

## **BERKELEY COLLEGE**

### **Title IX (and Non-Title IX) Sexual Harassment and Sexual Misconduct Policy**

#### **I. Introduction**

Berkeley College (the "College") is committed to providing a learning and working environment that promotes mutual respect, civility, and diversity, in an environment free of discrimination on the basis of sex or gender<sup>1</sup>. The College does not discriminate on the basis of sex or gender in any of its education or employment programs or activities—including in its admissions or employment processes—and it does not tolerate discrimination or harassment on the basis of sex or gender. This includes harassment or discrimination based on sexual orientation, gender expression, and gender identity. Sexual and Gender-Based Harassment, Sexual Assault, Dating Violence, Domestic Violence, and Stalking are prohibited forms of discrimination and will not be tolerated, as described in this Policy.

This Policy has been drafted to comply with the requirements of Title IX and its implementing regulations, 34 C.F.R. Part 106, including the final Title IX regulations issued by the U.S. Department of Education's Office for Civil Rights in May 2020, which prohibit discrimination on the basis of sex in educational programs or activities receiving federal financial assistance. The requirement not to discriminate on the basis of sex in the education program or activity extends to admission and employment. This Policy has also been drafted to comply with Title VII of the Civil Rights Act of 1964, relevant provisions of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), as amended by relevant provisions of the Violence Against Women Reauthorization Act of 2013 (VAWA), in New York with the New York State and City Human Rights Laws and Article 129-B of the New York Education Law, and in New Jersey with the New Jersey Law against Discrimination.

#### **II. Scope and Jurisdiction**

This Policy applies to all Berkeley College students, trustees, faculty, staff and third parties.<sup>2</sup> For purposes of this Policy, the term "College" shall include Berkeley College and BES Inc., all employees of which shall be collectively referred to as "associates."

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<sup>1</sup> The College prohibits discrimination (based on all protected classes, including sex) in its Equal Opportunity Policy found here: <https://berkeleycollege.edu/pdf/equal-opportunity-policy.pdf>

<sup>2</sup> Third parties can include, for example, paid or unpaid interns, independent contractors, vendors, guests, applicants for admission and employment and other non-employees.

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Any individual may report Sexual Harassment or Sexual Misconduct to the College and receive access to reasonably available Supportive Measures. A student, associate or other individual who is participating in, or attempting to participate in, the College's Education Program or Activity may also file a Formal Complaint and request formal resolution under this Policy. In addition, the Title IX Coordinator may file a Formal Complaint on behalf of a third party where the reported conduct occurred in the College's Education Program or Activity.

The College's ability to respond to reports of Prohibited Conduct under this Policy is tied to its disciplinary authority over the Respondent (the individual accused of violating the Policy). The College has jurisdiction when the conduct occurs in the College's Education Program or Activity, which includes:

- 1) all of the College's operations, including locations, events, or circumstances over which the College exercises substantial control over both the Respondent and the context in which the conduct occurs; and,
- 2) any building owned or controlled by a student organization that is officially recognized by the College.

If the Respondent is not an associate or student, the College's ability to take disciplinary action may be limited and will be determined by the context of the Prohibited Conduct and the nature of the relationship of the third party Respondent to the College. The Title IX regulations, which direct the College's response to reports of Sexual Harassment as defined in the Title IX regulations, do not draw a line between on campus, off campus, or online, provided the conduct occurred in an Education Program or Activity in the United States. Examples include College-sponsored, College-funded or otherwise College-supported study off campus, research, internship, mentorship, summer session, conferences, meetings, social events, or other affiliated programs or premises.

In addition, and in keeping with the College's educational mission and commitment to fostering a learning, living, and working environment free from discrimination and harassment, the College will also address through this Policy and accompanying procedures, reports of Prohibited Conduct that occur outside the United States, but still within the College's Education Program or Activity. For example, the College will address conduct that occurs outside of the United States but within a College-sponsored, College-funded, or otherwise College-supported study abroad program.

Under certain circumstances, this Policy may also apply to reports of Prohibited Conduct that occur outside of the Education Program or Activity but have continuing effects in the Education Program or Activity, or that fall within the scope of conduct otherwise regulated

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by the College. For example, this Policy may apply to a report of an off-campus sexual assault committed by a student or associate.

The Title IX Coordinator will select the appropriate process to use in a given situation based on the nature of the Prohibited Conduct reported, the geographic location in which it occurs, the role of the Respondent, and whether the conduct occurred within the Education Program or Activity. All of the College's processes, however, incorporate important procedural protections and are designed to be fair, impartial, prompt and equitable. See Section XI below for more information about the specific processes for investigation and resolution.

### **III. Coordination with Other Policies**

Reports of Prohibited Conduct may sometimes implicate conduct prohibited by another College Policy. Student, staff and faculty conduct is also governed by the following College policies:

- Ex: Student Rights and Responsibilities in Student Handbook(s)  
<https://berkeleycollege.edu/student-rights-and-responsibilities/index.html>
- Ex: Associate Policies on HR on SharePoint\_  
<https://berkeleycollege.edu/HRpolicy/index.html>
- Ex: Faculty Handbook\_  
<https://berkeleycollege.edu/facultyhandbook/index.html>

Where conduct involves the potential violation of both this Policy and another College policy, the College may choose to address other potential misconduct under the procedures set forth in this Policy, provided that doing so does not impair the College's ability to provide a prompt and equitable resolution to a Formal Complaint of Sexual Harassment.

### **IV. Prohibited Conduct**

This Policy prohibits a broad range of behaviors, which are referred to collectively as "Prohibited Conduct." In determining whether reported conduct violates this Policy, the College will consider the totality of the facts and circumstances involved in the incident, including the nature of the reported conduct and the context in which it occurred. Prohibited Conduct can be committed by or against individuals of any sex or gender and can occur between individuals of the same sex/gender or different sexes/genders. Prohibited Conduct can occur between strangers or acquaintances, as well as persons involved in intimate, sexual, dating, domestic, or familial relationships. Prohibited Conduct includes:

**A. Title IX Sexual Harassment:** The Title IX regulations define Sexual Harassment as conduct on the basis of sex that satisfies one or more of the following:

1. An associate of the College conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct; or
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 College's Education Program or Activity; or
3. Sexual Assault, Dating Violence, Domestic Violence, or Stalking, as defined below.

**a Sexual Assault:** Sexual assault is having or attempting to have sexual contact with another individual without consent or where the individual cannot consent because of age or temporary or permanent mental incapacity (see below for definition of **consent**, including **incapacitation**). Sexual contact includes:

- i. sexual intercourse (anal, oral, or vaginal), including penetration with a body part (e.g., penis, finger, hand, or tongue) or an object, or requiring another to penetrate themselves with a body part or an object, however slight; or
- ii. sexual touching of the private body parts, including, but not limited to, contact with the breasts, buttocks, groin, genitals, or other intimate part of an individual's body for the purpose of sexual gratification.
- iii. attempts to commit sexual assault.

**b Dating and Domestic Violence:** Dating and Domestic Violence includes any act of violence against a Complainant who is or has been involved in a sexual, dating, domestic, or other intimate relationship with the Respondent, or against a

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person with whom the Respondent has sought to have such a relationship, as follows:

- i. **Dating Violence:** includes any act of violence committed by a person:
  - (a) Who is or has been in a social relationship of a romantic or intimate nature with the Complainant; and
  - (b) Where the existence of such a relationship shall be determined based on a consideration of the following factors:
    - (1) the length of the relationship;
    - (2) the type of relationship; and
    - (3) the frequency of interaction between the persons involved in the relationship.
- ii. **Domestic Violence:** includes any act of violence 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, by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the Complainant under New Jersey and/or New York state law, respectively; or by any other person against an adult or minor Complainant who is protected from that person's acts under New Jersey and/or New York state law, respectively;

Dating or Domestic Violence may also include forms of Sexual Harassment under this policy, including Sexual Assault, Sexual Exploitation, and Stalking.

- c. **Stalking:** Stalking occurs when a person engages in a course of conduct directed at a specific person under circumstances that would cause a reasonable person to fear for their own

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safety or the safety of others or suffer substantial emotional distress.

Course of conduct means two or more instances including but not limited to unwelcome acts in which an individual directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property. Substantial emotional distress means significant mental suffering or anguish.

Stalking includes the concept of cyber-stalking, a particular form of stalking in which electronic media such as the internet, social networks, blogs, cell phones, texts, or other similar devices or forms of contact are used.

**B. Other Sexual Harassment:** In addition, consistent with federal, state and local laws including, but not limited to: Title VII of the Civil Rights Act of 1964, the New York State Human Rights Law, the New York City Human Rights Law, the New Jersey Law against Discrimination and the recognition that Sexual Harassment may occur in a wide variety of contexts, Berkeley College also defines Sexual Harassment to include any sexual advance, request for sexual favors, or other unwelcome conduct of a sexual nature, whether verbal, non-verbal, graphic, physical, electronic, or otherwise (*sexual harassment*); or, any act of intimidation or hostility, whether verbal or non-verbal, graphic, physical, or otherwise based on sex or gender, sexual orientation, gender identity, or gender expression, even if the acts do not involve conduct of a sexual nature (*gender-based harassment*); when one or more of the following conditions are present:

1. The conduct constitutes ***quid pro quo harassment***: Submission to, or rejection of, such conduct by an individual a) is used (by someone in a position of power) as a basis for making academic or employment decisions or evaluations about that individual; or, b) is made (by someone in a position of power) a term or condition of that individual's academic standing, employment, or ability to participate in any College program, activity opportunity or benefit.

For example, quid pro quo harassment can occur when an employer or College administrator implicitly or explicitly attempts to make submission to sexual demands or gender based harassment a condition of employment or a condition of an academic program or

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activity. Thus, an associate or student may perceive that he or she must tolerate sexual advances or engage in a sexual relationship in order to continue employment or instruction, to achieve advancement or a good grade, or to avoid adverse employment or educational consequences such as poor evaluations or demotions. Similarly, it is unlawful for an employer or College administrator to condition favorable treatment such as promotions, salary increases, preferred assignments, or good grades, on an associate's or student's acceptance of sexual advances or relations.

2. The conduct creates a **hostile environment**. A hostile environment can involve, for example, unwelcome verbal, physical or expressive behavior of a sexual nature or directed at an individual because of that individual's sex or gender, including, but not limited to: graphic verbal commentary about a person's body; sexually degrading words to describe an individual; the display of sexually suggestive objects or pictures; repeated and unwelcome flirtation or requests for "dates"; sexual slurs and jokes; inquiries about a person's sexual habits; sex stereotyping and unwelcome touching. A hostile environment only exists when such conduct is sufficiently severe, persistent, or pervasive such that it unreasonably interferes with, limits, or deprives an individual from participating in or benefiting from the College's educational or employment experience, when viewed through both a subjective and objective standard.<sup>3</sup>

A hostile environment can be created by persistent or pervasive conduct or by a single or isolated incident, if sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the conduct is physical. A single incident of sexual assault, for example, may be sufficiently severe to constitute a hostile environment. In contrast, the perceived offensiveness of a single verbal or written expression, standing alone, is typically not sufficient to constitute a hostile environment.

- C. **Retaliation** is also prohibited under this Policy. Retaliation means any adverse action, intimidation, threat, coercion or discrimination against an

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<sup>3</sup> Unlike Federal and NJ law, neither New York State nor New York City requires harassment to be "severe or pervasive." New York defines harassing conduct as any conduct that subjects an employee to inferior terms, conditions, or privileges of employment because of an individual's gender, or membership in any other protected category. Harassment in New York, however, does not include behaviors that a reasonable person would consider petty slights or trivial inconveniences.



individual for the purpose of interfering with any right or privilege secured by Title IX or its regulations, or because the individual has made a report or Formal Complaint of Prohibited Conduct, testified, assisted, or participated or refused to participate in any manner in any investigation, proceeding or hearing under this policy. Retaliation includes such conduct through associates or agents of a Complainant, Respondent, or participant in any investigation or proceeding related to this Policy. In addition, no person covered by this Policy shall be subject to an adverse action (employment or educational) because that person provides information or testimony, or otherwise assists in an external administrative or judicial forum.

- D. Sexual Exploitation:** Sexual exploitation, which is a form of discrimination on the basis of sex, means taking sexual advantage of another person and includes, without limitation: recording, photographing and/or transmitting

images of private sexual activity and/or the intimate parts of another person(s) via web-cam, camera, cell phone, Internet, etc., without the knowledge and consent of all persons; allowing third persons to observe private sexual acts or nudity without the knowledge and consent of all persons; and indecent exposure.

## **V. Related Definitions**

### **A. Affirmative Consent**

Consent to a sexual act requires a clear, affirmative, current, and mutual agreement to take or permit such action. Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon an individual's sex, sexual orientation, gender identity, or gender expression. Although consent need not be verbal, verbal communication is often the most reliable means of ensuring consent to sexual activity.

Consent to any one or prior sexual act does not constitute consent to any other or future sexual act. Consent to sexual activity may be withdrawn at any time, in which case the activity must cease immediately. Consent cannot be obtained by physical force, threats, or intimidation. Consent is required regardless of whether the person *initiating* the act is under the influence of drugs and/or alcohol.



Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by a lack of consciousness or being asleep, being involuntarily restrained, or can exist if an individual's ability to make decisions is otherwise compromised. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.

Consent cannot be given by a person who is under the legal age of consent. In addition, consent cannot be given by an individual with a mental, intellectual, physical or other disability that renders him/her incapable of giving consent.

Minors (individuals under age 18 for purposes of this policy and consistent with New York law) are legally incapable to consent to any sexual activity with an adult; therefore, there is no such thing as consensual sexual activity between a minor and an adult member of the College community. The

College strictly prohibits sexual activity of any type between adult associates and minors in connection with any of its programs or activities. Any reports or complaints of unlawful sexual activity involving minors will be reported to appropriate law enforcement and social services agencies consistent with New York state law.

- B. Complainant** refers to an individual who is alleged to be the victim of conduct that could constitute Sexual Harassment under this Policy. A Complainant can be a student, an associate, or a third-party.
- C. Respondent** refers to an individual who has been reported to be the perpetrator of conduct that could constitute Sexual Harassment under this Policy. A Respondent can be a student, an associate, or a third-party.
- D. Actual knowledge** means notice of Sexual Harassment or allegations of Sexual Harassment to the College's Title IX Coordinators or any Official of the College who has authority to institute corrective measures on behalf of the College.
- E. Education Program or Activity** refers to locations, events, or circumstances over which the College exercised substantial control over both the Respondent and the context in which the Sexual Harassment

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occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the College.

- F. Formal Complaint** means a document filed by a Complainant or signed by the Title IX Coordinator alleging Prohibited Conduct under this Policy against a Respondent and requesting that the College investigate the allegation of Prohibited Conduct. A Formal Complaint must be in writing and may be filed with the Title IX Coordinator in person, by mail, or by electronic mail. The written Formal Complaint must contain the Complainant's physical or digital signature, or otherwise indicate that the Complainant is the person filing the Formal Complaint. Where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a party.

## **VI. Considerations in Advance of Reporting**

### **A. Understanding the Difference Between Privacy and Confidentiality**

Berkeley College is committed to protecting the privacy of all individuals involved in a report of Prohibited Conduct under this policy. All associates who are involved in the College's response to Prohibited Conduct, including the Title IX Coordinator, investigators and adjudicators, receive specific training and guidance about safeguarding private information, including the protections set forth in Title IX, the Clery Act, and the Family Educational Rights and Privacy Act ("FERPA").

**Privacy** and **Confidentiality** have distinct meanings under this Policy.

**Privacy:** refers to the discretion that will be exercised by the College in the course of any investigation or disciplinary processes under this Policy. Information related to a report of Prohibited Conduct will be handled discreetly and shared with a limited circle of College associates or designees who need to know in order to assist in the assessment, investigation, and resolution of the report and related issues. The College will make reasonable efforts to investigate and address reports of Prohibited Conduct under this Policy, and information may be disclosed to participants in an investigation as necessary to facilitate the thoroughness and integrity of the investigation. In all such proceedings, the College will maintain the privacy of the parties to the extent reasonably possible.

**Confidentiality:** refers to the statutory protections provided to individuals who disclose information in legally-protected or privileged relationships, including College **Personal Counselors** (students) and the **Employee Assistance**

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**Program** (associates) (Confidential Resources). Information shared by an individual with a Confidential Resource, on campus or in the community, intended as a confidential communication, cannot be revealed to any other individual without express permission of the individual seeking services, unless there is an imminent threat of harm to self or others, or the conduct involves suspected abuse of a minor. When a report involves suspected abuse of a minor under the age of 18, these Confidential Resources are required by state law to notify child protective services and/or local law enforcement.

Similarly, an individual's medical and counseling records are confidential and cannot be released without the individual's written permission or unless permitted or required consistent with ethical or legal obligations.

If you share information about Prohibited Conduct with any faculty or staff member who is not a designated Confidential Resource, that faculty or staff member will share that information with the Title IX Coordinator. Upon receiving such information, the Title IX Coordinator will offer Supportive Measures to a Complainant, inform the Complainant of the availability of Supportive Measures with or without the filing of a Formal Complaint, and explain to the Complainant the process for filing a Formal Complaint. The Title IX Coordinator will consider the Complainant's wishes with respect to Supportive Measures and seek to respect a Complainant's autonomy in making the determination regarding how to proceed.

The Formal Complaint process does not provide for anonymity and complete confidentiality, although the principles of privacy, described above, apply throughout all processes.<sup>4</sup>

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<sup>4</sup> The Family Educational Rights and Privacy Act, 20 U.S.C. 1232g ("FERPA") allows Berkeley College to share information with parents when 1) there is a health or safety emergency or 2) when the student is a dependent on either parent's prior year federal income tax return. Generally, the College will not share information about a report of domestic violence, dating violence, stalking, or sexual assault with parents without the permission of the reporting individual. For more information on FERPA, please see the College Student Records Policy here: <https://berkeleycollege.edu/pdf/ferpa-notice.pdf>.

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In limited circumstances, typically where a risk of imminent harm to an individual or others or a threat to the physical health and safety of the campus is determined to exist, the College may be required to take immediate action upon receipt of a report of Prohibited Conduct. In such circumstances, the reasons and steps the College will take will be explained to the Complainant.<sup>5</sup>

## **B. Release of Information by the College**

Pursuant to the Clery Act, Berkeley College must disclose statistics about Clery Act crimes in its daily crime log and Annual Security Report and provides those statistics to the United States Department of Education. If a report of Sexual Assault, Dating Violence, Domestic Violence or Stalking discloses a serious or continuing threat to the campus community, the College will issue a timely warning notification to the community to protect the health and safety of the community as required by the Clery Act (See section VII (C) below). In all of these instances, the information is reported in a manner that does not include personally identifying information about persons involved in an incident. In addition, Confidential Resources may submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client, patient or student.

The College will not release the name of the Complainant, the Respondent or witnesses to the general public except as otherwise permitted or required by law. The College will also maintain the confidentiality of any Supportive Measures provided to a Complainant, to the extent that maintaining such confidentiality would not impair the College's ability to provide the supportive measures. The College may also share non-personally identifying information about reports received in aggregate form, including data about outcomes and sanctions. All Berkeley College proceedings are conducted in compliance with the requirements of

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<sup>5</sup> The College will weigh a number of factors when determining whether to honor a confidentiality request, including, but not limited to:

- The nature of the reported conduct;
- Whether the Respondent has a history of violent behavior or there have been other complaints or reports of harassment, misconduct or prohibited conduct against the Respondent;
- Whether the incident represents potential escalating behavior on the part of the Respondent;
- Whether the circumstances suggest there is an increased risk of the Respondent committing additional acts of sexual violence or other violence, including but not limited to reported threats of sexual violence or other violence by the Respondent against the Complainant or others;
- Whether the Respondent is reported to have used a weapon, force, threats or coercion;
- Whether the Respondent is reported to have intentionally drugged or caused the incapacitation of another as a means of committing the conduct;
- Whether the conduct was reportedly committed by multiple individuals;
- Whether the Complainant is a minor;
- Whether the Respondent is an associate; and
- Whether the College possesses other competent means to obtain relevant evidence.

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FERPA, the Clery Act (as amended by VAWA), Title IX, state and local law, and College policy.

## **VII. Reporting Responsibilities of College Employees**

### **A. Confidential Resources**

As described above, Confidential Resources are prohibited from sharing information unless required or permitted by law or ethical obligations. Confidential Resources on campus and in the community include:

Students seeking confidential assistance should consider speaking in confidence to a college “Personal Counselor,” located at each campus location. **College Personal Counselors** who acquire confidential information in the course of providing counseling services are not required to report the matter to the Title IX Coordinators. **Personal Counselors are the only designated/recognized confidential resource at the College.** Nevertheless, Personal Counselors shall inform students who seek confidential counseling of all of their reporting options and resources, both inside and outside the College. Students may disclose confidentially the incident and obtain services from state and/or local government services and hotlines. See <https://berkeleycollege.edu/about/administration/general-counsel/title-ix/index.html> for more details and information.

Associates seeking confidential assistance may contact the Employee Assistance Program (“EAP”) by calling Toll-Free 855-RSL-HELP (855-775-4357), a confidential crisis line, or <http://rsli.acieap.com> The EAP is available regardless of whether an incident is reported to the College or law enforcement. Reports to the EAP, however, will not be provided to the College and will not result in investigation or disciplinary action by the College.

### **B. All Other Employees**

College faculty or staff (other than Personal Counselors) who receive reports or complaints of Prohibited Conduct are considered “Responsible Employees” and are expected to promptly notify the Title IX Coordinator or Deputy Title IX Coordinators. The College seeks to remove barriers and foster increased reporting in order to ensure equitable access to Supportive Measures, policies, and procedures for all College community members. Centralized reporting and recordkeeping also enhances the College’s ability to identify and track patterns, trends and impacts on campus climate.

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In keeping with these values, Responsible Employees must report all known information, including the identities of the parties, the date, time and location and any details about the reported incident to the Title IX Coordinator. Responsible Employees may not promise Confidentiality or withhold information about Prohibited Conduct from the Title IX Coordinator. Failure by a Responsible Employee to report suspected Prohibited Conduct in a timely manner may subject them to appropriate discipline, including removal from a position or termination of employment.

If a reporting individual discloses an incident of Prohibited Conduct to a Responsible Employee but wishes to maintain Confidentiality or does not consent to the College's request to initiate an investigation, the Title IX Coordinator, or Deputy Title IX Coordinators, must weigh the request against the College's obligation to provide a safe, non-discriminatory environment for all members of its community. Responsible Employees are not required to report information disclosed at a public awareness event such as candlelight vigils, protests, or other public events. In addition, Berkeley College is not obligated to begin an investigation based on such information. The College may use the information provided at such an event to inform its efforts for additional education and training.

### **C. Timely Warnings**

Any College official who receives a report of Sexual Assault, Dating Violence, Domestic Violence, and Stalking (and other Clery Act-defined crimes), alleged to have occurred on or adjacent to College property must promptly report it to the Public Safety Department. In accordance with College policy and procedures, the AVP for Public Safety, or his designee, will initiate a conversation regarding whether there exists a serious or continuing threat to the campus community, such that a Timely Warning Notification should be issued. This conversation will include the Campus Operating Officer, the Title IX Coordinator (or her designee) and an attorney from the Office of General Counsel. The AVP for Public Safety will provide to the group his rationale for the need for the Notification, and specify to what population it will be directed. In the event that an investigation is needed to verify the validity of the original crime or threat, the decision to notify may be delayed until such time as the threat can be verified. The above-described group will decide whether to issue a Notification and its content. The Public Safety Department will issue the Notification in a way that withholds the name of the alleged victim(s).

## **VIII. How to Report Prohibited Conduct**

### **A. Emergency and/or Medical Assistance**

Complainants are encouraged to seek immediate medical treatment and preserve physical evidence following an incident of Prohibited Conduct even if they have not



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decided whether they wish to pursue any campus or law enforcement action. This will help to ensure that a Complainant receives proper care, preserve any available evidence, and support their opportunity to support a disciplinary or criminal action at a later time. A list of local area hospitals that can assist Complainants in preserving evidence is available at <https://berkeleycollege.edu/pdf/vawa-brochure.pdf>.

Complainants are also encouraged to contact law enforcement as soon as possible following an incident that may pose a threat to safety or physical well-being or that is potentially a criminal act under New Jersey or New York state law.

Berkeley College community members with an immediate safety concern or medical injury can call 911 or College Public Safety at (973) 200-1172.

## **B. Reporting Prohibited Conduct to the College**

Berkeley College encourages anyone who has experienced Prohibited Conduct to report it to the College. A Complainant does not need to know whether they wish to request any particular course of action or how to label what happened. An individual who is uncertain what they wish to do in response to an alleged incident of Prohibited Conduct, including how or whether to report the conduct, may contact and consult a Confidential Resource to address questions and concerns in a confidential setting. Individuals with questions or concerns about the College's processes may also contact the [Title IX Coordinator](#) directly to learn more about resources and procedural options.

Any individual may make a report of Prohibited Conduct under this Policy regardless of affiliation with Berkeley College and regardless of whether or not the person reporting is the person alleged to be the victim of conduct. Reports can be made in person, by mail, by telephone, or by electronic mail.

### **Reports of Prohibited Conduct should be made to:**

- Students can direct complaints to, consult with, and/or file a report of Prohibited Conduct with, the **Deputy Title IX Coordinator for Students** as follows: LaTysha Gaines, MPA, Campus Operating Officer for Woodland Park, [LaTysha-Gaines@BerkeleyCollege.edu](mailto:LaTysha-Gaines@BerkeleyCollege.edu), 973-368-9857.<sup>6</sup>
- The Deputy Title IX Coordinator shall promptly inform the Title IX Coordinator of any sexual harassment related inquiries or complaints of which she becomes aware.

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<sup>6</sup> Available before and after normal business hours at 973-368-9857.



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- Students may also direct Prohibited Conduct related inquiries, complaints, and/or reports to the designated **Title IX Coordinator** for Berkeley College - who serves as the overall College coordinator for Title IX, VAWA and NY 129-B compliance – Sherrille Shabazz, Vice President, Student Development and Campus Life, who can be reached at 646-948-1361<sup>7</sup>, [TitleIXCoordinator@BerkeleyCollege.edu](mailto:TitleIXCoordinator@BerkeleyCollege.edu).
- Students may also report these matters to **College Public Safety, local law enforcement and/or the NY state police** (if applicable). The Title IX Coordinator and/or the College Public Safety Department can assist you with contacting local law enforcement and/or the NY state police, upon request.
- Where the respondent is a Berkeley College associate, students may report these types of incidents to the College's **Deputy Title IX Coordinator for Associates**: Karen Carpentieri, VP for Human Resources, [KJC@BerkeleyCollege.edu](mailto:KJC@BerkeleyCollege.edu), 862-437-8532 or have the right to request that a confidential or private employee assist in reporting to Deputy Title IX Coordinator for Associates.
- Students may contact the U.S. Department of Education, Office for Civil Rights with Title IX related complaints, at 800-421-3481 or [ocr@ed.gov](mailto:ocr@ed.gov).
- Associates can direct complaints to, consult with, and/or file a report involving sexual harassment with the College's **Deputy Title IX Coordinator for Associates**: Karen Carpentieri, VP for Human Resources, [KJC@BerkeleyCollege.edu](mailto:KJC@BerkeleyCollege.edu), 862-437-8532 or to the **Title IX Coordinator** for Berkeley College - who serves as the overall College coordinator for Title IX, VAWA and NY 129-B compliance – Sherrille Shabazz, Vice President, Student Development and Campus Life, who can be reached at 646-948-1361<sup>8</sup>, [TitleIXCoordinator@BerkeleyCollege.edu](mailto:TitleIXCoordinator@BerkeleyCollege.edu).
- Students and Associates can decline to notify any such authorities or individuals.

Berkeley College recognizes that deciding whether to make a report of Prohibited Conduct is a personal decision. Making a report is different from filing a Formal Complaint. When the College receives a report of Prohibited Conduct, the College will offer Supportive Measures to a Complainant, inform the Complainant of the availability of Supportive Measures with or without the filing of a Formal Complaint, and explain to the Complainant

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<sup>7</sup> Available before and after normal business hours at 646-948-1361.

<sup>8</sup> Available before and after normal business hours at 646-948-1361.

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the process for filing a Formal Complaint. The College will consider the Complainant's wishes with respect to Supportive Measures and seek to respect a Complainant's autonomy in making the determination regarding how to proceed.

In limited circumstances, the Title IX Coordinator may file a Formal Complaint initiating an investigation into reported conduct. See the Title IX Sexual Harassment and Sexual Misconduct Procedures on how to file a Formal Complaint.

The most efficient and effective way to learn about the College's resources and procedural options, access Supportive Measures, or to file a Formal Complaint is by directly contacting the Title IX Coordinator.

## **1. The Title IX Coordinator**

Berkeley College has appointed a Title IX Coordinator to oversee the consistent implementation of this Policy, and to ensure compliance with Title IX, its implementing regulations, and other applicable federal and state laws. The College's Title IX Coordinator is responsible for educating the College community about Title IX, applicable policies, procedures, resources, and reporting options; developing educational programming and initiatives; overseeing the College's response to reports of Prohibited Conduct and related conduct, including coordinating Supportive Measures; overseeing prompt and equitable investigations and resolutions of reports of Prohibited Conduct; and facilitating individual and community remedies. The Title IX Coordinator also maintains records of all reports, investigations, and resolutions to track and monitor patterns, trends and issues of concern.

The College's Title IX Coordinator is:

**Sherrille Shabazz, EdD.**

Vice President, Student Development and Campus Life

Berkeley College

3 East 43<sup>rd</sup> Street

New York, NY 10017

[TitleIXCoordinator@BerkeleyCollege.edu](mailto:TitleIXCoordinator@BerkeleyCollege.edu)

646-948-1361

The Title IX Coordinator is trained on the definition of Prohibited Conduct, the scope of the College's Education Program or Activity, how to conduct an investigation and resolution process including investigations, hearings, and appeals, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

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### **C. Time Frame for Reporting**

Complainants and witnesses are encouraged to report Prohibited Conduct as soon as possible in order to maximize the College's ability to respond promptly and effectively. There is no time limitation on sharing allegations with the Title IX Coordinator. However, the passage of time may impact or limit the College's jurisdiction and/or the ability to investigate, respond, and impose disciplinary sanctions or provide remedies.

Depending on the relationship of the Respondent to the College, the College may not have the authority to impose disciplinary action; this may occur when a student Respondent has graduated or an employee Respondent is no longer employed by the College. If the Respondent is no longer affiliated with the College (for example, a report is made after a student has left or graduated or an associate no longer works for Berkeley College), the College will still provide reasonably available Supportive Measures to the Complainant, assist the Complainant in identifying external reporting options, and may take other appropriate action to address the reported conduct.

### **D. Drug and Alcohol Use – Amnesty in Connection with Reporting**

The health and safety of every student at Berkeley College is of utmost importance. Berkeley College recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including Domestic Violence, Dating Violence, Stalking, or Sexual Assault, occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. Berkeley College strongly encourages students to report Domestic Violence, Dating Violence, Stalking, or Sexual Assault to Berkeley College officials in accordance with these procedures. A bystander acting in good faith, or a reporting individual acting in good faith, that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to Berkeley College officials or law enforcement will not be subject to Berkeley College's disciplinary process for violations of College alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.

### **E. Obligation to Provide Truthful Information**

All community members are expected to provide truthful information in any proceeding under this policy. Submitting or providing deliberately false or misleading information in bad faith or with a view to personal gain or intentional harm to another in connection with an incident of Prohibited Conduct is prohibited and subject to disciplinary sanctions. This

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provision does not apply to reports made or information provided in good faith, even if the facts alleged in the report are erroneous or are not later substantiated.

## **IX. Supportive Measures, Interim Assistance, Emergency Removal, and Administrative Leave**

### **A. Supportive Measures**

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or Respondent when a report is received. Supportive measures are available before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Supportive measures are designed to restore or preserve equal access to the College's Education Program or Activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the College's educational environment, or deter Prohibited Conduct.

Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

The College will consider a number of factors in determining which Supportive Measures to take, including the needs of the student or associate seeking Supportive Measures; the severity or pervasiveness of the alleged conduct; any continuing effects on the complainant; whether the complainant and the respondent share the same residence hall, academic course(s), or job location(s); and whether judicial measures have been taken to protect the complainant (e.g., protective orders). The College will work in good faith to implement the requirements of judicially issued protective orders and similar orders, to the extent that doing so is within its authority.

The Title IX Coordinator or Deputy Title IX Coordinators are responsible for ensuring the implementation of Supportive Measures and coordinating the College's response with the appropriate offices on campus. The College will maintain the privacy of any Supportive Measures provided under this Policy to the extent practicable and will promptly address any violation of the protective measures. If a Supportive Measure is implemented, including a no-contact order, both the Complainant and Respondent may request a review, if reasonable under the circumstances, of the need for, and terms of, such measures, with the Title IX Coordinator or Deputy Title IX Coordinators and shall be allowed to submit evidence in support of their request. Berkeley College will also provide reasonably available Supportive

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Measures for third parties, provided that the Supportive Measures are within the scope of that individual's relationship to the College.

## **B. Orders of Protection and Restraining Orders**

The College will endeavor to enforce any orders of protection or restraining orders obtained from the courts that have been provided. Although not required, Complainants are encouraged to provide the College with a photo of, and other identifying information about, the Respondent. Complainants should provide a copy of the court order, and other information about the Respondent, to the Title IX Coordinator, Deputy Title IX Coordinators, or to the Public Safety Department. Either party may obtain a copy of the order of protection or restraining order from the Public Safety Department (if such order has been provided to the College), and may request an appointment to speak with a Public Safety associate about the order and ask questions. The Public Safety Department will contact and assist local law enforcement in effecting an arrest for a violation of any order of protection or restraining order. Students and associates subject to an order of protection or restraining order may face consequences for any violation, including, but not limited to, arrest, additional conduct charges, and/or emergency removal/interim suspension.

Note: The Public Safety Department is available to assist students and associates in obtaining an order of protection or restraining order. However, the College cannot obtain such order on the student or associate's behalf. The Public Safety Department can assist with identifying and obtaining contact information for local law enforcement and nearby legal services.

## **C. Emergency Removal**

Certain circumstances may warrant removing a student Respondent from a Berkeley College Educational Program or Activity. The College may remove a student Respondent on an emergency basis from College property or employment, education or research programs or activities. Before imposing an emergency removal, the College will undertake an individualized analysis of safety and risk for the campus community to determine whether the Respondent's presence in the program or activity poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Prohibited Conduct and justifies removal of the Respondent from the College program or activity.

The Title IX Coordinator will promptly provide the Respondent with written notice of any removal and an opportunity to challenge the removal. During any challenge, the Respondent will remain off-campus and must comply with the notice of removal. That notice shall include a statement that the use of any information the Respondent chooses to provide may subsequently be used in implementing any aspect of this Policy, including the investigation

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and adjudication. The Respondent will have 72 hours to submit a written challenge to the safety and risk analysis to the Title IX Coordinator.

#### **D. Administrative Leave**

Following a report of Prohibited Conduct, the College may place a non-student employee Respondent on administrative leave, with or without pay.

### **X. Overview of Actions and Procedural Options upon Receipt of a Report**

#### **A. Duties of Title IX Team upon Receipt of a Report of Prohibited Conduct**

Upon receipt of a report from a Complainant, Responsible Employee, or other individual, the Title IX Coordinator (or designee) will promptly – typically within 72 hours – contact the reporting individual to request a meeting to gather supplemental information (if any) and explain the College's processes. If the reporting individual is a potential Complainant (the individual who is reported to have experienced Prohibited Conduct), the outreach will also cover reasonably available Supportive Measures (available with or without filing a Formal Complaint), the process for filing a Formal Complaint, the Complainant's right to report the alleged conduct to law enforcement, the difference between Privacy and Confidentiality, and the right to be protected from Retaliation.

In addition to the initial conversation and any subsequent meeting with the Complainant, the College will provide the Complainant with written information about resources, procedural options, including local law enforcement resources as applicable and reasonably available Supportive Measures. As part of the Intake and Outreach, the Title IX Coordinator will:

- Promptly contact the Complainant to discuss the availability of Supportive Measures;
- Consider the Complainant's wishes with respect to Supportive Measures;
- Assess the nature and circumstances of the report;
- Address immediate physical safety and emotional well-being of the Complainant or other campus community members;
- Discuss the Complainant's expressed preference for manner of resolution and any barriers to proceeding;
- Discuss the differences between confidentiality and privacy;
- Notify the Complainant of the right to contact or decline to contact campus security, local law enforcement, and/or state police, and if requested, assist them with notifying law enforcement;



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- Explain to the Complainant the differences between the campus process and law enforcement process;
- Notify the Complainant of the availability of counseling and medical and counseling resources services including free and fee-based services on and off-campus to address physical and mental health concerns and to preserve evidence, including the option to obtain a sexual assault forensic exam;
- Notify the Complainant of the importance of preserving evidence;
- Ensure that the report is routed to the appropriate person(s) so that it may be entered into the College's Daily Crime Log, if required by the Clery Act;
- Ensure that the report is routed to the appropriate person(s) who will assess the need for a Timely Warning under the Clery Act;
- Provide the Complainant with information about on- and off-campus resources;
- Provide the Complainant with a copy of the Policy and these procedures and an explanation of the procedural options, including seeking Supportive Measures and the process for filing a Formal Complaint;
- Inform the Complainant that they may seek an advisor of their choosing to assist them throughout the investigation and resolution of the report, that the advisor may accompany them to any meeting or proceeding under this process, and that the College will provide an advisor, without fee or charge, to conduct questioning on behalf of the party at the hearing if they do not have an advisor;
- Assess for evidence of a pattern or other similar conduct by the Respondent;
- Explain the College's prohibition against Retaliation; and
- Explain the Complainant's right to withdraw a complaint or cease involvement from Berkeley College's process at any time.

Complainants have the right to disclose to Berkeley College representatives, who may offer confidentiality pursuant to applicable laws. Even Berkeley College representatives who cannot guarantee confidentiality will maintain Complainants' privacy to the greatest extent possible. The information a Complainant provides to a nonconfidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution. If the Respondent is an employee, Complainants have the right to disclose the incident to Berkeley College Human Resources and may seek assistance from a confidential or private employee in reporting to Berkeley College Human Resources. Complainants also have the right to disclose confidentially and to obtain information from the state or local government. Complainants have the right to receive assistance from Berkeley College representatives in initiating legal proceedings in family court or civil court.



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Complainants have the right to have emergency access to a Title IX Coordinator or other official trained in interviewing victims of sexual assault. The Title IX Coordinator or other official will be available at first disclosure to provide information about reporting options, resources including counseling and medical services, confidentiality, privacy, the differences between the campus and law enforcement processes, and – as applicable – obtaining a sexual assault forensic exam, STIs and related medical care, and resources through the New York State Office of Victim Services.

## **XI. Overview of Procedural Options**

Upon receipt of a report of Prohibited Conduct, the Title IX Coordinator or Deputy Title IX Coordinators will engage in a preliminary inquiry to assess and understand the nature of the report, provide outreach to a Complainant, offer Supportive Measures, and determine whether this Policy applies to the report, and if so, what form of resolution is reasonably available and appropriate. Centralized outreach through the Title IX Coordinator ensures that all College community members have access to information about the College's resources, policies and procedural options for resolving the report.

For reports of Prohibited Conduct, a Complainant who is participating, or attempting to participate in a Berkeley College Education Program or Activity may elect to file a Formal Complaint. If the Complainant is not participating in – or attempting to participate in – a Berkeley College Education Program or Activity, the Title IX Coordinator may file a Formal Complaint on that Complainant's behalf. In certain circumstances, if the Complainant does not elect to file a Formal Complaint, the Title IX Coordinator may file a Formal Complaint, with or without the participation of the Complainant. If the Title IX Coordinator determines that the Respondent and the reported conduct meet the jurisdictional requirements outlined above (*see Section II, Scope and Jurisdiction*), the Formal Complaint will proceed through formal resolution. Either party may challenge the determination of jurisdiction by the Title IX Coordinator. Supportive Measures are available to a Complainant regardless of whether a Formal Complaint is filed.

Formal resolution includes an investigation, by a neutral and trained investigator, and an opportunity to appeal the investigator's finding(s).

- For Formal Complaints of Title IX Sexual Harassment, including Dating Violence, Domestic Violence, and Stalking, occurring in the United States **and** in a Berkeley College Education Program or Activity, notwithstanding whether the Respondent is an associate or student, the following procedures apply:
  - Title IX Sexual Harassment and Sexual Misconduct Procedures\_  
<https://berkeleycollege.edu/pdf/Title-IX-Non-Title-IX-SexualHarassment-and-Sexual-Misconduct-Policy.pdf>

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Pursuant to the Title IX Sexual Harassment and Sexual Misconduct Procedures, the investigation will be followed by a live hearing, and an opportunity to appeal the finding of the decision maker.

- For Formal Complaints that include an allegation of Sexual Assault, regardless of where the incident(s) is alleged to have occurred, notwithstanding whether the Respondent is an associate or student, the following procedures apply:
  - Title IX Sexual Harassment and Sexual Misconduct Procedures <https://berkeleycollege.edu/pdf/Title-IX-Sexual-Harassment-and-Sexual-Misconduct-Procedures.pdf>

Pursuant to the Title IX Sexual Harassment and Sexual Misconduct Procedures, the investigation will be followed by a live hearing, and an opportunity to appeal the finding of the decision maker.

- For Formal Complaints of Title IX Sexual Harassment, including Dating Violence, Domestic Violence, and Stalking, **not** occurring in the United States, **or outside** a Berkeley College Education Program or Activity, the following procedures apply:
  - Non-Title IX Sexual Harassment and Sexual Misconduct Procedures for Students - for complaints where a student is either the Complainant or Respondent <https://berkeleycollege.edu/pdf/Non-Title-IX-Sexual-Harassmentand-Sexual-Misconduct-Procedures-for-Students.pdf>
  - Non-Title IX Sexual Harassment and Sexual Misconduct Procedures for Associates - for complaints brought by an associate against an associate <https://berkeleycollege.edu/pdf/Non-Title-IX-Sex-Harass-and-Sex-MisconductProcedures-for-Associates.pdf>
- For Formal Complaints that include an allegation(s) of Sexual Exploitation or Other Sexual Harassment, **and not** Title IX Sexual Harassment, Dating Violence, Domestic Violence, and Stalking, the following procedures apply:
  - Non-Title IX Sexual Harassment and Sexual Misconduct Procedures for Students - for complaints where a student is either the Complainant or Respondent <https://berkeleycollege.edu/pdf/Non-Title-IX-Sexual-Harassment-and-Sexual-Misconduct-Procedures-for-Students.pdf>

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- Non-Title IX Sexual Harassment and Sexual Misconduct Procedures for Associates - for complaints brought by an associate against an associate  
<https://berkeleycollege.edu/pdf/Non-Title-IX-Sex-Harass-and-Sex-MisconductProcedures-for-Associates.pdf>

## **XII. Student Bill of Rights**

In addition to rights described elsewhere in this Policy and related procedures, all students who report incidents of Prohibited Conduct have the right to:

- Make a report to local law enforcement and/or state police;
- Have disclosures of Dating or Domestic Violence, Stalking, Sexual Assault, and other forms of Sexual Harassment treated seriously;
- Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure by the institution;
- Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
- Be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services, where available;
- Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
- Describe the incident to as few institution representatives as practicable and not be required to unnecessarily repeat a description of the incident;
- Be protected from retaliation by the institution, any student, the Complainant and/or the Respondent, and/or their friends, family and acquaintances within the jurisdiction of the institution;
- Access to at least one level of appeal of a determination;

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- Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or Respondent throughout the judicial or conduct process including during all meetings and hearings related to such process; and
- Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the institution.

### **XIII. Sanctions**

A person who commits a violation of this policy will be subject to disciplinary action, up to and including dismissal or termination. The list of potential sanctions that may be imposed against a student or associate are included in the respective processes for resolving complaints.

### **XIV. Prevention and Education Programs**

The College is committed to the prevention of Prohibited Conduct through regular and ongoing education and awareness programs. Incoming students and new associates receive primary prevention and awareness programming, and returning students and current associates receive ongoing training and related programs.

Individuals involved in the implementation of this Policy receive training as required by the Clery Act and Title IX and applicable state and local laws.

### **XV. Review of Policy**

The College will review this Policy on at least an annual basis. The review will capture evolving legal requirements, evaluate the supports and resources available to the parties, and assess the effectiveness of the resolution process (including as to the fairness of the process, the time needed to complete the process, and the sanctions and remedies imposed).