

Grievance Process Pool: Training Series

Part 1- Overview, Definitions, & Scope
February 2022

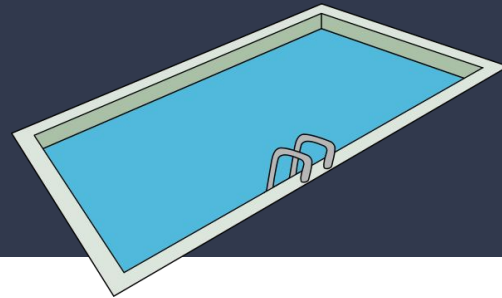


CARES
Nondiscrimination
BARNARD COLLEGE

Welcome and Introductions



What is the “Pool?”



Barnard’s Discrimination and Harassment Resolution Process and Formal Title IX Grievance Process relies on a pool of faculty and staff (“the Pool”) to carry out the processes.

Nondiscrimination and Title IX

Nondiscrimination and Harassment Resolution Process

Reporting

Formal Title IX Grievance Process

Nondiscrimination and Harassment Resolution Process

Responsible Community Action Policy

Anyone who has experienced or learned of potentially discriminatory and harassing behavior is encouraged to report these incidents. Discrimination and harassment in the context of this resolution process is defined within the Policy Against Discrimination and Harassment (“Policy”), and confirms such discrimination is prohibited by the College in compliance with federal, state, and local laws. The Nondiscrimination and Harassment Resolution Process is applicable when the Director determines the Title IX Formal Grievance Process is inapplicable or offenses subject to the Title IX Formal Grievance Process have been dismissed, OR the alleged behavior is discrimination or harassment related to another protected status under the Policy Against Discrimination and Harassment. Barnard College will act on any formal or informal allegation or notice of violation of the policy Against Discrimination and Harassment that is received by the Director of Nondiscrimination and Title IX or a member of the administration, faculty, or other employee, with the exception of confidential resources, as articulated in the Policy.

Nondiscrimination and Title IX

Formal Title IX Grievance Process

Reporting

Formal Title IX Grievance Process

Nondiscrimination and Harassment Resolution Process

Responsible Community Action Policy

Federally-Mandated Final Rule Under Title IX

On May 30, 2020, Barnard College [informed](#) its community that the U.S. Department of Education’s Office of Civil Rights had issued a Final Rule under Title IX of the Education Amendments of 1972. The Final Rule defines the meaning of “sexual harassment” (including forms of sex-based violence), describes how schools must respond to reports of misconduct falling within the new definition of sexual harassment, and sets forth a grievance process that schools must follow in these specific covered cases before issuing a disciplinary sanction against a person accused of sexual harassment.

On August 14, despite the repeated objections of many of those institutions – including Barnard – and tens of thousands of individuals, the Final Rule took effect.

Roles that Pool Members May Assume

- Investigator
- Decision-Maker (previously “adjudicator”)
- Appeal Decision-Maker
- Advisor
- Hearing Facilitator
- Facilitator of Informal or Alternative Resolution processes

Deputy Compliance Coordinator Team



Elizabeth Scott-Francis

Director of Nondiscrimination and Title IX
Title IX Coordinator



Danielle-Hope Cabral

Deputy Compliance Coordinator

Deputy Compliance Coordinator Team



Saskia Hamilton

Deputy Compliance Coordinator for
Faculty



Kathleen Veteri

Deputy Compliance Coordinator for Staff



Madeline Camacho

Deputy Compliance Coordinator for
Students

Training Outcomes

As a result of attending the first training in our series, participants will be able to:

- Name the types of discrimination and harassment prohibited by the College's Policy Against Discrimination and Harassment;
- Recognize and understand their role(s) as members of the Pool;
- Articulate and understand relevant policy definitions, including the definition of sexual harassment under Title IX;
- Explain the scope of Barnard's education program or activity;
- Describe our obligations and responsibilities related to the Policy and associated grievance/resolution procedures.

Training: Compliance Requirements

Title IX Coordinators, Investigators, Decision-makers, and any individual who facilitates an informal resolution process must receive training on:

Title IX Final Rule

- The definition of sexual harassment in the regulations,
- The scope of the College's education program or activity,
- How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes as applicable, and
- How to serve impartially, including avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

NY 129-B

- Interviewing those impacted by sexual assault
- Conducting investigations of sexual violence
- The effects of trauma
- The rights of the respondent (including the right to a presumption that the respondent is "not responsible" until a finding of responsibility is made).
- Other issues including domestic violence, dating violence, stalking, or sexual assault

Title IX Defined

Title IX

"No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."

Title IX Background

Whom does Title IX protect?

Any person participating in an educational program or activity in the United States that receives federal financial assistance.

- Students
- Staff
- Faculty
- Applicants for admission.
- Visitors and community members.

What is the Title IX “Final Rule” and what do the 2020 Regs Say?

- Recognition of sexual harassment as sex discrimination
 - Sexual harassment under Title IX includes – **dating violence, domestic violence, and stalking.**
- Protections for survivors
 - Institutions must respect a complainant’s decision to report (or not report) AND provide supportive measures regardless.
- Campus processes and procedures
 - The regulation provides students with a right to written notice of allegations, the right to an advocate, and the right to submit, examine, and challenge evidence.
 - All **parties have the right to a live hearing** where advisors conduct cross-examination.
 - Schools must offer **both parties an equal opportunity to appeal** the finding.
 - The regulation gives schools flexibility to **conduct Title IX investigations and hearings remotely**

AND There will likely be more procedural changes

- Notice of proposed rulemaking for Title IX scheduled for April 2022.
 - The Department of Education has indicated that it intends to propose major revisions to the current Title IX rules, including to the definition of sexual harassment and how schools must respond to complaints of sexual harassment. Further, the Department stated that in revising the current Title IX rules, it will prioritize protections for students based on sexual orientation and gender identity, with specific focus on the initiatives identified in President Biden's Executive Orders [13988](#) and [14201](#).

THE WHITE HOUSE



BRIEFING ROOM

Executive Order on Guaranteeing an Educational Environment Free from Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity

MARCH 08, 2021 • PRESIDENTIAL ACTIONS



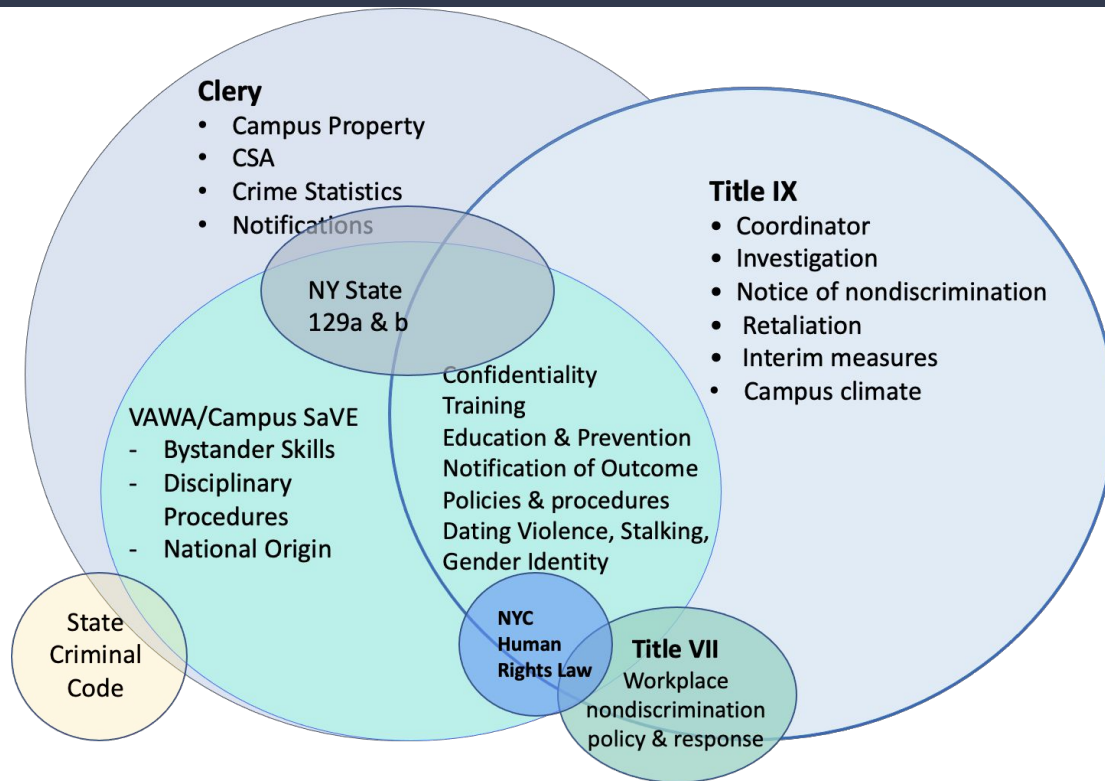
Nondiscrimination **AND** Title IX

Policy Against Discrimination and Harassment

Barnard is committed to providing an environment free from unlawful discrimination, harassment, or retaliation. As such, the College prohibits any kind of unlawful discrimination or harassment including discrimination on the basis of race, color, religion, creed, national or ethnic origin, sexual orientation, age, pregnancy, disability, or sex, gender identity or expression, in the administration of any of its educational programs or activities or in its employment practices.

- Barnard adheres to all federal and state civil rights laws and regulations prohibiting discrimination and harassment.
- Policy applies to students, faculty, and staff
- Policy contains clear behavioral standards, definitions, and descriptions of prohibited conduct

Compliance Overlap



Definitions

Policy Definitions

- **Discriminatory Harassment-** Harassment by any member or group of the community on the basis of actual or perceived membership in a class protected by law.
- **Sexual Harassment-** We'll dive into this on the next slide.
 - **Sexual assault:** Any sexual act directed against another person without the consent of the Complainant, including instances in which the Complainant is incapable of giving consent; Incest; or Statutory Rape;
 - **Dating Violence:** Violence on the basis of sex committed by a person who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
 - **Domestic Violence:** Violence on the basis of sex committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, or by a person who is cohabitating with or has cohabitation with the Complainant as a spouse or intimate partner.
 - **Stalking:** Engaging in a course of conduct on the basis of sex directed at a specific person, that 1) would cause a reasonable person to fear for the person's safety; 2) the safety of others; or 3) suffer substantial emotional distress.

Sexual Harassment– Defined

- The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of New York regard Sexual Harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice. Barnard has adopted the following definition of Sexual Harassment in order to address the unique environment of an academic community.
- Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved. Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking

Sexual Harassment Definition

Sexual harassment means conduct on the basis of sex that satisfies one or more of the following:

- (1) An employee of the College conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct (also known as “**quid pro quo**”);
- (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, *and* objectively offensive that it effectively denies a person equal access to the recipient's education program or activity; or
- (3) “Sexual assault” as defined in [20 U.S.C. 1092\(f\)\(6\)\(A\)\(v\)](#), “dating violence” as defined in [34 U.S.C. 12291\(a\)\(10\)](#), “domestic violence” as defined in [34 U.S.C. 12291\(a\)\(8\)](#), or “stalking” as defined in [34 U.S.C. 12291\(a\)\(30\)](#).

Other Policy Definitions

- **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 sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent.
- **Coercion:** is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent.
- **Force:** is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent.

Terminology

Complainant or reporting individual means an individual who is alleged to have experienced conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.

Respondent means an individual who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.

Parties include the Complainant(s) and Respondent(s), collectively.

Sanction means a consequence imposed by the College on a Respondent who is found to have violated this policy.

Jurisdiction & Scope of Barnard's Education Program or Activity

- **Education program or activity** means locations, events, or circumstances where Barnard College exercises substantial control over both the Respondent *and* the context in which the sexual harassment or discrimination occurs and also includes any building owned or controlled by a student organization that is officially recognized by Barnard College.
- **The Policy** applies to conduct that occurs within the education program and activities of Barnard. This refers to conduct that:
 - Takes place on the campus or on property owned or controlled by the College;
 - Occurs at Barnard-sponsored events;
 - Occurs in buildings owned or controlled by Barnard's recognized student organizations;

And when:

- The Respondent is a member of the Barnard community;
- The conduct occurs against a person in the United States (Title IX)

“Notice” of Discrimination and Harassment

Actual Knowledge

- Notice of experienced or suspected discrimination and/or harassment (including sexual harassment) **to any responsible employee (mandated reporter)**.

Obligation to Respond

- When the College has **actual knowledge** of discrimination and/or harassment, we must respond promptly and in a manner that is not deliberately indifferent.

Response Obligations

- **Once Barnard has actual knowledge, the Director of Nondiscrimination and Title IX must:**
 1. Promptly contact the complainant or impacted individual to discuss the availability of supportive measures,
 2. Consider the complainant's wishes with respect to supportive measures,
 3. Inform the complainant of the availability of supportive measures with or without the filing of a formal complaint, and
 4. Explain to the complainant the process for filing a formal complaint.

Title IX Obligations

Our Obligation	Stop Adverse Behavior	Prevent Recurrence	Remedy Effects
Our Response	Prompt	Effective	Equitable
Our Investigation	Thorough	Reliable	Impartial

Rights Within the Process

Right to be Protected from Retaliation

Any action by a member of the Barnard College community to penalize, intimidate, harass, or take adverse action against a person because of filing a report of discrimination or harassment, participating in an investigation or otherwise asserting rights protected by law is prohibited. Retaliation may be found even when the underlying report does not constitute discrimination or harassment in violation of policy.

Right to Report (or Not to Report) to Authorities

All individuals have the right to report (or not report) to community safety, local law enforcement, or to the institution.

Right to Supportive Measures/ Assistance

Non-disciplinary, non-punitive supports and accommodations designed to preserve access to educational programs and activities. Reasonably available without fee or charge and without unreasonably burdening the other party.

Right to An Advisor

Complainant and Respondent each have the right to be accompanied to any related meeting or proceeding by an advisor of their choice.

The Process- Prompt, Fair, Impartial.

Confidential Resources for Students (i.e. not mandated reporters)

*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
*Being Barnard	122 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

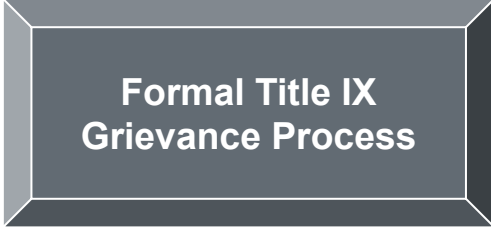
Resolution Processes



Informal Resolution



**Nondiscrimination
and Harassment
Resolution Process**



**Formal Title IX
Grievance Process**

Resolution Processes: Basic Requirements

- Equitable treatment of the parties
- Objective evaluation of all relevant evidence
- No conflicts of interest or bias (and training!)
- Presumption of innocence
- Reasonably prompt timeframes

- Description of the range of supportive measures available
- Description of possible sanctions/remedies
- Standard of evidence (preponderance) applies to all
- Procedures for appeal

Nondiscrimination and Harassment Resolution

Applies to all allegations of harassment, discrimination, and/or retaliation on the basis of protected class status involving students, staff, faculty members or third parties.

1. Alternative Resolution

- a. Informal process such as mediation or restorative practices, by which parties mutually agree to resolve an allegation.
- b. All parties must consent to the use of Alternative or Informal Resolution.

2. Administrative Resolution via an Investigation and Hearing

- a. Inquiry
- b. Investigation
- c. Determination
- d. Appeal (if applicable)

Formal Title IX Grievance Process

1. Informal Resolution

- a. Supportive resolution
- b. Administrative Resolution (accepts responsibility)
- c. Alternative Resolution

All parties must consent to the use of Informal Resolution.

2. Formal Grievance Process

- a. Notice of Investigation and Allegations
- b. Investigation
- c. Referral for Live Hearing & Hearing
- d. Deliberation, Determining Responsibility, & Decision-Making
- e. Notice of Outcome (Sanctions if applicable)
- f. Appeal (if applicable)

Applies to formal notice and complaint(s) of qualifying allegations of sexual harassment (including sexual assault, dating violence, domestic violence, and stalking) alleged to have occurred on or after August 14, 2020 (jurisdictional considerations apply).

How We Fulfill Our Obligations

- Compliance with internal and mandated policies:
 - do what we say we are going to do.
- Following our training.
- Documenting our actions (centralized record-keeping through Advocate system).

What's Next?

- **This is the first in a Series of trainings:**
 - Ensure your comfortability and knowledge and;
 - Meet our compliance requirements

Next Training(s):

March 15, 2022 at 11:00 a.m. (Lynn Chu)

OR

March 23, 2022 at 11:00 a.m. (504 Diana)
Conducting Effective Investigations



Next
Time