive Measures or interim measures during the course of a proceeding pursuant to this Policy. All individuals, not just those accused of violating this Policy, are prohibited from engaging in Retaliation. If alleged Retaliation occurs between the parties while a matter is pending pursuant to this Policy, the alleged Retaliation may be addressed separately or, in the sole discretion of the Office of Nondiscrimination, folded into the pending proceeding based on the circumstances.
- Intentional Interference: Intentionally interfering with the process of the Office of Nondiscrimination concerning any report made under this Policy.

E. Other Important Concepts

1. Role of the Civil Rights Coordinator

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

Civil Rights Coordinator has been designated as the College's Title VI, Title VII, and Title IX Coordinator.

2. Sharing of Information

The College considers reports and investigations to be private matters for the parties involved. For that reason, the College will protect the identity of persons involved in reports of alleged violations of this Policy to the best of its ability consistent with applicable law. The College will share personally identifiable information only with persons who have a need to know such information in order for the College to investigate and respond to the report or to provide resources or support services.

The identities of witnesses are typically shared with the parties; however, based on the specific facts, requests, and circumstances of a particular case, the Office of Nondiscrimination has discretion to anonymize witnesses when appropriate. The College does not publish the names of or post identifiable information about persons involved in reports of discrimination or other violations of this Policy.

Parties will be asked at the beginning of an investigation to keep information related to the investigation and resolution private to the extent consistent with applicable law. Witnesses will be asked to keep any information learned in an investigation meeting private to the extent consistent with applicable law.

3. Training and Education

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

4. Incidents Involving Minors

All Barnard employees, students, volunteers, and contractors who witness discrimination or violence against individuals under the age of 18 are obligated to contact Barnard's Office of General Counsel and to call the New York State Child Abuse & Maltreatment Hotline at 800-342-3720. During the call with the NY State Child Abuse & Maltreatment Hotline, individuals must obtain an ID number and the name of the representative contacted. After the call, individuals must complete this [form](#) from the Office of Children and Family Services and send it to the local child protective services where the incident(s) occurred.

5. Bad-Faith Complaints and False Information

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

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

II. Procedures Governing Complaints Against Employees

A. Introduction to General Procedures

This section outlines the process the Office of Nondiscrimination follows when it receives a report alleging a violation of this Policy by a Barnard employee.

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

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

B. Participation in Process

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

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

All participants have the responsibility to be completely truthful at all stages of the process.

C. Standard of Evidence

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

D. Advisors

Employees filing or responding to reports under this Policy may request the presence of an advisor to provide support throughout the investigatory and resolution process. An advisor may not be a party or witness in the matter or a related matter. It is the responsibility of each employee to coordinate scheduling with their advisor for any meetings.

Advisors are required to keep information they learn in the course of their role as an advisor confidential. An advisor may not speak, write, provide information to, or otherwise communicate with investigators or adjudicators during the process, and advisors may not review any document or attend any meeting in the absence of the employee they are assisting or without a valid FERPA waiver, if applicable. An advisor may not disrupt any meeting under this Policy.

Any member of a collective bargaining unit recognized by the College, whether a party, reporter, or witness, may be entitled to have a union representative present during any investigatory meeting pursuant to their operative collective bargaining agreement.

E. The Investigation Process

1. The Initial Inquiry

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

a. Supportive Measures

Before or during an investigation under this Policy, the College may offer free supportive services to any individual making a report or to any employee accused of violating the Policy ("Supportive Measures"). Supportive Measures are designed to restore or preserve access to and benefit from their jobs and

workplace environment. Supportive Measures are also designed to protect the safety of all parties and the College's work environment and to deter discrimination.

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

- Restricting access to campus buildings or College property;
- No-contact directives;
- Administrative leave;
- Counseling;
- Modifications of work schedules;
- Changes in work locations or assignments;
- Increased security and monitoring of certain areas;
- Suspension from activities.

In providing Supportive Measures, the Office of Nondiscrimination will make every effort to preserve or restore equal access to the workplace. The Supportive Measures needed by each party may change over time, and the Office of Nondiscrimination will make every effort to ensure that any Supportive Measures in place are necessary and effective based on the parties' evolving needs.

Please note that failure to comply with any Supportive Measures provided by the Office of Nondiscrimination may be a violation of this Policy and may lead to disciplinary action or sanctions.

b. Interim Administrative Leave

At any time after receiving a report of an alleged violation of this Policy, the College, at its discretion, may place an employee on interim administrative leave, including during the pendency of the investigation. The decision to place an employee on administrative leave will be made by Barnard's Office of Human Resources.

2. Dismissal

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

- The individual who filed the complaint requests to withdraw the complaint or any allegations within it by contacting the Office of Nondiscrimination in writing;
- The College is unable to identify the accused person after taking reasonable steps to do so;
- The accused person is no longer affiliated with or employed by the College; or
- The Office of Nondiscrimination determines that the conduct alleged in the complaint, even if proven, would not violate this Policy and the Office of Nondiscrimination has undertaken reasonable efforts to clarify the allegations with the reporting individual.

In the event the Office of Nondiscrimination determines that the complaint should be dismissed, it will promptly inform the parties of dismissal and the basis for the dismissal.

3. Notification to Parties

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

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

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

4. Acceptance of Responsibility

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

In the event an employee decides to accept responsibility for some but not all of the alleged violations, the Office of Nondiscrimination will determine whether to sever the matter, sending the violations for which the employee has accepted responsibility to the appropriate office for sanctioning and continuing with the formal or informal resolution process for the remaining alleged violations as appropriate.

5. The Investigation

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

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

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

6. Notice of Outcome

Once an investigation is complete, the Office of Nondiscrimination will issue a Notice of Outcome letter. The Notice of Outcome will include a summary of the investigation and the conclusions reached. If the complaint presents more than a single allegation of misconduct, a finding will be made separately as to each allegation. All parties will be notified simultaneously in writing of the Notice of Outcome.

7. Consequences for Violating This Policy

If a staff member is found responsible for violating this Policy, the Office of Nondiscrimination will provide the Notice of Outcome and final investigative report to the Office of Human Resources. The Office of Human Resources, in consultation with the staff member's manager, will determine sanctions and corrective actions based on its review of the report and any recommendations in the report.

Sanctions against union-represented staff members will be issued in accordance with the applicable collective bargaining agreement.

If a faculty member is found responsible for violating this Policy, the Office of Nondiscrimination will provide the final investigative report to the Office of the Provost. The Office of the Provost, in consultation with the Office of Human Resources, will determine sanctions and corrective actions based on its review of the final investigative report and any recommendations in the report.

Sanctions against non-union-represented faculty members will be issued in accordance with applicable faculty codes and tenure protections.

Sanctions against union-represented faculty members will be issued in accordance with the applicable collective bargaining agreement.

When a determination has been made that an individual has violated this Policy, sanctions will be based on several factors, including the severity of the conduct and any prior policy violations.

In determining sanctions, the decisionmaker will seek to achieve the following objectives:

- Promoting safety and protecting the Barnard community;
- Educating the Barnard community on this Policy's requirements;

- Sanctioning individuals for violating this policy and deterring them from future discriminatory behavior;
- Ending misconduct;
- Taking steps reasonably calculated to prevent the future reoccurrence of the misconduct; and
- Restoring the individual to their pre-deprivation status, to the extent practical and possible.

Sanctions and corrective actions may include, but are not limited to:

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

The College may also take other action designed to eliminate any hostile environment, to prevent the recurrence of any violation of this Policy, and to remedy the effects of any such violation on the parties and the community.

8. Responsibilities of Managers

When an investigation finds a violation of this Policy by an employee, the Office of Human Resources must ensure that appropriate remedial action, which may include disciplinary action, is implemented. Managers must provide confirmation to Human Resources within fourteen (14) business days that the appropriate action has occurred.

Managers are responsible for regular monitoring to ensure that all remedial and/or disciplinary steps are completed and no further discrimination or harassment occurs in the work environment.

F. Alternative Resolution

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

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

Parties interested in Alternative Resolution will receive a written notice containing:

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

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

G. Records

The investigatory file will consist of the initial complaint; the final investigative report, including a record of the remedial action to be taken, if any; and any documents created or used in connection with the investigation. Upon completion of the investigation, the Office of Nondiscrimination will close the file. The Office of Nondiscrimination will maintain records for a period of seven (7) years after the conclusion of an investigation.