

# **Barnard College**

## **Nondiscrimination and Harassment Resolution Process**

Applicable to Students, Faculty, and Staff

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## 1. Overview

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](#).

The procedures described below apply to all allegations of harassment, discrimination, and/or retaliation on the basis of protected class status involving students, staff, faculty members, or third parties. Unionized or other categorized employees may also be subject to the terms of their respective collective bargaining agreements/employees’ rights. These procedures may also be used to address or resolve collateral misconduct arising from the investigation of or occurring in conjunction with harassing, discriminatory, or retaliatory conduct (e.g., vandalism, physical abuse of another). All other allegations of misconduct unrelated to incidents covered by this Policy will be addressed through the procedures elaborated in the respective student, faculty, and staff handbooks. Reports may be received from information reports from Community Safety, supervisors, or other College staff, or may come directly from an individual bringing forward a specific complaint or witnessed behavior. Individuals who believe they have experienced or observed discrimination or harassment may consult with the Director of Nondiscrimination and Title IX to discuss their concern or initiate a report.

## 2. Initial Assessment

Following intake, receipt of notice, or a complaint of an alleged violation of the College’s Policy Against Discrimination and harassment, the Director of Nondiscrimination and Title IX (“the Director”)<sup>1</sup> engages in an initial assessment, which is typically one to five (1-5) business days in duration. The steps in an initial assessment can include:

- The Director reaches out to the Complainant to offer supportive measures.
- The Director works with the Complainant to ensure they have an Advisor.
- The Director works with the Complainant to determine which of three options to pursue: A Supportive Response, an Informal Resolution, or an Administrative Resolution.

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<sup>1</sup> If circumstances require, the Associate Vice President for CARES or Director of Nondiscrimination & Title IX will designate another person to oversee the process below should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.

- If a Supportive Response is preferred, the Director works with the Complainant to identify their wishes and then seeks to facilitate implementation. An Administrative Resolution process is not initiated, though the Complainant can elect to initiate it later, if desired.
- If an Informal Resolution option is preferred, the Director assesses whether the complaint is suitable for informal resolution, which informal mechanism may serve the situation best or is available and may seek to determine if the Respondent is also willing to engage in Informal Resolution.
- If Administrative Resolution is preferred, the Director initiates the investigation process and determines whether the scope of the investigation will address:
  - Incident, and/or
  - A potential pattern of misconduct, and/or
  - A culture/climate issue.

Based on the initial assessment, the College will initiate one of these responses:

- Supportive Response -- measures to help restore the Complainant's education access, as described in the Policy.
- Informal Resolution – typically used for less serious offenses and only when all parties agree to Informal Resolution, or when the Respondent is willing to accept responsibility for violating policy.
- Administrative Resolution – investigation of policy violation(s) and recommended finding, subject to a determination by the Director or Decision-maker and the opportunity to appeal to an Appeal Panel.

The investigation and the subsequent Administrative Resolution determine whether the Policy has been violated. If so, the College will promptly implement effective remedies designed to end the discrimination, prevent recurrence, and address the effects. The process followed considers the preference of the parties but is ultimately determined at the discretion of the Director of Nondiscrimination and Title IX. At any point during the initial assessment or formal investigation, if the Director of Nondiscrimination and Title IX determines that reasonable cause does not support the conclusion that policy has been violated, the process will end, and the parties will be notified.

The Complainant may request that the Director of Nondiscrimination and Title IX review the reasonable cause determination and/or re-open the investigation. This decision lies in the sole discretion of the Director, but the request is usually only granted in extraordinary circumstances.

### **3. Resolution Process Pool**

The resolution process relies on a pool of officials ("Pool") for implementation. Members of the Pool are trained annually in all aspects of the resolution process and can serve in any of the following roles, at the direction of the Director:

- To act as optional process Advisors to the parties
- To facilitate Informal Resolution
- To investigate allegations
- To serve as a Decision-maker
- To serve on an Appeal panel

The Director of Nondiscrimination and Title IX carefully vets Pool members for potential conflicts of

interest or disqualifying biases and appoints the Pool, which acts with independence and impartiality. Pool members receive annual training, including a review of College policies and procedures as well as applicable federal and state laws and regulations so that they are able to appropriately address allegations, provide accurate information to members of the community, protect safety, and promote accountability. This training includes, but is not limited to:

- The scope of the Recipient's Discrimination and Harassment Policy and Procedures
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents and promote accountability
- Implicit bias; Disparate treatment
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, timely, and impartial manner by individuals who receive training in conducting investigations of sexual harassment, trauma-informed practices, and impartiality,
- How to uphold fairness, equity, and due process
- How to weigh evidence; How to conduct questioning; How to assess credibility; Impartiality and objectivity; Types of evidence
- Deliberation; How to render findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses; How to apply definitions used by the recipient with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy
- How to conduct an investigation and applicable grievance process, including hearings, appeals, and informal resolution processes

## **4. Counterclaims**

Counterclaims by the Respondent may be made in good faith or may instead be motivated by a retaliatory intent. The College is obligated to ensure that any process is not abused for retaliatory purposes. The College permits the filing of counterclaims, but uses the initial assessment, described above in the Policy section, to assess whether the allegations are made in good faith. If they are, the allegations will be processed using the resolution procedures below, typically after resolution of the underlying allegation. Counterclaims made with retaliatory intent will not be permitted. A delay in the processing of counterclaims is permitted, accordingly. Occasionally, allegations and counterclaims can be resolved through the same investigation, 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. Advisors**

### **a. Expectations of an Advisor**

The College generally expects an Advisor to adjust their schedule to allow them to attend meetings when planned, though 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 attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available. Parties whose Advisors are disruptive or who do not abide by Barnard policies and procedures may face the loss of that Advisor and/or possible Policy violations. Advisors are expected to consult with their advisees

without disrupting College meetings or interviews. Advisors do not represent parties in the process; their role is only to advise.

#### **b. Expectations of the Parties with Respect to Advisors**

Each party may choose an Advisor<sup>2</sup> who is eligible and available<sup>3</sup> to accompany them throughout the process. The Advisor can be anyone, including an attorney, but should not be someone who is also a witness in the process. 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 Investigators of the identity of their Advisor at least two (2) business days before the date of their first meeting with the Investigator(s) (or as soon as possible if a more expeditious meeting is necessary or desired). The parties are expected to provide timely notice to the Investigator(s) and/or the Director of Nondiscrimination and Title IX if they change Advisors at any time. Upon written request of a party, the College may copy the Advisor on all communications between the Recipient and the party. For parties who are entitled to union representation, the College will allow the unionized employee to have a union representative (if requested by the party) as well as an Advisor of their choice present for all resolution-related meetings and interviews, if they choose. To uphold the principles of equity, the other party (regardless of union membership) will also be permitted to have two Advisors. Witnesses are not permitted to have union representation or Advisors in grievance process interviews or meetings.

## **6. Resolution Options**

Proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accord with Barnard policy. While there is an expectation of privacy around what is discussed during interviews, the parties have discretion to share their own experiences with others if they so choose, but are encouraged to discuss with their Advisors first before doing so.

#### **a. Informal Resolution**

Informal Resolution is applicable when the parties voluntarily agree to resolve the matter through Alternative Resolution, such as mediation, restorative practices, facilitated dialogue, etc., or when the Respondent accepts responsibility for violating Policy, or when the Director of Nondiscrimination and Title IX can resolve the matter informally by providing remedies to resolve the situation.

It is not necessary to pursue Informal Resolution first in order to pursue Administrative Resolution, and any party participating in Informal Resolution can stop the process at any time and request the Administrative Resolution process. Further, if an Informal Resolution fails after the resolution is finalized, Administrative Resolution may be pursued.

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<sup>2</sup> This could include an attorney, advocate, or support person. Witnesses are not entitled to Advisors within the process, though they can be advised externally.

<sup>3</sup> "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 implement and monitor sanctions.

## Alternative Resolution

Alternative Resolution is an informal process, such as mediation or restorative practices, by which the parties mutually agree to resolve an allegation. It may be used for less serious, yet inappropriate, behaviors and is encouraged as an alternative to the Administrative Resolution process (described below) to resolve conflicts. All parties must consent to the use of Alternative Resolution. The Director of Nondiscrimination and Title IX determines if Alternative Resolution is appropriate, based on the willingness of the parties, the nature of the conduct at issue, and the susceptibility of the conduct to Alternative Resolution.

In an Alternative Resolution, a trained administrator facilitates a dialogue with the parties to an effective resolution, if possible. Institutionally-imposed sanctions are not possible as the result of an Alternative Resolution process, though the parties may agree to accept sanctions and/or appropriate remedies. The Director of Nondiscrimination and Title IX maintains records of any resolution that is reached, and failure to abide by the resolution can result in appropriate enforcement actions. Alternative Resolution is not typically the primary resolution mechanism used to address reports of violent behavior of any kind or in other cases of serious violations of policy, though it may be made available after the Administrative Resolution process is completed should the parties and the Director of Nondiscrimination and Title IX believe it could be beneficial. The results of Alternative Resolution are not appealable.

## Respondent Accepts Responsibility for Alleged Violations

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent accepts responsibility, the Director of Nondiscrimination and Title IX makes a determination that the individual is in violation of Barnard Policy. The Director then determines appropriate sanction(s) or responsive actions, which are promptly implemented in order to effectively stop the harassment, discrimination, and/or retaliation; prevent its recurrence; and remedy the effects of the conduct, both on the Complainant and the community.

If the Respondent accepts responsibility for all of the alleged policy violations and the Director of Nondiscrimination and Title IX or designee has determined appropriate sanction(s) or responsive actions, which are promptly implemented, the process is over. The Complainant will be informed of this outcome. If the Respondent accepts responsibility for some of the alleged policy violations and the Director has determined appropriate sanction(s) or responsive actions, which are promptly implemented for those violations, then the remaining allegations will continue to be investigated and resolved through Administrative Resolution. The parties will be informed of this outcome. The parties are still able to seek Alternative Resolution on the remaining allegations, subject to the stipulations above.

### b. Administrative Resolution via an Investigation and Hearing

Administrative Resolution can be pursued for any behavior for which the Respondent has not accepted responsibility that constitutes conduct covered by the Policy Against Discrimination and Harassment at any time during the process. Administrative Resolution starts with a thorough, reliable, and impartial inquiry process, and, if appropriate, a subsequent investigation. Promptly following the receipt of a report, information will be reviewed by the Director of Nondiscrimination and Title IX to determine if there may be a reason to believe that a policy may have been violated. Inquiry is a prompt process that should not take longer than five-to-ten (5-10) business days.

If a formal investigation is to commence, the Director will provide written notification of the investigation to the parties at an appropriate time during the investigation. Advanced notice facilitates the parties' ability to identify and choose an Advisor, if any, to accompany them to the interview. Notification will include a meaningful summary of the allegations, 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 or designated email account. Once emailed, and/or received in-person, notice will be presumptively delivered. The notification should include the policies allegedly violated, if known at the time. Alternatively, the policies allegedly violated can be provided at a later date, in writing, as the investigation progresses, and details become clearer. The College aims to complete all investigations within a sixty (60) business day time period, which can be extended as necessary for appropriate cause by the Director of Nondiscrimination and Title IX with notice to the parties as appropriate.

Once the decision is made to commence an investigation, 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. The Director of Nondiscrimination and Title IX will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no conflicts of interest or disqualifying bias. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Director of Nondiscrimination and Title IX will determine whether the concern is reasonable and supportable. If so, another Investigator will be assigned and the impact of the bias or conflict, if any, will be remedied. If the bias or conflict relates to the Director, concerns should be raised with the Associate Vice President of CARES.

Investigations are completed expeditiously, normally within thirty-to-forty (30-40) business days, though some investigations 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 the investigation as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation. Barnard may undertake a short delay in its investigation (several days to weeks, to allow evidence collection) when criminal charges based on the same behaviors that invoke the Recipient's resolution process are being investigated by law enforcement. The College will promptly resume its investigation and resolution process once notified by law enforcement that the initial evidence collection process is complete.

College action(s) 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. 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 to fully review and respond to all evidence on the record.

## 7. Investigation

The trained Investigator (or external investigator when appropriate), will interview the Complainant, Respondent, and available witnesses as appropriate. The Complainant and Respondent may each have an advisor present at all meetings and interviews. The Investigator will also gather any pertinent evidentiary materials (including but not limited to, emails, written documents, or photographs).

During the investigation process, both the Complainant and the Respondent will have an equal opportunity to provide the Investigator with relevant evidence and/or specific witness information. It is possible that more than one meeting may be necessary for the Complainant and Respondent to have the opportunity to respond to information obtained. The Investigator will prepare an investigation report that will include a summary of relevant information of each interview, provide a summary of factual information, and include any relevant documentation collected. It should be noted, some information disclosed during investigation may not be relevant or appropriate to include in the investigative report. For example, disclosure of medical or mental health conditions, diagnoses, and/or treatment will generally not be included.

The Complainant and Respondent will each have the opportunity to review the investigative report, in the presence of a College official, and deliver a response to the report. The investigative report is then delivered to the Decision-maker to review and make a determination. In some instances, during or at the conclusion of the investigation, the parties may voluntarily agree to end the formal process and utilize one of the informal resolution processes. Where informal resolution is appropriate for the circumstances, the Director of Nondiscrimination and Title IX will make a decision about whether the matter may be resolved through an informal process. At any point the College may institute community-based efforts such as educational initiatives and/or training, as appropriate for prevention or in response to climate.

The College, at the discretion of the General Counsel, may conduct an investigation independent of, or in addition to, the procedures provided herein at any time. The investigation may involve complaints or allegations concerning discrimination and harassment or misconduct against the College, or any of their employees or students.

## 8. Determination

Within two to three (2-3) business days of receiving the Investigator's investigative report, the Director of Nondiscrimination and Title IX or a trained, designated Decision-maker from the Pool<sup>4</sup> reviews the report and all responses. The Respondent will be given the opportunity to respond to the alleged violation of policy in the following ways: 1) no response; 2) not responsible; or 3) responsible. If the Respondent accepts responsibility, the appropriate Decision-maker or Director of Nondiscrimination and Title IX will be notified, and parties will receive notification that the matter has been forwarded for sanctioning. If the Respondent declines responsibility or chooses not to respond, the Complainant will be notified, and the case will be forwarded to the appropriate individual for review and final determination on the basis of the preponderance of the evidence.

The Decision-maker/Director of Nondiscrimination and Title IX is responsible for fairly, promptly, and impartially determining whether it is more likely than not that policy has been violated upon review of the investigative materials. Determination will be conducted by officials of the College without a conflict of interest or bias for or against either party. A party with concern about a conflict of interest should contact the Director of Nondiscrimination and Title IX. If the investigative record is incomplete, the Director /Decision-maker may direct a re-opening of the investigation, or may direct or conduct any additional inquiry necessary, including informally meeting with the parties or any witnesses, if needed.

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<sup>4</sup> When the Director is the Investigator or has been heavily involved in the process prior to determination, a Decision-maker should be designated from the Pool to ensure there is no conflict of interest.



If the Decision-maker determines that a violation has occurred based on a preponderance of the evidence, the Respondent is “Responsible” and the Decision-maker will make recommendations regarding appropriate sanctions. The determination should be made within ten (10) business days of receipt of the investigative report. If found “Not Responsible,” both Respondent and Complainant will be notified in writing of the outcome, receive rationale for the finding, and any related supportive measures or actions, as well as information about the right to appeal the outcome and/or sanction(s).

## 9. Additional Details of the Investigation Process

### a. Witness responsibilities

Witnesses (as distinguished from the parties) who are faculty or staff of the College are expected to cooperate with and participate in the College’s investigation and resolution process. Failure of a witness to cooperate with and/or participate in the investigation or resolution process constitutes a violation of Policy and may be subject to discipline.

### b. Remote processes

Parties and witnesses may be interviewed remotely by phone, video conferencing, or similar technologies if the Investigator(s) and/or Decision-maker determine that timeliness, efficiency, or other causes dictate a need for remote interviewing. Witnesses may also provide written statements in lieu of interviews, or respond to questions in writing, if deemed appropriate by the Investigator(s), though this approach is not ideal. When remote technologies are used, the College makes reasonable efforts to ensure privacy and ensures that any technology does not work to the detriment of any party or subject them to unfairness.

### c. Evidence

Any evidence that is relevant and credible may be considered, including an individual’s prior misconduct history as well as evidence indicating a pattern of misconduct, subject to the limitation in (e) below. The process should exclude irrelevant or immaterial evidence and may disregard evidence lacking in credibility or that is improperly prejudicial.

### d. Sexual history/patterns

Unless the Decision-maker/ Director of Nondiscrimination and Title IX determines it is appropriate, the investigation and the finding do not consider: (1) incidents not directly related to the possible violation, unless they evidence a pattern; (2) the irrelevant sexual history of the parties (though there may be a limited exception made with regard to the sexual history between the parties); (3) irrelevant character evidence.

### e. Previous allegations/violations

While previous conduct violations by the Respondent are not generally admissible as information supporting the current allegation, the Investigator(s) may supply the Director of Nondiscrimination and Title IX/Decision-maker with information about previous good faith allegations and/or findings, when that information suggests potential pattern and/or predatory conduct. Previous disciplinary action of any kind involving the Respondent may be considered in determining the appropriate sanction(s). Character witnesses or evidence may be offered. The investigation and hearing will determine if the character evidence is relevant. If so, it may be considered. If not, it will be excluded.

#### f. Notification of outcome

The Director of Nondiscrimination and Title IX informs the parties of the determination within two to three (2-3) business days of the resolution, ideally simultaneously, but without significant time delay between notifications. Notifications are made in writing and may be delivered by one or more of the following methods: in person or emailed to the parties' Barnard-issued or designated email account. Once emailed, and/or received in-person, notice is presumptively delivered. The Notification of Outcome specifies the finding for each alleged policy violation, any sanction(s) that may result and the rationale supporting the findings.

Unless based on an acceptance of violation by the Respondent, the determination may be appealed by either party. The Notification of Outcome also includes the grounds on which the parties may appeal and the steps the parties may take to request an appeal of the findings. More information about the appeal procedures can be found below.

### 10. Withdrawal or Resignation While Resolution Processes are Pending

**Students:** Should a student Respondent decide not to participate in the resolution process or fail to respond to notification and outreach within specified time frames, the process proceeds absent their participation to a reasonable resolution. The College may place a hold, bar access to an official transcript, and/or prohibit graduation as necessary to permit the resolution process to be completed.

**Employees:** Should an employee resign with unresolved allegations pending, the records of the Director of Nondiscrimination and Title IX will reflect that status, and any College responses to future inquiries regarding employment references for that individual will include the former employee's unresolved status.

### 11. Appeals

All requests for appeal consideration must be submitted in writing to the Director of Nondiscrimination and Title IX within five (5) business days of the delivery of the written finding of the Decision-maker. Any party may appeal, but appeals are limited to the following grounds:

- A procedural error or omission occurred that significantly impacted the outcome of the hearing (e.g., substantiated bias, material deviation from established procedures,
- To consider new evidence, unknown or unavailable during the investigation, that could substantially impact the original finding or sanction. A summary of this new evidence and its potential impact must be included in the appeal.
- Belief by either party that the severity of the sanction is substantially disproportionate given the details of the case.

Disagreement with the finding or the sanctions is not, by itself, grounds for an appeal.

When any party requests an appeal, the Director of Nondiscrimination and Title IX will share the appeal request with the other party(ies) or other appropriate persons such as the Investigator(s), who may file a response within three (3) business days. The other party may also bring their own appeal on separate grounds. A three-member appeals panel chosen from the Pool will be designated by the Director of Nondiscrimination and Title IX from those who have not been involved in the process previously. One member of the Appeal Panel will be designated as the Chair.

If new grounds are raised, the original appealing party will be permitted to submit a written response to these new grounds within three (3) business days. These responses or appeal requests will be shared with each party. The Panel will review the appeal request(s) within five (5) business days of completing the pre-appeal exchange of materials. If grounds are not sufficient for an appeal, or the appeal is not timely, the Appeal Panel dismisses the appeal. When the Panel finds that at least one of the grounds is met by at least one party, additional principles governing the review of appeals include the following:

- Decisions by the Panel are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction(s)/responsive action(s) only if there is compelling justification to do so.
- Appeals are not intended to be full re-hearings of the allegation(s). In most cases, appeals are confined to a review of the written documentation or record of the investigation and pertinent documentation regarding the grounds for appeal.
- An appeal is not an opportunity for the Panel to substitute their judgment for that of the original Investigator(s) or the Director of Nondiscrimination and Title IX/ Decision-maker merely because they disagree with the finding and/or sanction(s).
- Appeals granted based on new evidence should normally be remanded to the Investigator(s) for reconsideration. Other appeals should be remanded at the discretion of the Panel.
- Sanctions imposed as the result of the Administrative Resolution are implemented immediately unless the Director of Nondiscrimination and Title IX stays their implementation in extraordinary circumstances, pending the outcome of the appeal.
  - For students: Graduation, study abroad, internships/externships, etc., do NOT in and of themselves constitute exigent circumstances, and students may not be able to participate in those activities during their appeal.
- All parties will be informed in writing of the outcome of the appeal without significant time delay between notifications, and in accordance with the standards for Notice of Outcome as defined above.
- Once an appeal is decided, the outcome is final; further appeals are not permitted, even if a decision or sanction is changed on remand.
- In rare cases when a procedural error cannot be cured by the original Investigator(s) and/or Director of Nondiscrimination and Title IX/ Decision-maker (as in cases of bias), the Panel may recommend a new investigation and/or Administrative Resolution process, including a new resolution administrator.
- The results of a new Administrative Resolution process can be appealed once, on any of the three applicable grounds for appeals.
- In cases in which the appeal results in Respondent's reinstatement to the College or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable.

## 12. Long-Term Remedies/Actions

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Director 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 the 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 Director, 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 Director 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 Recipient's ability to provide these services.

### 13. Failure to Complete Sanctions/Comply with Interim and Long-term Remedies/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 Director.

*Procedures effective: August 2015; reviewed August 2016, August 2020; Revised 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 Director 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' motivation to participate in good faith;
- Civility of the parties;
- Results of a violence risk assessment/ongoing risk analysis; whether there is an ongoing threat of harm or safety to the campus; whether an emergency removal is needed
- Disciplinary history;
- Skill of the Alternative Resolution facilitator with this type of allegation;
- Complaint complexity;
- Emotional investment/capability of the parties; Rationality of the parties; Goals 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 are 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 Director 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 Director 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 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.<sup>5</sup> At any time before or after the commencement of the informal resolution process, the Director 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 Director may serve as the facilitator, subject to these restrictions. All facilitators must have training in the definition of sexual harassment under 34 C.F.R. § 106.30(a), the scope of the institution's education program or activity, how to conduct informal resolution processes, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, or bias.

### **Confidentiality**

In entering the informal resolution process, the Parties agree that any testimony and evidence (including admissions of responsibility) they share or receive during the informal resolution process concerning the allegations of the Formal Complaint is confidential. No evidence concerning the allegations obtained within the informal resolution process may be disseminated to any person, provided that any Party to the informal resolution process may generally discuss the allegations under investigation with a parent, friend, advisor, or other source of emotional support, or with an advocacy organization. As a condition of entering the informal resolution process, any evidence shared or received during the informal resolution process may not be used in any subsequent formal resolution process or institutional appeal.

### **Informal Resolution Options**

Barnard offers the following informal resolution procedures for addressing 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

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<sup>5</sup> 85 Fed. Reg. 30026, 30054 (May 19, 2020).

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: SANCTION EXAMPLES

### 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.
- *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.<sup>6</sup>
- *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.

### b. Employee Sanctions/Corrective Actions

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

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<sup>6</sup> 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."



- *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.

### **36. 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 Director 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 C: BARNARD COLLEGE RESOURCES

### On-Campus Student Resources

<b>*Columbia Sexual Violence Response &amp; Rape Crisis/ Anti-Violence Support Center (SVR)</b>	105 Hewitt Hall   212-854-HELP (4357)
<b>*Rosemary Furman Counseling Center</b>	100 Hewitt Hall   212-854-2092 For after hours emergencies call 855-622-1903
<b>*Primary Care Health Services</b>	Lower Level, Brooks Hall   212-854-2091
<b>Office of Nondiscrimination and Title IX</b>	First Floor, Elliott Hall   212-854-0037
<b>*Being Barnard</b>	122 Reid Hall   212-854-0145
<b>*Ombuds Office</b>	113 Hewitt Hall   212-854-1352
<b>*Well Woman Health Promotion Program</b>	119 Reid Hall   212-854-3063
<b>*University Chaplain</b>	710 Lerner Hall   212-854-1493

### College Employee Resources

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

*\*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.