Grievance Process Pool: Training Series

Part 1- Overview, Definitions, & Scope
February 2022
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.
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 prejudgement 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.”
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.
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

Clergy
- Campus Property
- CSA
- Crime Statistics
- Notifications

Title IX
- Coordinator
- Investigation
- Notice of nondiscrimination
- Retaliation
- Interim measures
- Campus climate

NYA/WA/Campus SaVE
- Bystander Skills
- Disciplinary Procedures
- National Origin

Confidentiality Training
Education & Prevention
Notification of Outcome
Policies & procedures
Dating Violence, Stalking,
Gender Identity

NYC Human Rights Law

Title VII
Workplace nondiscrimination policy & response

State Criminal Code
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 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

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.

Language around actual knowledge is specific to Title IX under the law; however, the College has adopted this standard for responding to any actual or suspected discrimination and/or harassment (not solely sex-based).
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.

106.44(a)
# Title IX Obligations

<table>
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<tr>
<th>Our Obligation</th>
<th>Stop Adverse Behavior</th>
<th>Prevent Recurrence</th>
<th>Remedy Effects</th>
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<tr>
<td>Our Response</td>
<td>Prompt</td>
<td>Effective</td>
<td>Equitable</td>
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<td>Our Investigation</td>
<td>Thorough</td>
<td>Reliable</td>
<td>Impartial</td>
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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)

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<tr>
<th>Resource</th>
<th>Location</th>
<th>Contact Information</th>
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<tbody>
<tr>
<td><em>Columbia Sexual Violence Response &amp; Rape Crisis/ Anti-Violence Support Center (SVR)</em></td>
<td>105 Hewitt Hall</td>
<td>212-854-HELP (4357)</td>
</tr>
<tr>
<td>*Rosemary Furman Counseling Center</td>
<td>100 Hewitt Hall</td>
<td>212-854-2092</td>
</tr>
<tr>
<td>*Primary Care Health Services</td>
<td>Lower Level, Brooks Hall</td>
<td>212-854-2091</td>
</tr>
<tr>
<td>*Being Barnard</td>
<td>122 Reid Hall</td>
<td>212-854-0145</td>
</tr>
<tr>
<td>*Ombuds Office</td>
<td>113 Hewitt Hall</td>
<td>212-854-1352</td>
</tr>
<tr>
<td>*Well Woman Health Promotion Program</td>
<td>119 Reid Hall</td>
<td>212-854-3063</td>
</tr>
<tr>
<td>*University Chaplain</td>
<td>710 Lerner Hall</td>
<td>212-854-1493</td>
</tr>
</tbody>
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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) apples 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*