

Barnard College

Title IX Formal Grievance Process

Applicable to Students, Faculty, and Staff

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1. Overview

Barnard College will act on any formal notice/complaint of violation of the Policy Against Discrimination and Harassment (“the Policy”) that is received by the Director of Nondiscrimination and Title IX¹ or any other Official with Authority by applying these procedures, known as the Title IX Formal Grievance Process.

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

- Defines the meaning of “sexual harassment” (including forms of sex-based violence),

¹ At Barnard College, the Director of Nondiscrimination and Title IX acts as the Title IX Coordinator. Any reference to action taken by the Director of Nondiscrimination and Title IX/Title IX Coordinator is inclusive of action taken on behalf by a designee (i.e. deputy coordinator).

- 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.

The Title IX Formal Grievance Process became effective on August 14, 2020, and only applies to sexual harassment alleged to have occurred on or after August 14, 2020. Incidents of sexual harassment alleged to have occurred before August 14, 2020, will be investigated and adjudicated according to the resolution process in place at the time the incident allegedly occurred.

The procedures below apply **only** to qualifying allegations of sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined in the [Policy Against Discrimination and Harassment](#)) involving students, staff, administrators, or faculty members. If other Policy definitions are invoked, such as protected class harassment or discrimination as defined in the Policy, please refer to the [Nondiscrimination and Harassment Resolution Process](#) for a description of the procedures applicable to the resolution of such offenses. The Nondiscrimination and Harassment Resolution Process can also apply to sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined in the Policy) when jurisdiction does not fall within this Title IX Formal Grievance Process as determined by the Title IX Coordinator. Barnard remains committed to addressing any violations of its policies, even those not meeting the narrow standards defined under the 2020 Title IX Final Rule.

Unionized/other categorized employees are also subject to the terms of their agreements/employees' rights to the extent those agreements do not conflict with federal or state compliance obligations.²

The procedures below may be used to address collateral misconduct arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another), when alleged violations of the Policy are being addressed at the same time. All other allegations of misconduct unrelated to incidents covered by the Policy will be addressed through procedures described in the student, faculty, and staff codes of conduct/handbooks.

2. Notice/Complaint

Upon receipt of a complaint or notice of an alleged violation of the Policy, the Director of Nondiscrimination and Title IX (or designee) initiates a prompt initial assessment to determine the next steps the College needs to take. The Director of Nondiscrimination and Title IX will initiate at least one of three responses:

- 1) Offering supportive measures because the Complainant does not want to file a formal complaint; and/or
- 2) An informal resolution (upon submission of a formal complaint); and/or

² Consult with qualified legal counsel on the complex interaction between the regulations and union rights under collective bargaining agreements.

3) A Formal Grievance Process including an investigation and a hearing (upon submission of a formal complaint).

The College uses the Formal Grievance Process to determine whether or not the Policy has been violated. If so, the College will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to harassment or discrimination, their potential recurrence, and/or their effects.

3. Initial Assessment

Following receipt of notice or a complaint of an alleged violation of the Policy, the Title IX Coordinator³ engages in an initial assessment, typically within one to five (1-5) business days. The steps in an initial assessment can include:

- The Title IX Coordinator seeks to determine if the person impacted wishes to make a formal complaint, and will assist them to do so, if desired.
 - If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint themselves because a violence risk assessment based upon available information indicates a compelling threat to health and/or safety.
- If a formal complaint is received, the Title IX Coordinator assesses its sufficiency and works with the Complainant to make sure it is correctly completed.
- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.
- The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.
- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an informal resolution option, or a formal investigation and grievance process.
 - If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes, assesses their request(s), and implements accordingly. No Formal Grievance Process is initiated, though the Complainant can elect to initiate one later, if desired.
 - If an informal resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for informal resolution and may then seek to determine if the Respondent is also willing to engage in informal resolution.
 - If a Formal Grievance Process is preferred by the Complainant, the Title IX Coordinator determines if the misconduct alleged falls within the scope of the 2020 Title IX regulations⁴:
 - If it does, the Title IX Coordinator will initiate the formal investigation and grievance process, directing the investigation to address: an incident,

³ If circumstances require, the Associate Vice President of CARES or Title IX Coordinator will designate another person to oversee the resolution process should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable, unable to fulfill their duties, or have a conflict of interest.

⁴ The Formal Title IX Grievance Process applies to a formal complaint 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 the policy.

and/or, a pattern of alleged misconduct, and/or, a culture/climate issue, based on the nature of the complaint.

- If alleged misconduct does not fall within the scope of the 2020 Title IX regulations, the Title IX Coordinator determines that the regulations do not apply (and will “dismiss” that aspect of the complaint, if any), assesses which policies may apply, which resolution process is applicable, and will refer the matter accordingly.

**Please note that dismissing a complaint under the 2020 Title IX regulations is solely a procedural requirement under Title IX which does not limit the College’s authority to address a complaint with an appropriate process and remedies.*

a. Dismissal (Mandatory and Discretionary)⁵

The College must dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

- 1) The conduct alleged in the formal complaint would not constitute sexual harassment as defined in the [Policy](#), even if proved; and/or
- 2) The conduct is alleged to have occurred before August 14, 2020; and/or
- 3) The conduct did not occur in an educational program or activity controlled by the College (including buildings or property controlled by recognized student organizations) and/or the College does not have control of the Respondent; and/or
- 4) The conduct did not occur against a person in the United States; and/or
- 5) At the time of filing a formal complaint, a Complainant is not participating in or attempting to participate in the education program or activity at the College⁶.

The College may dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing:

- 1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; or
- 2) The Respondent is no longer enrolled in or employed by the recipient; or
- 3) Specific circumstances prevent Barnard from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

A Complainant who decides to withdraw a complaint may later request to reinstate it or refile it. Upon any dismissal, the College will promptly send written notice, simultaneously to the parties,

⁵ These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR §106.45.

⁶ Such a Complainant is still entitled to supportive measures, but the formal grievance process is not applicable unless the Title IX Coordinator signs the complaint in the event the Complainant cannot/will not do so.

of the dismissal and the rationale for doing so, and describe other applicable action related to the matter. This dismissal decision is appealable by any party under the relevant appeal procedures. The decision not to dismiss is also appealable by any party claiming that a dismissal is required or appropriate.

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 of circumstances.

4. Counterclaims

The College is obligated to ensure that the grievance process is not abused for retaliatory purposes. Barnard permits the filing of counterclaims but uses an initial assessment to determine whether the allegations in the counterclaim are made in good faith. Counterclaims by a Respondent may be made in good faith, but are on occasion made for purposes of retaliation, instead. Counterclaims made with retaliatory intent will not be permitted.

Counterclaims determined to have been reported in good faith will be processed using the appropriate grievance procedures. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur. Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Director of Nondiscrimination and Title IX. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this policy.

5. Right to an Advisor

All parties may have an Advisor of their choice present with them for all meetings, interviews, and hearings within the grievance process, if they so choose. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible and available.⁷

a. Who Can Serve as an Advisor

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the grievance process. The parties may choose Advisors from inside or outside of the Barnard community. The Director of Nondiscrimination and Title IX will also offer to assign a trained Advisor to any party if the party so chooses. If the parties choose an Advisor from the pool available from the College, the Advisor will have been trained by Barnard and be familiar with the grievance process. If the parties choose an Advisor from outside the pool of those identified by the College, the Advisor may not have been trained by the College and may not be familiar with College policies and procedures. Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing.

⁷ “Available” means the party cannot insist on an Advisor who simply doesn’t have inclination, time, or availability. Also, the Advisor cannot have institutionally conflicting roles, such as being a Title IX administrator who has an active role in the matter, or a supervisor who must monitor and implement sanctions.

b. Advisor's Role in Meetings and Interviews

The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors should help the parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith. Barnard has a long-standing practice of requiring individuals to participate in the process directly and not through an advocate, advisor, or representative. The Advisor of Choice is not an advocate. Except where explicitly stated by these procedures, as consistent with the Final Rule, Advisors of Choice shall not participate directly in the process as per standard policy and practice of the College.

c. Advisors in Hearings/ Barnard-Appointed Advisor

Under U.S. Department of Education regulations for Title IX, a form of indirect questioning is required during the hearing but must be conducted by the parties' Advisors. The parties are not permitted to directly question each other or any witnesses. If a party does not have an Advisor for a hearing, the College will appoint a trained Advisor for the limited purpose of conducting any questioning of the other party(ies) and witnesses.

d. Pre-Interview Meetings

Advisors and their advisees may request or be asked by the College to meet with the investigators conducting interviews/meetings in advance of these interviews or meetings. Such pre-meeting allows Advisors to clarify and understand their role and Barnard's policies and procedures. All Advisors are subject to the same College policies and procedures, whether they are attorneys or not, and whether they are selected by a party or assigned by the College. Advisors are expected to advise without disrupting proceedings.

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation. Any Advisor who oversteps their role as defined by this policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the scheduled meeting will end, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

e. Sharing Information with the Advisor

The College expects that the parties may wish to have Barnard share documentation and evidence related to the allegations with their Advisors. The College provides a consent form that authorizes College officials involved in the process to share such information directly with a party's Advisor. The parties must either complete and submit this form to the Director of Nondiscrimination and Title IX or provide similar documentation demonstrating consent to a release of information to the Advisor before Barnard is able to share records with an Advisor.

f. Privacy of Records Shared with Advisor

Advisors are expected to maintain the privacy of the records shared with them. Barnard may restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by Barnard's privacy expectations.

g. Expectations of an Advisor

The College generally expects an Advisor to adjust their schedule to allow them to attend related meetings when planned, but the College may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay. The College may also make reasonable provisions to allow an Advisor who cannot be present in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

h. Expectations of the Parties with Respect to Advisors

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Director of Nondiscrimination and Title IX of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired). The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor is to be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing.

6. Resolution Processes

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with Barnard Policy. Although there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose, with the exception of information the parties agree not to disclose as part of an Informal Resolution, discussed below. Barnard encourages parties to discuss with their Advisors any sharing of information before doing so.

The Formal Title IX Grievance Process is Barnard's primary resolution approach for prohibited sexual harassment under Title IX, unless Informal Resolution is elected by all parties and the College. The options for Informal Resolution are detailed in this section, and the Formal Title IX Grievance Process is detailed starting in the next section.

a. 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. More detailed information about the Informal Resolution Process is available in [Appendix A](#).

- Supportive Resolution. When the Title IX Coordinator can resolve the matter informally by providing supportive measures (only) to remedy the situation.
- Alternative Resolution. When the parties agree to resolve the matter through an alternative resolution mechanism as described below, including mediation, restorative practices, and/or facilitated dialogue or other means, usually before a formal investigation takes place.
- Administrative Resolution. When the Respondent elects to accept responsibility for the allegations in the formal complaint and desires to accept a sanction(s) and end the resolution process.

To initiate Informal Resolution, a Complainant must submit a formal complaint, as defined above. A Respondent who wishes to initiate Informal Resolution should contact the Director of Nondiscrimination and Title IX. It is not necessary to pursue Informal Resolution first in order to pursue the Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process. Prior to implementing Informal Resolution, the College will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by the College. Barnard will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

7. Formal Grievance Process

The Formal Title IX Grievance Process relies on a pool of faculty and staff⁸ (“the Pool”) to carry out the process.

a. Pool Member Roles

Members of the Pool are trained annually, and may serve in the following roles, at the direction of the Title IX Coordinator:

- To act as an Advisor to the parties
- To serve in a facilitation role in Informal Resolution or Alternative Resolution if appropriately trained in appropriate resolution approaches (e.g., mediation, restorative practices, facilitated dialogue)
- To perform or assist with initial assessment
- To investigate complaints
- To serve as a hearing facilitator (process administrator, not decision-making role)
- To serve as a Decision-maker regarding the complaint
- To serve as an Appeal Decision-Maker

b. Pool Member Appointment and Training

The Title IX Coordinator is responsible for identifying and appointing members of the Pool. Pool members receive annual and ongoing training on a variety of topics related to Nondiscrimination and Title IX and College policy. Specific training is also provided for all Pool members. More

⁸ External, trained third-party neutral professionals may also be used to serve in pool roles when deemed appropriate by the College.

information about Pool Member appointment and training, including the materials used to train all members of the Pool, are publicly posted on the College website here:

<https://barnard.edu/cares/nondiscrimination-and-title-ix/inform>

8. Formal Grievance Process: Notice of Investigation and Allegations

The Director of Nondiscrimination and Title IX will provide written notice of the investigation and allegations (the “NOIA”) to the Respondent upon commencement of the Formal Title IX Grievance Process. This facilitates the Respondent’s ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, who will be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

- A meaningful summary of all allegations,
- The identity of the involved parties (if known),
- The precise misconduct being alleged,
- The date and location of the alleged incident(s) (if known),
- The specific policies implicated; A description of the applicable procedures,
- A statement of the potential sanctions/responsive actions that could result,
- A statement that the College presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,
- A statement about the College’s policy on retaliation,
- Information about the confidentiality of the process,
- Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor,
- A statement informing the parties that Barnard’s Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,
- Detail on how the party may request disability accommodations during the interview process,
- The name(s) of the Investigator(s), along with a process to identify to the Title IX Coordinator, in advance of the interview process, any conflict of interest that the Investigator(s) may have, and
- An instruction to preserve any evidence that is directly related to the allegations.

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various allegations. Notice will be made in writing and may be delivered by one or more of the following methods: in person, or emailed to the parties’ Barnard-issued email or designated accounts. Once emailed and/or received in-person, notice will be presumptively delivered.

9. Resolution Timeline

The College will make a good faith effort to complete the resolution process within a sixty-to-ninety (60-90) business day time period, including appeal if any. This timeframe may be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

10. Appointment of Investigators and Ensuring Impartiality

Once the decision to commence a formal investigation is made, the Director of Nondiscrimination and Title IX appoints Pool members to conduct the investigation (typically using a team of two Investigators), usually within two (2) business days of determining that an investigation should proceed.

Any individual materially involved in the administration of the resolution process including the Title IX Coordinator, Investigator(s), and Decision-maker(s) may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent. The Title IX Coordinator will vet the assigned Investigator(s) for impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. At any time during the resolution process, the parties may raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Pool member will be assigned and the impact of the bias or conflict, if any, will be remedied.

The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence that supports that the Respondent engaged in a policy violation and evidence that supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness. The College operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by a preponderance of the evidence.

11. Investigation Timeline

Investigations are completed expeditiously, normally within thirty (30) business days, though some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc. The College will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

12. Delays in the Investigation Process and Interactions with Law Enforcement

The College may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include, but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions. The

College will communicate in writing the anticipated duration of the delay and reason to the parties, and provide the parties with status updates if necessary. The College will promptly resume its investigation and resolution process as soon as feasible. During such a delay, Barnard will implement supportive measures as deemed appropriate.

Barnard's action(s) or processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

13. Steps in the Investigation Process

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record. The Investigator(s) typically take(s) the following steps, if not already completed (not necessarily in this order):

- Determine the identity and contact information of the Complainant
- Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated
- Assist the Title IX Coordinator, if needed, with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the parties
- Meet with the Complainant to finalize their interview/statement, if necessary
- Work with the Title IX Coordinator, as necessary, to prepare the initial Notice of Investigation and Allegation (NOIA). The NOIA may be amended with any additional or dismissed allegations
 - Notice should inform the parties of their right to have the assistance of an Advisor, who could be a member of the Pool or an Advisor of their choosing present for all meetings attended by the party
- Provide each interviewed party and witness an opportunity to review and verify the Investigator's summary notes (or transcript) of the relevant evidence/testimony from their respective interviews and meetings
- Make good faith efforts to notify the parties of any meeting or interview involving the other party, in advance when possible
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary

- Allow each party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask of the other party and witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions
- Complete the investigation promptly and without unreasonable deviation from the intended timeline
- Provide regular status updates to the parties throughout the investigation
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) with a list of witnesses whose information will be used to render a finding
- Write a comprehensive investigation report fully summarizing the investigation, all witness interviews, and addressing all relevant evidence. Appendices including relevant physical or documentary evidence will be included
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) a secured electronic or hard copy of the draft investigation report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which the College does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten days. Each copy of the materials shared will be watermarked on each page with an indicator of the role of the person receiving it (e.g., Complainant, Respondent, Complainant's Advisor, Respondent's Advisor).
- The Investigator(s) may elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses
- The Investigator(s) will incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) will document all rationales for any changes made after the review and comment period
- The Investigator(s) shares the report with the Title IX Coordinator and/or legal counsel for their review and feedback
- The Investigator will incorporate any relevant feedback, and the final report is then shared with all parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing. The parties and advisors are also provided with a file of any directly related evidence that was not included in the report

14. Evidentiary Considerations in the Investigation

The investigation does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; or 2) questions and evidence about the Complainant's sexual predisposition; or 3) questions and evidence about the Complainant's prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Within the boundaries stated above, the investigation can consider character evidence generally, if offered, but that evidence is unlikely to be relevant unless it is factual evidence or relates to a pattern of conduct.

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.⁹ Barnard will provide copies of the parties' written responses to the investigation to all parties and their advisors, if any. 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. Barnard will then provide the parties five (5) business days to inspect, review, and respond to the parties additional evidence through a written response to the investigator. Those written responses will be disclosed to the parties and decision-maker, if applicable.

Barnard will provide the parties up to ten (10) business days to provide a response, after which the investigator will not be required to accept a late submission. Investigator has ten (10) business 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. The parties and their advisors and any witnesses must sign an agreement not to disseminate, photograph, or otherwise copy any of the evidence subject to inspection and review or use such evidence for any purpose unrelated to the Formal Title IX Grievance Process.

15. Referral for Hearing

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a live hearing. The hearing will not be held less than ten (10) business days from the conclusion of the investigation – when the final investigation report is transmitted to the parties and the Decision-maker – unless all parties and the Decision-maker agree to an expedited timeline.

The College will designate a single Decision-Maker from the Pool, at the discretion of the Title IX Coordinator. The Title IX Coordinator will not serve as the Decision-Maker. Similarly, no Decision-Maker will also have served as Investigator or advisor to any party of the case, nor may they serve on the appeals body of the case. The single Decision-maker will also serve as the hearing Chair. The Title IX Coordinator may elect to have an alternate from the Pool sit in throughout the hearing process in the event that a substitute is needed for any reason. The hearing will convene at a time and venue determined by the Chair or designee.

16. Evidentiary Considerations in the Hearing

Any evidence that the Decision-maker(s) determine(s) is relevant may be considered. The hearing does not consider: 1) incidents not directly related to the possible violation, unless they evidence a pattern; 2) questions and evidence about the Complainant's sexual predisposition; or 3) questions or evidence about the Complainant's prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence

⁹ See 85 Fed. Reg. 30026, 30307 (May 19, 2020).

concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent. Within the boundaries stated above, the hearing can consider character evidence generally, if offered, but that evidence is unlikely to be relevant unless it is factual evidence or relates to a pattern of conduct.

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility, aligned with the College's use of a progressive discipline system. This information is only considered at the sanction stage of the process, and is not shared until then. The parties may each submit a written impact statement prior to the hearing for the consideration of the Decision-maker(s) at the sanction stage of the process (if the process progresses to sanctioning) after a determination of responsibility is reached. After post-hearing deliberation, the Decision-maker(s) render(s) a determination based on the preponderance of the evidence; whether based upon available information it is more likely than not that the Respondent violated the Policy.

17. Notice of Hearing

No less than ten (10) business days prior to the hearing¹⁰, the Title IX Coordinator or the Chair will send notice of the hearing to the parties. Once emailed, and/or received in-person, notice will be presumptively delivered.

The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable hearing procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing.
- Description of any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur, and how the parties will participate, including use of technology that enables the Decision-maker(s) and parties to see and hear a party or witness answering questions.
- A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker(s) on the basis of demonstrated bias or conflict of interest. This must be raised with the Title IX Coordinator at least two (2) business days prior to the hearing.
- Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the party's or witness's testimony and any statements given prior to the hearing will not be considered by the Decision-maker(s). For compelling reasons, the Decision-Maker may reschedule the hearing.
- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they do not have an Advisor, and the Recipient will appoint one. Each party must have an Advisor present. There are no exceptions.
- A copy of all the materials provided to the Decision-maker(s) about the matter, unless they

¹⁰ Unless an expedited hearing is agreed to by all parties.

have been provided already.¹¹

- An invitation to each party to submit to the Chair an impact statement pre-hearing that, only in the event of a responsible finding, the Decision-maker(s) will review during any sanction determination.
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by the College and remain within the 60-90 business day goal for resolution.

18. Pre-Hearing Preparation

After any necessary consultation with the parties, the Chair will provide the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days prior to the hearing.

The parties will be given the name(s) of the Decision-maker(s) at least five (5) business days in advance of the hearing. All objections to any Decision-maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than two days prior to the hearing. Decision-makers will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

The Title IX Coordinator will give the Decision-maker(s) a list of the names of all parties, witnesses, and Advisors at least five (5) business days in advance of the hearing. Any Decision-maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

During the ten (10) business day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Chair at a pre-hearing meeting or at the hearing and will be exchanged between each party by the Chair.

19. Pre-Hearing Meetings

The Chair may convene a pre-hearing meeting(s) with the parties and/or their Advisors and invite them to submit the questions or topics they wish to ask or discuss at the hearing, so that the Chair can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the

¹¹ The final investigation report may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.

hearing or to provide recommendations for more appropriate phrasing. However, this advance review opportunity does not preclude the Advisors from asking a question for the first time at the hearing or from asking for a reconsideration on a pre-hearing ruling by the Chair based on any new information or testimony offered at the hearing. The Chair must document and share with each party their rationale for any exclusion or inclusion at a pre-hearing meeting.

At each pre-hearing meeting with a party and their Advisor, the Chair will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant. The Chair may rule on these arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing. The Chair may consult with the Title IX Coordinator, or ask them to attend pre-hearing meetings. The pre-hearing meetings may be conducted as separate meetings with each party/advisors, with all parties/advisors present at the same time, remotely, or as a paper-only exchange. The Chair will work with the parties to establish the format.

20. Hearing Procedures

At the hearing, the Decision-maker(s) has the authority to hear and make determinations on all allegations of discrimination, harassment, and/or retaliation and may also hear and make determinations on any additional alleged policy violations that occurred in concert with the discrimination, harassment, and/or retaliation, even though those collateral allegations may not specifically fall within the Policy Against Discrimination and harassment.

Participants at the hearing include the Decision-Maker/Chair, the hearing facilitator, the Investigator(s) who conducted the investigation, the parties, Advisors to the parties, any called witnesses, the Title IX Coordinator, and anyone providing authorized accommodations, interpretation, and/or assistive services. The Chair will answer all questions on procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf. The Chair will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Decision-maker(s) and the parties, and the witnesses will then be excused.

In hearings involving more than one Respondent or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly. However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged policy violation.

21. The Order of the Hearing

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

a. **Introduction**

The Chair explains the procedures, including rules and expectations for the hearing, and introduces the participants. This may include a final opportunity for challenge or recusal of

the Decision-maker(s) on the basis of bias or conflict of interest. The Chair will rule on any such challenge unless the Chair is the individual who is the subject of the challenge, in which case the Title IX Coordinator will review and decide the challenge.

b. **Opening Statements**

The Parties will each be given the opportunity to provide opening statements.

c. **Investigator Presents the Final Investigation Report**

The Investigator(s) will then present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-maker(s) and the parties (through their Advisors). The Investigator(s) will be present during the entire hearing process, but not during deliberations.

Neither the parties nor the Decision-maker(s) should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and Advisors and parties will refrain from discussion of or questions for Investigators about these assessments. If such information is introduced, the Chair will direct that it be disregarded.

d. **Testimony and Questioning**

Once the Investigator(s) present(s) the report and are questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, and then in the order determined by the Chair. The hearing will facilitate questioning of parties and witnesses by the Decision-maker(s) and then by the parties through their Advisors.

All questions are subject to a relevance determination by the Chair. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Chair upon request if agreed to by all parties and the Chair), the proceeding will pause to allow the Chair to consider the question (and state it if it has not already been stated aloud), and the Chair will determine whether the question will be permitted, disallowed, or rephrased. The Chair may invite explanations or persuasive statements regarding relevance with the Advisors, if the Chair so chooses. The Chair will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Chair will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair has final say on all questions and determinations of relevance. The Chair may consult with legal counsel on any questions of admissibility. The Chair may ask Advisors to frame why a question is or is not relevant from their perspective but will not entertain arguments from the Advisors on relevance once the Chair has ruled on a question. If the parties raise an issue of bias or conflict of interest of an Investigator or Decision-maker at the hearing, the Chair may elect to address those issues, consult with legal counsel, and/or refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not in issue at the hearing, the Chair should not permit irrelevant questions that probe for bias.

e. 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 may ask the other party or parties and witnesses relevant questions and follow-up questions, including those questions 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 during a hearing must be relevant to the allegations and the response to those allegations. 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.

f. Refusal to Submit to Questioning; Inferences

Whether a party or witness does or does not answer questions from the Decision-maker, their statements will be admissible. Any party or witness may choose not to offer evidence and/or answer questions at the hearing, either because they do not attend the hearing or because they attend but refuse to participate in some or all questioning. The Decision-Maker can only rely on whatever relevant evidence is available through the investigation and hearing in making the ultimate determination of responsibility. The Decision-maker(s) may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

If collateral charges of policy violations other than sexual harassment are considered at the same hearing, the Decision-Maker(s) may consider all evidence it deems relevant, may rely on any relevant statement as long as the opportunity for questioning is afforded to all parties through their Advisors, and may draw reasonable inferences from any decision by any party or witness not to participate or respond to questions. If a party's Advisor of choice refuses to comply with Barnard's established rules of decorum for the hearing, the College may require the party to use a different Advisor. If a recipient-provided Advisor refuses to comply with the rules of decorum, the College may provide that party with a different Advisor to conduct questioning on behalf of that party.

g. Recording Hearings

Hearings (but not deliberations) are to be recorded by Barnard for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted. The recording of the hearing or a transcript 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 review the recording or transcript either in person or via video conference. The recording of the hearing or transcript will not be provided directly to the parties or advisor of choice and parties are not permitted to make a copy or retain access to the recording or transcript beyond the period of review.

22. Deliberation Determining Responsibility, Decision-Making, and Standard of Proof

The Decision-maker will deliberate in closed session to determine whether the Respondent is

responsible or not responsible for the policy violation(s) in question. Barnard uses the preponderance of the evidence standard for investigations and determinations regarding responsibility of formal complaints under the Formal Title IX Grievance Process. This means that the investigation and hearing process determines whether it is more likely than not that a violation of the Policy occurred. When there is a finding of responsibility on one or more of the allegations, the Decision-maker may then consider the previously submitted party impact statements in determining appropriate sanction(s).

The Decision-maker will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The Decision-maker may – at their discretion – consider the statements, but they are not binding. The Decision-maker(s) will review the statements and any pertinent conduct history provided by the Director of Nondiscrimination and Title IX and will recommend the appropriate sanction(s) in consultation with other appropriate administrators, as required.

Written Determination Regarding Responsibility

The Decision-maker will prepare a deliberation statement and deliver it to the Director of Nondiscrimination and Title IX, detailing the identification of the allegations, a description of the procedural steps taken from the receipt of the formal complaint through the determination, findings of fact supporting the determination, conclusions regarding which section of the policy, if any, the respondent has or has not violated, rationale for determination, evidence used in support of their determination, the evidence not relied upon in their determination, credibility assessments, any recommended sanctions and rationale, and Barnard’s procedures to appeal. This report must be submitted to the Title IX Coordinator within two (2) business days of the end of deliberations, unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the parties.

23. Notice of Outcome

Using the deliberation statement, the Title IX Coordinator will work with the Decision-maker to prepare a Notice of Outcome letter. The Title IX Coordinator will share the letter, including the final determination, rationale, and any applicable sanction(s) with the parties and their Advisors within five (5) business days of receiving the Decision-maker(s)’ Written Determination Regarding Responsibility.

The Notice of Outcome will be shared with the parties simultaneously. Notification will be made in writing and may be delivered by email via the Barnard-issued email or otherwise approved account. The Title IX Coordinator will connect with the parties to advise that the Notice of Outcome is ready to be shared so individuals may best prepare to receive such notice. The Title IX Coordinator will also offer parties the opportunity to individually meet shortly after the delivery to provide any clarification or answer any questions about the outcome. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered. The Notice of Outcome will articulate the specific policy(ies) reported to have been violated, including the relevant policy section, and will contain a description of the procedural steps taken by the College from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Notice of Outcome will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent the College is permitted to share such information under state or federal law; any sanctions issued which the College is permitted to share according to state or federal law; and whether remedies will be provided to the Complainant to ensure access to the College's educational or employment program or activity. The Notice of Outcome will also include information on when the results are considered by the College to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

24. Sanctions

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation; The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the Decision-maker(s)

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested. The sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities. For examples of student and employee sanctions, see [Appendix C](#).

25. Appeals

Any 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 request for appeal to the Director of Nondiscrimination and Title IX within five (5) business days of the delivery of the Notice of Outcome, indicating the grounds for the appeal.

Appeals are limited to the following grounds:

- 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 of responsibility or dismissal was made, that could affect the outcome of the matter.
- The Title IX Coordinator, Investigator(s), or Decision-Maker 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 Request for Appeal will be forwarded to the Appeal Chair or designee for consideration to determine if the request meets the grounds for appeal (a Review for Standing). This review is not a review of the merits of the appeal, but solely a determination as to whether the request meets the grounds and is timely filed. If any of the grounds in the Request for Appeal do not meet the grounds above, that request will be denied by the Appeal Chair, and the parties and their Advisors will be notified in writing of the denial and the rationale. If any of the grounds in the Request for Appeal meet the grounds above, then the Appeal Chair will notify the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the original Decision-maker(s).

The submission of appeal stays any sanctions for the duration of the appeal procedures. Supportive measures remain available during the appeal process. 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.

The other party(ies) and their advisors will be given five (5) business days to submit a response to the portion of the appeal that was approved and involves them. All responses, if any, will be forwarded by the Appeal Chair to all parties for review and comment. The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed to determine if it meets the grounds in this grievance process by the Appeal Chair and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Investigator(s) and/or original Decision-maker(s), as necessary, who will submit their responses, if any, in five (5) business days, which will be circulated for review and comment by all parties. If not approved, the parties will be notified accordingly, in writing.

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. Attached to their appeal, the individual may provide a written submission for the Appellate Panel to consider. The written statement must be prepared by the individual and be no longer than five single-spaced typed pages. No attachments or exhibits will be accepted; references to evidence should be made to materials included in the Investigative Report.

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

26. Long-Term Remedies/Other Actions

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

- Referral to counseling and health services; Referral to the Employee Assistance Program
- Education to an individual and/or the community
- Permanent alteration of housing assignments; Permanent alteration of work arrangements

for employees

- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

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

27. Failure to Comply with Sanctions and/or Responsive Actions

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

Procedures effective: August 2020; updated September 2021

APPENDIX A: Barnard College Informal Resolution Policy

Overview of Informal Resolution

Informal Resolution is an informal approach, including mediation, restorative practices, facilitated dialogue, by which the parties reach a mutually agreed upon resolution of an allegation. All parties must consent to the use of an Informal Resolution approach. The Title IX Coordinator may look to the following factors to assess whether Informal Resolution is appropriate, or which form of Alternative Resolution may be most successful for the parties:

- The parties' amenability to Alternative Resolution; Likelihood of potential resolution, taking into account any power dynamics between the parties;
- The parties' goals and motivation to participate;
- Civility of the parties;
- Results of a violence risk assessment/ongoing risk analysis; Whether an emergency removal is needed;
- Disciplinary history;
- Availability of a properly trained Alternative Resolution facilitator;
- Complaint complexity;
- Emotional investment/capability of the parties; Rationality of the parties;

The ultimate determination of whether Alternative Resolution is available or successful is to be made by the Director of Nondiscrimination and Title IX. The Director is authorized to negotiate a resolution that is acceptable to all parties, and/or to accept a resolution that is proposed by the parties, usually through their Advisors. The Director of Nondiscrimination and Title IX maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions. Results of complaints resolved by Informal Resolution are not appealable.

Procedures for Entering and Exiting Informal Resolution Process

Parties who do not wish to proceed with an investigation and hearing, and instead seek Barnard's assistance to resolve allegations of misconduct, may elect to enter the informal resolution process. Generally speaking, these resolution options may be less time intensive than an investigation and a resolution and/or live hearing, while still affording individuals 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 be applied only in instances that the Title IX Coordinator deems appropriate and when all parties voluntarily agree to participate. At any time, parties may decide to exit the informal resolution process, which would trigger a return to the formal grievance process if the alleged conduct constituted covered sexual harassment under Title IX.] Informal resolution is only permitted to address allegations of student-on-student or employee-on-employee discrimination or harassment, and is never allowed as an option to resolve allegations that an employee sexually harassed a student.¹² 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

¹²All parties who experience sexual harassment are encouraged to come forward and consult with the Director of Nondiscrimination and Title IX to best understand available options. 85 Fed. Reg. 30026, 30054 (May 19, 2020).

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 complaints of Discrimination and Harassment covered under this Informal Resolution Policy.

Supportive Resolution In some instances a Complainant may desire supportive measures as the sole resolution. This may or may not include restrictions related to the access or instructions regarding when parties find themselves in the same campus location.

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.

Alternative Resolution The purpose of alternative resolution is for the parties who are in conflict to identify the implications of an individual's actions and, with the assistance of a trained facilitator, identify points of agreement and appropriate remedies to address them. Either party can request alternative resolution to seek resolution; alternative resolution 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 Nondiscrimination and Title IX 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 alternative resolution process and choose or resume another option for resolution at any time. The alternative resolution process will typically commence within 10 days after the Office of Nondiscrimination and Title IX receives consent to mediate from both parties, and will continue until concluded or terminated by either party or the Office of Nondiscrimination and Title IX.

During alternative resolution, 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 Director of Nondiscrimination and Title IX 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 alternative resolution process, the facilitator will memorialize the agreement that was reached between the parties. The Office of Nondiscrimination and Title IX will monitor adherence to the proposed solution and close the matter when compliance is satisfactory.

APPENDIX B: RULES OF DECORUM

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

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

Rules of Decorum

1. If an advisor, Party or witness, is referencing another person, including the hearing participants, as much as possible the person's name or role (i.e. Complainant, Respondent) should be used.
2. If an advisor, Party or witness is referencing another person, including the hearing participants, it is the expectation that the person is referenced by their gender as they identify it. No participant shall intentionally 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;
 - Taking 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 The Office of Nondiscrimination and Title IX will assign an advisor to the Party for the purpose of completing cross-examination. Reasonable delays, including the temporary adjournment of the hearing, may be anticipated should an advisor be removed. A Party cannot serve as their own advisor in this circumstance. If the Decision-maker determines that an Advisor violated the Rules of Decorum but in the course of asking a relevant question, the violation will not affect the question's relevancy. The Decision-maker will notify the Advisor of the violation and permit the question to be re-asked (or permit a replacement Advisor in cases where the Advisor has been removed for the violation of the Rules of Decorum).

Removal Process

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

Appendix C: SANCTION EXAMPLES

a. Student Sanctions

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

- *Warning*: A formal statement that the conduct was unacceptable and a warning that further violation of any Barnard policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Required Counseling*: A mandate to meet with and engage in either Barnard-sponsored or external counseling to better comprehend the misconduct and its effects.
- *Access or Activity Restrictions*: A mandate to restrict access to specific space or activities for a specified period of time.
- *Probation*: A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- *Suspension*: Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at Barnard. The appropriate transcript notation will apply.¹³
- *Expulsion*: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend Barnard-sponsored events. This sanction will be noted permanently as a Conduct Expulsion on the student's official transcript, subject to any applicable expungement policies.
- *Withholding Diploma*: The College may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities as a sanction if the student is found responsible for an alleged violation.
- *Revocation of Degree*: The College reserves the right to revoke a degree previously awarded from Barnard for fraud, misrepresentation, and/or other violation of College policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- *Organizational Sanctions*: Deactivation, loss of recognition, loss of some or all privileges (including Barnard registration) for a specified period of time.
- *Other Actions*: In addition to or in place of the above sanctions, the College may assign any other sanctions as deemed appropriate.

¹³ For crimes of violence, including but not limited to sexual violence, defined as crimes that meet the reporting requirements pursuant to the federal Clery Act established in 20 U.S.C. 1092(f)(1)(F)(i)(I)-(VIII), institutions shall make a notation on the transcript of students found responsible after a conduct process that they were "suspended after a finding of responsibility for a code of conduct violation" or "expelled after a finding of responsibility for a code of conduct violation." For the respondent who withdraws from the institution while such conduct charges are pending, and declines to complete the disciplinary process, institutions shall make a notation on the transcript of such students that they "withdrew with conduct charges pending."

b. Employee Sanctions/Corrective Actions

Responsive actions for an employee who has engaged in harassment, discrimination, and/or retaliation include:

- *Warning – Verbal or Written*
- *Performance Improvement Plan/Management Process*
- *Enhanced supervision, observation, or review*
- *Required Counseling; Required Training or Education*
- *Probation; Denial of Pay Increase/Pay Grade*
- *Loss of Oversight or Supervisory Responsibility; Demotion*
- *Transfer; Reassignment*
- *Delay of tenure track progress*
- *Assignment to new supervisor*
- *Restriction of stipends, research, and/or professional development resources*
- *Suspension with pay; Suspension without pay*
- *Termination*
- *Other Actions:* In addition to or in place of the above sanctions, the College may assign any other responsive actions as deemed appropriate.

Withdrawal or Resignation While Charges Pending

a. **Students:** Should a Respondent decide not to participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from the College, the resolution process ends with a dismissal, as the College no longer has disciplinary jurisdiction over the withdrawn student.

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

b. **Employees:** Should an employee Respondent resign with unresolved allegations pending, the resolution process ends with dismissal, as the College no longer has disciplinary jurisdiction over the resigned employee. However, the College will continue to address and remedy any systemic issues or concerns that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

The employee who resigns with unresolved allegations pending is not eligible for admission or rehire with the College, and the records retained by the Title IX Coordinator will reflect that status. All Recipient responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

APPENDIX D: BARNARD COLLEGE RESOURCES

On-Campus Student Resources

*Columbia Sexual Violence Response & Rape Crisis/ Anti-Violence Support Center (SVR)	105 Hewitt Hall 212-854-HELP (4357)
*Rosemary Furman Counseling Center	100 Hewitt Hall 212-854-2092 For after hours emergencies call 855-622-1903
*Primary Care Health Services	Lower Level, Brooks Hall 212-854-2091
Office of Nondiscrimination and Title IX	First Floor, Elliott Hall 212-854-0037
*Being Barnard	119 Reid Hall 212-854-0145
*Ombuds Office	113 Hewitt Hall 212-854-1352
*Well Woman Health Promotion Program	119 Reid Hall 212-854-3063
*University Chaplain	710 Lerner Hall 212-854-1493

College Employee Resources

Human Resources	Interchurch Center (475 Riverside Dr.) 646-754-8350
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Office of Nondiscrimination and Title IX	First Floor, Elliott Hall 212-854-0037
*Ombuds Office	113 Hewitt Hall 212-854-1352
*Employee Assistance Program	Offered through Humana. Provides referral services for counseling (24/7) as well as legal and financial advice. (800) 448-4358 www.hriworld.com

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

Off-Campus Resources for Students and Employees:

Local NYC Resources

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

- New York City Anti-Violence Project
116 Nassau Street, 3rd Floor | (212) 714-1141 (this is a 24-hour help line)
AVP is dedicated to serving LGBTQ individuals and HIV-affected communities.
- WomanKind
9 Mott Street, Suite 200 | 1-888-888-7702 (this is a 24-hour 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.
- Sanctuary for Families
PO Box 1406, Wall Street Station | (212) 349-6009
Annually, Sanctuary for Families serves over 10,000 individuals who experience some form of domestic violence, sex trafficking, and related forms of gender violence. Its services include: counseling, legal assistance, crisis and temporary shelter, community education, and advocacy, among others.

- Safe Horizon
Multiple locations across the five boroughs | 1-800-621-4673 (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
114th Street and Amsterdam Ave. (across from Columbia) | (212) 423-2140 (M-F, 9am-5pm)
The SAVI program is located in St. Luke's Hospital. While their main line is only open during business hours, advocates from the program are available to survivors at the hospital 24/7.

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

Online Resources for Students and Employees

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

- Love is Respect: Provides comprehensive information and support services (including helpline and online chat) for young adults who are concerned about dating relationships. They also provide more information for those individuals supporting someone experiencing relationship violence.
- RAINN: RAINN is the nation's largest anti-sexual violence organization. They offer a 24/7 helpline and online chat services, as well as information and resources related to sexual violence.
- The Network/ La Red: The Network/La Red is a survivor-led organization dedicated to ending partner abuse in LGBTQIA+, Polyamorous, and BDSM communities. Though physically based in Massachusetts, they provide a 24/7 toll free helpline and online resources.
- FORGE: FORGE is a national transgender anti-violence organization. They provide referrals to local providers, a peer support listserv for survivors, and guided survivor healing programs.