

Grievance Policy for Addressing Formal Complaints of Sexual Harassment Under the Title IX Regulations

1. Introduction

What is the purpose of the Title IX Grievance Policy?

Title IX of the Educational Amendments of 1972 prohibits any person in the United States from being discriminated against on the basis of sex in seeking access to any educational program or activity receiving federal financial assistance. The U.S. Department of Education, which enforces Title IX, has long defined the meaning of Title IX's prohibition on sex discrimination broadly to include various forms of sexual harassment and sexual violence that interfere with a student's ability to equally access our educational programs and opportunities.

On May 19, 2020, the U.S. Department of Education issued a Final Rule under Title IX of the Education Amendments of 1972 that:

- Defines the meaning of “sexual harassment” (including forms of sex-based violence),
- Addresses how schools **must** respond to reports of misconduct falling within that definition of sexual harassment, and
- Mandates a grievance process that schools **must** follow to comply with the law in these specific covered cases before issuing a disciplinary sanction against a person accused of sexual harassment.

See, 85 Fed. Reg. 30026 (May 19, 2020). The full text of the Final Rule and its extensive Preamble are available here: <http://bit.ly/TitleIXReg>

The Title IX Grievance Policy will become effective on August 14, 2020, and will only apply to sexual harassment alleged to have occurred on or after August 14, 2020. Based on the Final Rule, Barnard College (“Barnard” or the “College”) will implement the following Title IX Grievance Policy, effective August 14, 2020. Incidents of sexual harassment alleged to have occurred before August 14, 2020, will be investigated and adjudicated according to the process in place at the time the incident allegedly occurred.

How does the Title IX Grievance Policy impact other campus disciplinary policies?

In recent years, “Title IX” cases have become a short-hand for any campus disciplinary process involving sex discrimination, including those arising from sexual harassment and sexual assault. But under the Final Rule, Barnard must narrow both the geographic scope of its authority to act

under Title IX and the types of “sexual harassment” that it must subject to its Title IX investigation and adjudication process. **Only** incidents falling within the Final Rule’s definition of sexual harassment will be investigated and, if appropriate, brought to a live hearing through the Title IX Grievance Policy defined below.

Barnard remains committed to addressing any violations of its policies, even those not meeting the narrow standards defined under the Title IX Final Rule.

Specifically, our campus has:

- A **Code of Conduct** that defines certain behavior as a violation of campus policy, and a separate **Grievance Procedures for Gender-Based Misconduct, Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking** that addresses the types of sex-based offenses constituting a violation of campus policy, and the procedures for investigating and adjudicating those sex-based offenses.

To the extent that alleged misconduct falls outside the Title IX Grievance Policy, or misconduct falling outside the Title IX Grievance Policy is discovered in the course of investigating covered Title IX misconduct, Barnard retains authority to investigate and adjudicate the allegations under the policies and procedures defined within the **Grievance Procedures for Gender-Based Misconduct, Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking** through a separate grievance proceeding, linked [here](#).

The elements established in the Title IX Grievance Policy under the Final Rule have no effect and are not transferable to any other policy of the College for any violation of the Code of Conduct, employment policies, or any civil rights violation except as narrowly defined in this Policy. This Policy does not set a precedent for other policies or processes of the College and may not be cited for or against any right or aspect of any other policy or process.

How does the Title IX Grievance Policy impact the handling of complaints?

Our existing Title IX office and reporting structure remains in place. What has changed is the way our Title IX office will handle different types of reports arising from sexual misconduct, as detailed in full throughout Section 2.

2. The Title IX Grievance Policy

Table of Contents

1. Introduction.....	1
2. The Title IX Grievance Policy.....	3
a. Table of Contents.....	3
b. General Rules of Application.....	3
c. Definitions.....	4
d. Making a Report Regarding Covered Sexual Harassment to Barnard.....	8
e. Non-Investigatory Measures Available Under the Title IX Grievance Policy.....	9
f. The Title IX Grievance Process.....	10
g. Notice of Allegations.....	13
h. Advisor of Choice and Participation of Advisor of Choice.....	14
i. Investigation.....	16
j. Investigative Report.....	18
k. Hearing.....	18
l. Determination Regarding Responsibility.....	22
m. Appeals.....	25
n. Retaliation.....	26
3. Appendices to Barnard’s Grievance Policy for Addressing Formal Complaints of Sexual Harassment Under the Title IX Regulations.....	27

General Rules of Application

Effective Date

This Title IX Grievance Policy will become effective on August 14, 2020, and will only apply to formal complaints of sexual harassment brought on or after August 14, 2020.

Revocation by Operation of Law

Should any portion of the Title IX Final Rule, 85 Fed. Reg. 30026 (May 19, 2020), be stayed or held invalid by a court of law, or should the Title IX Final Rule be withdrawn or modified not to require the elements of this policy, this policy, or the invalidated elements of this policy, will be deemed revoked as of the publication date of the opinion or order 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 that date of opinion or order publication. Should the Title IX Grievance Policy be revoked in this manner, any conduct covered under the Title IX Grievance Policy shall be investigated and

adjudicated under the existing **Grievance Procedures for Gender-Based Misconduct, Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking.**

Non-Discrimination in Application

The requirements and protections of this policy apply equally regardless of sex, sexual orientation, gender identity, gender expression, or other protected classes covered by federal or state law. All requirements and protections are equitably provided to individuals regardless of such status or status as a Complainant, Respondent, or Witness. Individuals who wish to file a complaint about Barnard's policy or process may contact the Department of Education's Office for Civil Rights using contact information available at <https://ocrcas.ed.gov/contact-ocr>.

Definitions

Covered Sexual Harassment

For the purposes of this Title IX Grievance Policy, "covered sexual harassment" includes any conduct on the basis of sex that satisfies one or more of the following:

1. An employee conditioning educational benefits on participation in unwelcome sexual conduct (i.e., quid pro quo);
2. Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to Barnard's education program or activity;
3. Sexual assault (as defined in the Clery Act), which includes 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) amendments to the Clery Act), which includes 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 (as defined in the VAWA amendments to the Clery Act), which includes any felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under New York's domestic or family violence laws or by any other person against an adult or

6. youth victim who is protected from that person's acts under the domestic or family violence laws of New York.
7. Stalking (as defined in the VAWA amendments to the Clery Act), meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to-- (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.

Note that conduct that does not meet one or more of these criteria may still be prohibited under the **Policy Against Discrimination and Harassment (linked here)** and **Grievance Procedures for Gender-Based Misconduct, Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking.**

Consent

For the purposes of this Title IX Grievance Policy, “consent” involves explicit communication. Affirmative consent is 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 the 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. See Barnard’s Policy Against Discrimination and Harassment.

A sexual encounter is considered consensual when individuals each willingly and knowingly engage in sexual activity. Consent cannot be obtained through the use of coercion. Coercion is the use of pressure, manipulation, substances, force and disregarding objections of another party to engage in sexual activity. Consent must be clearly and unambiguously communicated.

Consent to any one sexual act or prior sexual activity does not necessarily constitute consent to any other sexual act. Consent may be given initially but withdrawn at any time. When consent is withdrawn or can no longer be given, sexual activity must stop.

One who is incapacitated (whether by alcohol or drug use, disability, unconsciousness, or is otherwise helpless) cannot consent to sexual activity. In this procedure, determining whether an individual was incapacitated may depend on the perspective of an objective and reasonable interpretation of events to consider whether a sober individual in the Respondent’s position could know or should have known that the Complainant was incapacitated. The person initiating each specific sexual act is responsible for obtaining affirmative consent, regardless of whether or not the initiator is under the influence of alcohol and/or other drugs.

Education Program or Activity

For the purposes of this Title IX Grievance Policy, Barnard’s “education program or activity” includes:

- Any on-campus premises.
- Any off-campus premises that Barnard has substantial control over. This includes buildings or property owned or controlled by a recognized student organization.
- Activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of Barnard’s programs and activities over which Barnard has substantial control.

Formal Complaint

For the purposes of this Title IX Grievance Policy, “formal complaint” means a document – including an electronic submission - filed by a complainant with a signature or other indication that the complainant is the person filing the formal complaint, or signed by the Title IX Coordinator, alleging sexual harassment against a respondent about conduct within Barnard’s education program or activity and requesting initiation of the procedures consistent with the Title IX Grievance Policy to investigate the allegation of sexual harassment.

Complainant

For the purposes of this Title IX Grievance Policy, Complainant means any individual who has reported being or is alleged to be the victim of conduct that could constitute covered sexual harassment as defined under this policy.

Relevant evidence and questions

“Relevant” evidence and questions refer to any questions and evidence that tends to make an allegation of sexual harassment more or less likely to be true.

“Relevant” evidence and questions do not include the following types of evidence and questions, which are deemed “irrelevant” at all stages of the Title IX Grievance Process:

- Evidence and questions about the complainant’s sexual predisposition or prior sexual behavior unless:
 - They are offered to prove that someone other than the respondent committed the conduct alleged by the Complainant, or

- They concern specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent and are offered to prove consent. 34 C.F.R. § 106.45(6)(i).
- Evidence and questions that constitute, or seek disclosure of, information protected under a legally-recognized privilege. Legally-recognized privileges include, e.g., attorney-client privilege.
- Any party’s medical, psychological, and similar records unless the party has given voluntary, written consent. 85 Fed. Reg. 30026, 30294 (May 19, 2020).

Respondent

For the purposes of this Title IX Grievance policy, Respondent means any individual who has been reported to be the perpetrator of conduct that could constitute covered sexual harassment as defined under this policy.

Privacy vs. Confidentiality

Consistent with Barnard’s Grievance Procedures for Gender-Based Misconduct, Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking, 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 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 will limit the disclosure as much as practicable, even if the Title IX Coordinator determines that the request for confidentiality cannot be honored.

Disability Accommodations

This Policy does not alter any of Barnard’s obligations under federal disability laws including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point before or during the Title IX Grievance Process that do not fundamentally alter the process. 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 Barnard programs and activities.

Making a Report Regarding Covered Sexual Harassment to Barnard

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual 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:

Name: Madeline Comacho
Title: Interim Title IX Coordinator
Office Address: 114 Barnard Hall
Email Address: mcamacho@barnard.edu
Telephone Number: (212) 853-0772

Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address listed for the Interim Title IX Coordinator.

Confidential Reporting

The following Officials will provide privacy, but not confidentiality, upon receiving a report of conduct prohibited under this policy:

- Title IX Coordinator or designee.
- Other Required Reporters include faculty and most staff (including Teaching Assistants and students employed by the College and acting in an official capacity, such as Resident Advisers), who are required by the College to provide relevant information about gender-based misconduct complaints to the Office of Title IX and Equity. Staff within this office, in consultation with the appropriate Title IX Coordinator(s), are responsible for connecting students with supportive resources and working to ensure community safety.

The following Officials may provide confidentiality:

- Confidential Resources on campus include: Furman Counseling Center (clinicians are confidential resources), Being Barnard, Columbia University Chaplain, Ombuds Office, Primary Care Health Service, and advocates, on campus, at the Sexual Violence Response Rape Crisis/Anti-Violence Support Center or off campus at St. Luke's Crime Victims Treatment Center. Contact information for on and off campus confidential resources can be found [here](#).

Non-Investigatory Measures Available Under the Title IX Grievance Policy

Supportive Measures

Complainants (as defined above), who report allegations that could constitute covered sexual harassment under this policy, have the right to receive supportive measures from Barnard regardless of whether they desire to file a complaint, which may include:

- Counseling
- Extensions of deadlines or other course-related adjustments
- Modifications of work or class schedules
- Restrictions on contact between the parties (no contact orders)
- Changes in work or housing locations

See 85 Fed. Reg. 30401.

Supportive measures are non-disciplinary and non-punitive.

Emergency Removal

Barnard retains the authority to remove a respondent from Barnard's program or activity on an emergency basis, where Barnard (1) undertakes an individualized safety and risk analysis and (2) determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of covered sexual harassment justifies a removal.

If Barnard determines such removal is necessary, the respondent will be provided notice and an opportunity to challenge the decision immediately following the removal. If, after undertaking an individualized safety and risk analysis, Barnard determines that there is an immediate threat to the physical health or safety of any student or other individual arising from the allegations of misconduct, either of the following actions may be taken:

- Temporarily suspending a Respondent from specified activities and/or positions of leadership; and
- Temporarily suspending a Respondent from Barnard.

Barnard will provide notice about these supportive and interim measures only to those who need to know in order to make them effective.

Failure to comply with interim measures or other directives is a violation of Barnard's Policy and may lead to additional disciplinary action.

Administrative Leave

Barnard retains the authority to place a non-student employee respondent on administrative leave during the Title IX Grievance Process, consistent with College policy.

The Title IX Grievance Process

Filing a Formal Complaint

The College makes every reasonable effort to ensure that complaints are resolved as expediently and efficiently as possible. Many complaints may require extensive review, and time frames will vary depending on the complexity of the investigation and the severity and extent of the alleged misconduct. Additionally, any reference to "days" in this Policy and these Procedures refers to business days.

The Title IX Office strives to complete investigation and adjudication within 120 days after the notice of an investigation under the Gender-Based Misconduct process or notice of a Title IX Formal Complaint.

Time frames may be extended for good cause as necessary to ensure the integrity and completeness of this process. The reasons for extension of the time frame also include, but are not limited to: compliance with a request by law enforcement; a limited accommodation of the availability of Parties, their advisors, and witnesses; students on leave; exam periods, school breaks or vacations; and accounting for complexities of a specific investigation, including the number of witnesses and volume of information provided by the Parties.

To file a Formal Complaint, a complainant must provide the Title IX Coordinator a written, signed complaint describing the facts alleged. Complainants are only able to file a Formal Complaint under this Policy if they are currently participating in, or attempting to participate in, the education programs or activities of Barnard, including as an employee. For complainants

who do not meet this criteria, the College will utilize existing policy in Grievance Procedures for Gender-Based Misconduct, Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking.

If a complainant does not wish to make a Formal Complaint, the Title IX Coordinator may determine a Formal Complaint is necessary. Barnard will inform the complainant of this decision in writing, and the complainant need not participate in the process further but will receive all notices issued under this Policy and Process.

Nothing in the Title IX Grievance Policy or **Grievance Procedures for Gender-Based Misconduct, Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking** prevents a complainant from seeking the assistance of state or local law enforcement alongside the appropriate on-campus process.

Informal Resolution

A complainant who files a Formal Complaint may elect, at any time, to address the matter through Barnard's Informal Resolution Process. All Parties to a Formal Complaint must agree to enter the Informal Resolution Process through an informed written consent. Information about this Process is available [here](#).

Multi-Party Situations

Barnard may consolidate Formal Complaints alleging covered sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of covered sexual harassment arise out of the same facts or circumstances.

Determining Jurisdiction

The Title IX Coordinator will determine if the instant Title IX Grievance Process should apply to a Formal Complaint. The Process will apply when all of the following elements are met, in the reasonable determination of the Title IX Coordinator:

1. The conduct is alleged to have occurred on or after August 14, 2020;
2. The conduct is alleged to have occurred in the United States;
3. The conduct is alleged to have occurred in Barnard's education program or activity; and
4. The alleged conduct, if true, would constitute covered sexual harassment as defined in this policy.

If all of the elements are met, Barnard will investigate the allegations according to the Title IX Grievance Process.

Allegations Potentially Falling Under Two Policies

Complaints that include allegations of both Gender-Based Misconduct and misconduct under the Title IX procedure will be investigated and adjudicated under the Title IX procedure.

Mandatory Dismissal

If any one of these elements are not met, the Title IX Coordinator will notify the parties that the Formal Complaint is being dismissed for the purposes of the Title IX Grievance Policy. Each party may appeal this dismissal using the procedure outlined in “Appeals,” below.

Discretionary Dismissal

The Title IX Coordinator may dismiss a Formal Complaint brought under the Title IX Grievance Policy, or any specific allegations raised within that Formal Complaint, at any time during the investigation or hearing, if:

- A complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any allegations raised in the Formal Complaint;
- The respondent is no longer enrolled or employed by Barnard; or,
- If specific circumstances prevent Barnard from gathering evidence sufficient to reach a determination regarding the Formal Complaint or allegations within the Formal Complaint.

Any party may appeal a dismissal determination using the process set forth in “Appeals,” below.

Notice of Dismissal

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

Notice of Removal

Upon dismissal for the purposes of Title IX, Barnard retains discretion to utilize the Code of Conduct and/or Grievance Procedures for Gender-Based Misconduct, Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking to determine if a violation of the Code of Conduct and/or Grievance Procedures for Gender-Based Misconduct, Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking has occurred. If so, Barnard will promptly send written notice of the dismissal of the Formal Complaint under the Title IX Grievance Process and removal of the allegations to the conduct process.

Notice of Allegations

The Title IX Coordinator will draft and provide the Notice of Allegations to any party to the allegations of sexual harassment. Such notice will occur as soon as practicable after Barnard receives a Formal Complaint of the allegations, if there are no extenuating circumstances.

The parties will be notified by their Barnard email accounts if they are a student or employee, and by other reasonable means if they are neither.

Barnard will provide sufficient time for the parties to review the Notice of Allegations and prepare a response before any initial interview.

The Title IX Coordinator may determine that the Formal Complaint must be dismissed on the mandatory grounds identified above, and will issue a Notice of Dismissal. If such a determination is made, any party to the allegations of sexual harassment identified in the Formal Complaint will receive the Notice of Dismissal in conjunction with, or in separate correspondence after, the Notice of Allegations.

Contents of Notice

The Notice of Allegations will include the following:

- Notice of Barnard's Title IX Grievance Process including any informal resolution process and a hyperlink to a copy of the process.
- Notice of the allegations potentially constituting covered sexual harassment, and sufficient details known at the time the Notice is issued, such as the identities of the parties involved in the incident, if known, including the complainant; the conduct allegedly constituting covered sexual harassment; and the date and location of the alleged incident, if known.

- A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- A statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney, as required under 34 C.F.R. § 106.45(b)(5)(iv);
- A statement that before the conclusion of the investigation, the parties may inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which Barnard does not intend to rely in reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a party or other source, as required under 34 C.F.R. § 106.45(b)(5)(vi);
- All Parties and witnesses are obligated to be honest and act in good faith. Any person who knowingly makes a false statement in connection with the investigation may be subject to separate disciplinary action. Reports or denials of gender-based misconduct made in good faith are not considered knowingly false solely because the outcome of an investigation and adjudication is contrary to those reports or denials.

Ongoing Notice

If, in the course of an investigation, Barnard decides to investigate allegations about the complainant or respondent that are not included in the Notice of Allegations and are otherwise covered "sexual harassment" falling within the Title IX Grievance Policy, Barnard will notify the parties whose identities are known of the additional allegations by their Barnard email accounts or other reasonable means.

The parties will be provided sufficient time to review the additional allegations to prepare a response before any initial interview regarding those additional charges.

Advisor of Choice and Participation of Advisor of Choice

Barnard will provide the parties equal access to advisors and support persons; any restrictions on advisor participation will be applied equally.

Barnard has a long-standing practice of requiring students to participate in the process directly and not through an advocate or representative. Students participating as Complainant or Respondent in this process may be accompanied by an Advisor of Choice to any meeting or hearing to which they are required or are eligible to attend. The Advisor of Choice is not an advocate. Except where explicitly stated by this Policy, as consistent with the Final Rule,

Advisors of Choice shall not participate directly in the process as per standard policy and practice of Barnard.

Barnard will not intentionally schedule meetings or hearings on dates where the Advisors of Choice for all parties are not available, provided that the Advisors act reasonably in providing available dates and work collegially to find dates and times that meet all schedules.

Barnard's obligations to investigate and adjudicate in a prompt timeframe under Title IX and other college policies apply to matters governed under this Policy, and Barnard cannot agree to extensive delays solely to accommodate the schedule of an Advisor of Choice. The determination of what is reasonable shall be made by the Title IX Coordinator or designee. Barnard will not be obligated to delay a meeting or hearing under this process more than five (5) days¹ due to the unavailability of an Advisor of Choice, and may offer the party the opportunity to obtain a different Advisor of Choice or utilize one provided by Barnard.

Notice of Meetings and Interviews

Barnard will provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with a party, with sufficient time for the party to prepare to participate.

Delays

Each party may request a one-time delay in the Grievance Process of up to five (5) days for good cause (granted or denied in the sole judgment of the Interim Title IX Coordinator, or designee) provided that the requestor provides reasonable notice and the delay does not overly inconvenience other parties.

For example, a request to take a five day pause made an hour before a hearing for which multiple parties and their advisors have traveled to and prepared for shall generally not be granted, while a request for a five day pause in the middle of investigation interviews to allow a party to obtain certain documentary evidence shall generally be granted.

The Title IX Coordinator, or designee shall have sole judgment to grant further pauses in the Process.

¹ Any reference to "days" in this Policy refers to business days.

Investigation

General Rules of Investigations

The Title IX Coordinator and/or an investigator designated by the Title IX Coordinator will perform an investigation under a reasonably prompt timeframe of the conduct alleged to constitute covered sexual harassment after issuing the Notice of Allegations.

Barnard, and not the parties, has the burden of proof and the burden of gathering evidence, i.e. the responsibility of showing a violation of this Policy has occurred. 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 an investigation or hearing. This does not shift the burden of proof away from Barnard and does not indicate responsibility.

Barnard 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 will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence, (i.e. evidence that tends to prove and disprove the allegations) as described below.

Inspection and Review of Evidence

Prior to the completion of the investigation, the parties will have an equal opportunity to inspect and review the evidence obtained through the investigation. The purpose of the inspection and review process is to allow each party the equal opportunity to meaningfully respond to the evidence prior to conclusion of the investigation.

Evidence that will be available for inspection and review by the parties will be any evidence that is directly related to the allegations raised in the Formal Complaint. It will include any:

1. Evidence that is relevant, even if that evidence does not end up being relied upon by Barnard in making a determination regarding responsibility;
2. Inculpatory or exculpatory evidence (i.e. evidence that tends to prove or disprove the allegations) that is directly related to the allegations, whether obtained from a party or other source.

All parties must submit any evidence they would like the investigator to consider prior to when the parties' time to inspect and review evidence begins. See, 85 Fed. Reg. 30026, 30307 (May 19, 2020).

Barnard will send the evidence made available for each party and each party's advisor, if any, through an electronic format. Each party and each party's advisor, if any, may have the option to inspect and review a hard copy. Barnard is not under an obligation to use any specific process or technology to provide the evidence and shall have the sole discretion in terms of determining format and any restrictions or limitations on access.

The parties will have ten (10) business days to inspect and review the evidence and submit a written response by email to the investigator. The investigator will consider the parties' written responses before completing the Investigative Report. The Parties may request a reasonable extension as their designated extension request.

Barnard will provide copies of the parties' written responses to the investigator to all parties and their advisors, if any. See, 85 Fed. Reg. 30026, 30307 (May 19, 2020).

Barnard will provide the parties five (5) business days after the initial inspection and review of evidence, and before the investigator completes their Investigative Report, to provide additional evidence in response to their inspection and review of the evidence, and then provide the parties five (5) business days to inspect, review, and respond to the party's additional evidence through a written response to the investigator. Those written responses will be disclosed to the parties and decision-maker, if applicable. See, 85 Fed. Reg. 30026, 30307 (May 19, 2020).

Barnard will provide the parties up to ten (10) days to provide a response, after which the investigator will not be required to accept a late submission. Investigator has ten (10) days to generate a report or, alternatively, may provide the parties with written notice extending the investigation for five (5) days and explaining the reason for the extension.

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

The parties and their advisors and any witnesses must sign an agreement not to disseminate any of the evidence subject to inspection and review or use such evidence for any purpose unrelated to the Title IX grievance process. See, 85 Fed. Reg. 30026, 30435 (May 19, 2020).

The parties and their advisors and any witnesses agree not to photograph or otherwise copy the evidence. See, 85 Fed. Reg. 30026, 30435 (May 19, 2020).

Inclusion of Evidence Not Directly Related to the Allegations:

Evidence obtained in the investigation that is determined in the reasoned judgment of the investigator not to be directly related to the allegations in the Title IX Formal Complaint will be included in the appendices to the Investigative Report.

Investigative Report

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

The Investigative Report is not intended to catalog all evidence obtained by the investigator, but only to provide a fair summary of that evidence.

Only relevant evidence (including both inculpatory and exculpatory – i.e. tending to prove and disprove the allegations - relevant evidence) will be referenced in the Investigative Report.

The investigator may redact irrelevant information from the Investigative Report when that information is contained in documents or evidence that is/are otherwise relevant. See, 85 Fed. Reg. 30026, 30304 (May 19, 2020).

Hearing

General Rules of Hearings

Barnard will not issue a disciplinary sanction arising from an allegation of covered sexual harassment without holding a live hearing unless otherwise resolved through another resolution method and references administrative remediation or mediation.

The live hearing may be conducted with all parties physically present in the same geographic location, or, at Barnard's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually through a remote video conference platform like Zoom. This technology will enable participants simultaneously to see and hear each other. At its discretion, Barnard may delay or adjourn a hearing based on technological errors not within a party's control.

All proceedings will be recorded through audiovisual recording and transcription. That recording and transcript will be made available to the parties for inspection and review.

Prior to obtaining access to any evidence, the Parties and each Advisor must sign an agreement not to:

- Disseminate any of the evidence submitted by another Party or witness subject to inspection and review;
- Disseminate testimony heard or evidence obtained during the Title IX process; and
- Use such testimony or evidence for any purpose unrelated to the Title IX Investigation and Hearing Procedure that would compromise the integrity of the Title IX Investigation and Hearing Procedure.

Once signed, this Agreement may not be withdrawn, including if a Party withdraws from the Title IX Investigation and Hearing Procedure.

Continuances or Granting Extensions

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

The Decision-maker may, only in exceptional circumstances, grant requests to present evidence not already in the investigative file and retains complete authority to determine how such new evidence may impact the hearing (e.g. if the hearing must be continued until a later date for the Investigator to review and present the new evidence to the Parties).

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)

- The parties cannot waive the right to a live hearing.
- Barnard may still proceed with the live hearing in the absence of a party, and may reach a determination of responsibility in their absence, including through any evidence gathered that does not constitute a “statement” by that party. 85 Fed. Reg. 30026, 30361 (May 19, 2020).
 - For example, A verbal or written statement constituting part or all of the sexual harassment itself is not a “prior statement” that must be excluded if the maker of the statement does not submit to cross-examination about that statement. In other words, a prior statement would not include a document, audio recording, audiovisual reading, and digital media, including but not limited to text messages, emails, and social media postings, that constitute the conduct alleged to have been the act of sexual harassment

under the formal complaint. See, OCR Blog (May 22, 2020), available at <https://www2.ed.gov/about/offices/list/ocr/blog/20200522.html>

- Barnard will not threaten, coerce, intimidate or discriminate against the party in an attempt to secure the party's participation. See 34 C.F.R. § 106.71; see also 85 Fed. Reg. 30026, 30216 (May 19, 2020).
- If a party does not submit to cross-examination, the decision-maker cannot rely on any prior statements made by that party in reaching a determination regarding responsibility, but may reach a determination regarding responsibility based on evidence that does not constitute a "statement" by that party.
- The decision-maker cannot draw an inference about the determination regarding responsibility based solely on a party's absence from the live hearing or refusal to answer cross examination or other questions. See 34 C.F.R. §106.45(b)(6)(i).

The Decision-maker

- The hearing body will consist of a single decision-maker ("Decision-maker").
- No Decision-maker will also have served as the Title IX Coordinator, Title IX investigator, or advisor to any party in the case, nor may the Decision-maker serve on the appeals body in the case.
- No Decision-maker will have 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.
- The Decision-maker will be trained on topics including how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for complainants, and any technology to be used at the hearing.
- 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 does not have 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, except for the purpose of cross-examination.
- The parties are not permitted to conduct cross-examination; it must be conducted by the advisor. As a result, if a party does not select an advisor, Barnard will select an advisor to serve in this role for the limited purpose of conducting the cross-examination at no fee or charge to the party.
- The advisor is not prohibited from having a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.
- The advisor is not prohibited from being a witness in the matter.

- If a party does not attend the live hearing, the party's advisor may appear and conduct cross-examination on their behalf. 85 Fed. Reg. 30026, 30340 (May 19, 2020).
- If neither a party nor their advisor appear at the hearing, Barnard will provide an advisor to appear on behalf of the non-appearing party. See, 85 Fed. Reg. 30026, 30339-40 (May 19, 2020).
- Advisors shall be subject to Barnard's Rules of Decorum, and may be removed upon violation of those Rules. See [Barnard's Rules of Decorum](#)

Witnesses

- Witnesses cannot be compelled to participate in the live hearing, and have the right not to participate in the hearing free from retaliation. See, 85 Fed. Reg. 30026, 30360 (May 19, 2020).
- If a witness does not submit to cross-examination, as described below, the decision-maker cannot rely on any statements made by that witness in reaching a determination regarding responsibility, including any statement relayed by the absent witness to a witness or party who testifies at the live hearing. 85 Fed. Reg. 30026, 30347 (May 19, 2020).
- Witnesses shall be subject to Barnard's Rules of Decorum, listed above

Hearing Procedures

For all live hearings conducted under this Title IX Grievance Process, the procedure will be as follows:

- The Decision-maker will open and establish rules and expectations for the hearing;
- The Parties will each be given the opportunity to provide opening statements;
- The Decision-maker will ask questions of the Parties and Witnesses;
- Parties will be given the opportunity for live cross-examination after the Decision-maker conducts its initial round of questioning; During the Parties' cross-examination, the Decision-maker will have the authority to pause cross-examination at any time for the purposes of asking Decision-maker's own follow up questions; and any time necessary in order to enforce the established rules of decorum.
- Should a Party or the Party's Advisor choose not to cross-examine a Party or Witness, the Party shall affirmatively waive cross-examination through a written or oral statement to the Decision-maker. A Party's waiver of cross-examination does not eliminate the ability of the Decision-maker to use statements made by the Party.

Live Cross-Examination Procedure

Each party's advisor will conduct live cross-examination of the other party or parties and witnesses. During this live-cross examination the advisor will ask the other party or parties and

witnesses relevant questions and follow-up questions, including those challenging credibility directly, orally, and in real time.

Before any cross-examination question is answered, the Decision-maker will determine if the question is relevant. Questions asked at a hearing must be relevant to the allegations and the response to those allegations. The basic test for relevance is whether the question asks for information that might help prove or disprove facts related to whether Respondent has committed the alleged conduct. Cross-examination questions that are duplicative of those already asked, including by the Decision-maker may be deemed irrelevant if they have been asked and answered.

Review of Recording

The recording of the hearing will be available for review by the parties within five (5) business days, unless there are any extenuating circumstances. The parties or advisors of choice can either in person or via video conference review the recording. The recording of the hearing will not be provided to the parties or advisor of choice.

Determination Regarding Responsibility

Standard of Proof

Barnard uses the preponderance of the evidence standard for investigations and determinations regarding responsibility of formal complaints covered under this Policy. This means that the investigation and hearing determines whether it is more likely than not that a violation of the Policy occurred.

General Considerations for Evaluating Testimony and Evidence

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

Decision-makers shall not draw inferences regarding a party or witness' credibility based on the party or witness' status as a complainant, respondent, or witness, nor shall it base its judgments in 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.

Still, credibility judgments should not rest on whether a party or witness' testimony is non-linear 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 first-hand 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.

Except where specifically barred by the Title IX Final Rule, a witness' 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.

The Final Rule requires that Barnard allow parties to call "expert witnesses" for direct and cross examination. While the expert witness will be allowed to testify and be crossed as required by the Final Rule, the decision-maker will be instructed to afford lower weight to non-factual 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 the expert witness testimony is the subject of cross examination and regardless of whether all parties present experts as witnesses.

The Final Rule requires that Barnard allow parties to call character witnesses to testify. While the character witnesses will be allowed to testify and be crossed as required by the Final Rule, the decision-maker will be instructed to afford very low weight to any non-factual character testimony of any witness.

The Final Rule requires that Barnard admit and allow testimony regarding polygraph tests ("lie detector tests") and other procedures that are outside of standard use in academic and non-academic conduct processes. While the processes and testimony about them will be allowed to testify and be crossed as required by the Final Rule, the decision-maker will be instructed to afford lower weight to such processes relative to the testimony of fact witnesses.

Where a party or witness' conduct or statements demonstrate that the party or witness is engaging in retaliatory conduct, including but not limited to witness tampering and intimidation, the Decision-maker may draw an adverse inference as to that party or witness' credibility.

Components of the Determination Regarding Responsibility

The written Determination Regarding Responsibility will be issued simultaneously to all parties through their Barnard email account, or other reasonable means as necessary. The Determination will include:

1. Identification of the allegations potentially constituting covered sexual harassment;
2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
3. Findings of fact supporting the determination;
4. Conclusions regarding which section of the Grievance Procedures for Gender-Based Misconduct, Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking, if any, the respondent has or has not violated;
5. For each allegation:
 - a. A statement of, and rationale for, a determination regarding responsibility;
 - b. A statement of, and rationale for, any disciplinary sanctions the recipient imposes on the respondent; and
 - c. A statement of, and rationale for, whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant; and
6. The recipient's procedures and the permitted reasons for the complainant and respondent to appeal (described below in "Appeal").

Timeline of Determination Regarding Responsibility

If there are no extenuating circumstances, the determination regarding responsibility will be issued by Barnard within ten (10) business days of the completion of the hearing.

Finality

The determination regarding responsibility becomes final either on the date that Barnard provides the parties with the written determination of the result of the appeal, if an appeal is filed consistent with the procedures and timeline outlined in "Appeals" below, or if an appeal is not filed, the date on which the opportunity to appeal expires.

Appeals

Each party may appeal (1) the dismissal of a formal complaint or any included allegations and/or (2) 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 the appeal.

The limited grounds for appeal available are as follows:

- Procedural irregularity that affected the outcome of the matter (i.e. a failure to follow Barnard's own procedures).
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter.
- The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against an individual party, or for or against complainants or respondents in general, that affected the outcome of the matter.
- Excessiveness or insufficiency of the sanction: An appeal based on the imposed sanction must explain why the sanction is inappropriate based on the weight of the information provided during the investigation, hearing and/or sanction.

The submission of appeal stays 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, Barnard 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.

Attached to their appeal, the student may provide a written submission for the Appellate Panel to review. The written statement must be prepared by the student and be no longer than five single-spaced typed pages, using 12-point Times New Roman font and one-inch margins. No attachments or exhibits will be accepted; references to evidence should be made to materials included in the Investigative Report.

Appeals will be decided by an Appellate Panel that 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.

Outcome of appeal will be provided in writing simultaneously to both parties, and include rationale for the decision.

Retaliation

Barnard 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 Formal Complaint of sexual harassment under this Title IX Grievance Policy, 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 this Title IX Grievance Policy.

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 this Title IX Grievance Policy.

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 sexual harassment, but that arise from the same facts or circumstances as a report or complaint of sex discrimination or a report or Formal Complaint of sexual harassment. See Barnard's Alcohol and Drug Amnesty Policy [here](#).

Complaints alleging retaliation may be filed according to Barnard's [Grievance Procedures for Gender-Based Misconduct, Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking](#).

**Appendices to Barnard's
Grievance Policy for Addressing Formal Complaints of Sexual Harassment Under the Title
IX Regulations**

Appendix A: Barnard's Informal Resolution Policy

Appendix B: Barnard's Rules of Decorum

Appendix C: On Campus and Off Campus Resources

APPENDIX A

Barnard College Informal Resolution Policy

Procedures for Entering and Exiting Informal Resolution Process

Parties who do not wish to proceed with an investigation and live hearing, and instead seek Barnard’s assistance to resolve allegations of Title IX-covered misconduct, may elect to enter the informal resolution process. Generally speaking, these resolution options are less time intensive than an investigation and live hearing, while still affording students an opportunity to actively participate in a process led by Barnard for resolution of their complaints.

The Parties may elect to enter Barnard’s informal resolution process at any time after the filing of the Formal Complaint 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 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 formal resolution process recommences. In participating in the informal resolution process, the Parties understand that the timeframes governing the formal process temporarily cease, and only recommence upon reentry into the formal process.

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 or other designated official 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, 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 Assault: penetration or the equivalent.

Informal resolution is only permitted to address allegations of student-on-student sexual harassment, and is never allowed as an option to resolve allegations that an employee sexually harassed a student. See, 85 Fed. Reg. 30026, 30054 (May 19, 2020).

At any time after the commencement of the informal resolution process, the Title IX Coordinator or other designated official 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 formal process. This determination is not subject to appeal.

Role of the Facilitator

Informal resolution processes are managed by facilitators, who may not have a conflict of interest or bias in favor of or against complainants or respondents generally or regarding the specific Parties in the matter. The Title IX Coordinator may serve as the facilitator, subject to these restrictions.

All facilitators must have training in the definition of sexual harassment under 34 C.F.R. § 106.30(a), the scope of the institution's education program or activity, how to conduct informal resolution processes, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, or bias.

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 Formal 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 formal resolution process or institutional appeal.

Informal Resolution Options

Barnard offers the following informal resolution procedures for addressing Formal Complaints of sexual harassment covered under this Policy

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 Formal Complaint at any point during the informal resolution process, the institution may administratively resolve the Formal Complaint.

Where the respondent admits responsibility, the Parties will receive simultaneous written notification of the acceptance of responsibility, and the decision-maker 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 but not limited to 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.

Mediation

The purpose of mediation is for the parties who are in conflict to identify the implications of a student's actions and, with the assistance of a trained facilitator, identify points of agreement and appropriate remedies to address them. Either party can request mediation to seek resolution; mediation will be used only with the consent of both parties, who will be asked not to contact one another during the process. The Office of Title IX & Equity will also review any request for mediation, and may decline to mediate based on the facts and circumstances of the particular case. Either party has the right to terminate the mediation process and choose or resume another option for resolution at any time.

The mediation process will typically commence within 10 days after the The Office of Title IX & Equity receives consent to mediate from both parties, and will continue until concluded or terminated by either party or the The Office of Title IX & Equity. During mediation, any potential investigation will halt, and calculations for time frames will be stayed. If the mediation results in a resolution, the disciplinary process will be concluded and the matter will be closed. If a resolution cannot be reached, the matter will be referred to the Associate Director of

Community Standards & Investigations for the Office for Title IX & Equity to re-evaluate other options for resolution, including investigation.

During mediation, a facilitator will guide a discussion between the parties. In circumstances where the parties do not wish to meet face to face, either party can request “caucus” mediation, and the facilitator will conduct separate meetings. Whether or not the parties agree to meet face to face, each party will be permitted to bring an advisor of their choice to any meetings who may be, but is not required to be, an attorney.

At the conclusion of the mediation, the facilitator will memorialize the agreement that was reached between the parties. The Office of Title IX & Equity will monitor adherence to the proposed solution and close the matter when compliance is satisfactory.

APPENDIX B

Barnard College 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 above. 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 the 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 mis-gender 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;
- Take any action that a reasonable person may see as intended to intimidate a participant or meaningfully modify someone's participation in the process.
- 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 Title IX Office 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 C

Barnard College Resources

On Campus

[Columbia SVR Rape Crisis /Anti-Violence Support Center](#) is located at 105 Hewitt Hall: 212-854-HELP (4357) - this is a 24/7 helpline

[Being Barnard](#) is located at 122 Reid Hall: 212-853-0145

[Primary Care Health Services](#) is located in Brooks, Lower Level: 212-854-2091

[Furman Counseling Center](#) is located at 100 Hewitt Hall: 212-854-2092

[University Chaplain](#) is located at 710 Lerner Hall: 212-854-1493

[Barnard Ombuds Office](#) is located in Hewitt Hall: 212-853-1352

[Title IX](#) is located at 102 Milbank Hall: 212-854-0037

[Public Safety](#) is located at 104 Barnard Hall: 212-854-3362 (emergency line: 212-854-6666)

[Well Woman](#) is located at 119 Reid Hall 212-854-3063

Off Campus

Local NYC Resources

New York City is home to a plethora of resources for people of all identities and genders who are facing sexual and interpersonal violence such as sexual harassment, sexual assault, dating violence, domestic violence, and stalking. 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 a survivor choose to file a report with the NYPD.

[New York City Anti-Violence Project](#) is located at 116 Nassau Street, 3rd floor: 212-714-1141 (this is a 24 hour help line)

- AVP is dedicated to serving LGBTQ and HIV-affected communities

[WomanKind](#) is located at 9 Mott Street, suite #200: 1-888-888-7702 (this is a 24 hour help line)

- WomanKind helpline advocates are multi-lingual and speak English, Spanish, and 18+ Asian languages and dialects including Chinese, Korean, Japanese, Tagalog, Hindi, Urdu, Bengali, and Vietnamese

[Safe Horizon](#) is located in multiple locations throughout the 5 boroughs: 1-800-621-4673 (this is a 24 hour help line)

- Safe Horizon is the largest survivor service non-profit 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](#) is located at 114th street and Amsterdam Avenue (Across from Columbia): 212-423-2140 (M-F, 9am to 5pm)

- The SAVI program is located in St. Lukes 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 ER, you do not have to do so alone. SVR provides advocates, 24/7 through their help line (212-854-HELP[4357]), to accompany you if you wish.**

Online Resources

There is 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 sexual and relationship violence.

- [Love is Respect](#): Love is Respect provides comprehensive information and support services (including helpline and online chat) for young adults who are concerned about their dating relationships. They also provide information for those who are supporting someone experiencing relationship violence.
- [RAINN](#): RAINN is the nation's largest anti-sexual violence organization. They offer a 24/7 help line and online chat services, as well as a plethora of 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 help line 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.