

# **Bard College Berlin**

## **Sexual Violence and Gender-Based Misconduct Policy**

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## 1. **Notice of Nondiscrimination**

Bard College Berlin is committed to providing an inclusive environment for all members of the community. The college aims to ensure equal access to its educational programs and employment opportunities free from discrimination on the basis of an individual's sex, gender, racial attribution, color, national origin, religion, age, disability, gender identity, sexual orientation, marital status, veteran status, military status, domestic violence victim status, ex-offender status, or any other characteristic protected by German law. Students and employees as well as applicants, vendors, visitors and guests shall not be subject to discrimination or harassment prohibited by law or otherwise treated adversely based upon a protected characteristic. Similarly, the College will not tolerate harassing, violent, intimidating, or discriminatory conduct by its students or employees. Such conduct includes sexual harassment, sexual assault, sexual violence and domestic violence.

## 2. **Introduction**

All students and employees of Bard College Berlin are expected to exhibit behavior that demonstrates respect for one another and to act in a manner that upholds the vision of community and education expressed in the Educational Mission of the institution. The College is committed to providing learning and working environments free of sexual and gender-based harassment, discrimination, sexual assault, sexual exploitation, stalking, and intimate partner violence (hereinafter referred to as "Sexual Violence and Gender-Based Misconduct" or shortened to "Gender-Based Misconduct") and to preventing, responding to and remedying occurrences of Gender-Based Misconduct when it becomes aware of them. To that end, the College provides services and support for students and employees who have been impacted by Gender-Based Misconduct, as well as accessible, prompt, thorough, and impartial methods of investigation and resolution of incidents of Gender-Based Misconduct.

Gender-Based Misconduct is an umbrella phrase used in this policy to concisely refer to any form of misconduct prohibited by this policy, including but not limited to the crimes and offenses of sexual harassment, sexual assault, stalking, dating violence and domestic violence.

The Bard College Berlin Sexual Violence and Gender-Based Misconduct Policy must be interpreted and applied in a manner consistent with German law and the principles of free inquiry, free expression and free speech to which Bard College Berlin is committed. The College's policy must not impinge on these rights or freedoms.

Any report alleging Gender-Based Misconduct by an Employee of the College must be sent to at least one of the Legal Representatives of Bard College Berlin gGmbH immediately upon receipt. The Legal Representatives of Bard College Berlin gGmbH are the Berlin-based Managing Director and the New-York-based Managing Director. The report must be sent to the Berlin-based Managing Director, unless a conflict of interest is perceived. If a conflict of

interest involving the Berlin-based Managing Director is perceived, the report must be sent to the New-York-based Managing Director. The Legal Representative of the College will coordinate with the Gender Equity Coordinator to investigate and resolve the complaint in accordance with German labor law, criminal law, anti-discrimination law and all other applicable laws, and within the timelines required therein.

Inquiries or complaints regarding any form of discrimination or harassment may be directed to the Gender Equity Coordination Team, consisting of:

- Director of Diversity Equity and Inclusion & Gender Equity Coordinator: Lauren Gaillard, l.gaillard@berlin.bard.edu
- Deputy Gender Equity Coordinator: Alisher Norov, a.norov@berlin.bard.edu

Inquiries regarding any form of discrimination or harassment or legal processes in Germany may be directed to public authorities, for example:

Antidiskriminierungsstelle des Bundes  
030 18555-1855  
[Contact form](#)

They may also be directed to civil-society organizations, for example:

Berliner Netzwerk gegen sexuelle Gewalt  
Oranienstraße 106  
10969 Berlin

### 3. **Policy Statement**

It is a violation of Bard College Berlin's Sexual Violence and Gender-Based Misconduct Policy to commit any of the following acts:

- Gender-Based Discrimination
- Sexual Harassment
- Gender-Based Harassment
- Hostile Environment
- Intimate Partner Violence or Abuse
- Retaliation
- Sexual Assault
- Rape
- Nonconsensual Sexual Contact
- Sexual Exploitation
- Stalking

These acts are defined in more detail below. Committing any of these acts may result in disciplinary action as outlined below.

This policy is in accordance with German law, including criminal law, labor law and anti-discrimination law. These laws include but are not limited to:

- Strafgesetzbuch (StGB), including § 177, § 186, § 187 and § 238
- Bürgerliches Gesetzbuch (BGB), including § 626
- Kündigungsschutzgesetz (KschG)
- Berliner Hochschulgesetz, including § 5b and § 5c
- Allgemeines Gleichbehandlungsgesetz (AGG) from August 18, 2006, including § 3.4
- The European Equal Treatment Directive 2006/54/EC

### 3.1. Scope of Policy

The College will respond to reported incidents of sexual violence and Gender-Based Misconduct, involving students or Employees (members of the faculty or staff), reported to have occurred:

- on campus;
- off-campus between students, faculty or staff; or
- during official Bard College Berlin programs between students, faculty or staff, regardless of location.

The policies of the College are understood to include online manifestations of any of the prohibited behaviors only if they occur in or have an effect on the College's education program and activities.

The College will address notices or complaints to determine whether the conduct occurred in the context of its employment relations or educational program or activity, or has an effect on campus or in an off-campus College program or activity. The Gender Equity Coordinator, in consultation with a Legal Representative of the College, will determine whether a interest of the College has been impacted for purposes of this policy.

Students and Employees of the College are expected to cooperate with and participate in the College investigation and resolution processes set forth in this policy. Action taken and support provided regarding incidents of misconduct involving contract workers (including "Lehrbeauftragte"), visitors, and guests may be limited by law; however, the College will

endeavor to respond when possible, legal practical and reasonable.

One or more of the College's personnel policies may overlap with this policy in a particular situation. The procedures described below apply to any situation where a student is a Complainant or Respondent. In all other situations, the College reserves the right to apply this policy or another applicable College policy or process, including the shortened procedure for cases between Employees which appears in section 5.5 of this document.

Please find the Glossary of Terms at the end of the Policy.

### 3.2. Student Bill of Rights for the Gender-Based Misconduct Policy

#### All students have the right to:

- Make a report to the police
- Have disclosures of domestic violence, dating violence, stalking, and sexual assault taken seriously
- Describe the incident to as few officers of the College as practicable and not be required to unnecessarily repeat a description of the incident
- Make a decision about whether or not to disclose a crime or violation and participate in the conduct process or criminal justice process, free from pressure by the College
- As much privacy as possible in the circulation of information (see section 3.4).

#### All Complainants have the right to:

- Participate in a process that is legal, fair, impartial, and provides adequate notice and a meaningful opportunity to be heard
- Be treated with dignity
- Receive from the College advice about health care and counseling services
- Be free from suggestions that they are at fault when crimes or violations are committed or should have acted in a different manner to avoid such crimes or violations
- Be free from retaliation by the College, any student, the accused or the Respondent, or any member of the College
- Be accompanied by one Support Person of their choice who may support them throughout the conduct process, including during all meetings and hearings related to such process.

#### All Respondents have the right to:

- Participate in a process that is legal, fair, impartial, and provides adequate notice of the allegations, a meaningful opportunity to be heard and an opportunity to respond to the allegations
- Be treated with dignity
- Receive from the College advice about health care and counseling services.
- Be free from retaliation by the College, any student, the accused or the respondent, or any member of the College.
- Be accompanied by one Support Person of their choice who may support them throughout the conduct process, including during all meetings and hearings related to such process.
- Access to at least one level of appeal of a determination.

### 3.3. Data Protection

The College's ability to notify parents or guardians about any complaints or allegations made with respect to this policy is limited by European and German federal law and the laws of the state of Berlin, including but not limited to the [Regulation \(EU\) 2016/679 of the European Parliament and of the Council of 27 April 2016](#), the [Bundesdatenschutzgesetz \(BDSG\)](#), the [Berliner Datenschutzgesetz - \(BlnDSG\)](#), and the [Studierendatenverordnung \(StudDatVO\)](#).

The College will maintain disciplinary files and files in connection with proceedings under this policy for seven (7) years. After seven (7) years, the files will no longer be available, except in cases resulting in expulsion or suspension. All records maintained by the College are subject to European and German federal law, and the laws of the state of Berlin

### 3.4. Reporting Options and Immediate Assistance

Any member of the Bard College Berlin community who has experienced Sexual Violence or Gender-Based Misconduct is encouraged to seek support and assistance through at least one of the resources listed below. Seeking assistance promptly may be important to ensure safety, to obtain medical care, and to preserve evidence to assist the response of police or the College. Behaviors that do not rise to the level of policy violations can also be reported, as the College may still be able to provide options for support, resolution or remedy.

#### 3.4.1. Confidential Reporting

Confidential Reporting is possible at Bard College Berlin through the resources listed below. Information shared with a Confidential Resource does not constitute a formal report or complaint and will not be investigated.

On-Campus Confidential Resources:

Counseling services at Bard College Berlin

<https://berlin.bard.edu/student-life/services-and-resources/health-and-counseling/>

Off-Campus Confidential Resources:

Berliner Krisendienst (Berlin crisis service) +49 30 390 630 0

LARA (sexual violence against women) +49 30 216 88 88

BIG e.V. (domestic violence) +49 30 611 03 00

L-Support (violence against Lesbians) [www.l-support.net](http://www.l-support.net)

Maneo (violence against Gays) [www.maneo.de/en.html](http://www.maneo.de/en.html)

MUT (sexual violence against men) +49 30 236 33 978

Information may be shielded or protected from disclosure only if shared with a medical, licensed counseling, or pastoral provider covered by a legal privilege or protection. Civil and criminal procedure and law may result in records and information maintained by confidential resources, and persons serving as confidential resources, being subject to subpoena. Information shared with confidential resources may be reported for statistical purposes without identifying information.

3.4.2. Institutional Reporting

Any member of the community who wishes to file a report of Sexual Violence or Gender-Based Misconduct with the College may do so by contacting the Gender Equity Coordinator or Deputy Gender Equity Coordinator, by phone, email, in person or via the online [Reporting Form](#).

Any employee of Bard College Berlin who wishes to file a report of Sexual Violence or Gender-Based Misconduct with the College may do so by contacting a Legal Representative of Bard College Berlin gGmbH, by phone, email or in person.

When information pertaining to specific incidents of reported Gender-Based Misconduct is shared, the Gender Equity Coordinator or Deputy will attempt to protect the privacy of all parties involved, but is required to initiate a preliminary inquiry and determine what, if any, further investigation is warranted.

If a report of Sexual Violence or Gender-Based Misconduct is filed against an employee of the College with the Gender Equity Coordinator or Deputy, the Gender Equity Coordinator or



Deputy must share this report with a Legal Representative of Bard College Berlin gGmbH upon receipt.

Please note that, while reports may be submitted anonymously to the Gender Equity Coordinator or Deputy or online, the College does not have the ability to investigate or respond to anonymous complaints.

Any Responsible Employee (as defined in the Glossary) with knowledge of an instance of Gender-Based Misconduct involving student members of Bard College Berlin must notify the Gender Equity Coordinator or Deputy Coordinator.<sup>1</sup> Bard College Berlin will limit redisclosure in compliance with German privacy laws and as much as possible<sup>2</sup>, but information reported to the College may be subject to disclosure pursuant to a lawful subpoena (“Zwangsvorladung”) issued to the College or pursuant to a request or investigation by an authorized state agency.

Upon receiving a report of potential Gender-Based Misconduct, Responsible Employees must inform the reporting individual of their own reporting responsibilities (i.e., that they cannot provide confidentiality, but will keep privacy as much as possible) and the option of seeking assistance from Confidential resources and support services. In addition, Responsible Employees must provide the following information to the reporting individual before the disclosure of the sexual assault, intimate partner violence, or stalking:

- Individuals have the right to make a report to the police or choose not to report.
- Individuals have the right to report the incident to the College.
- Individuals have the right to be free from retaliation for reporting an incident.
- Individuals have the right to receive assistance and resources from the College.

Persons who have questions regarding the reporting procedures for Sexual Violence and Gender-Based Misconduct may contact the Gender Equity Coordinator or Deputy Coordinator, to discuss the process, policies, resources, their institutional rights, and their options for reporting to the police.

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<sup>1</sup> Surveys, classroom writing assignments, human subjects research, and events such as Take Back the Night or similar speak-outs do not constitute notice to the College.

<sup>2</sup> For the purpose of this policy, “privacy” and “confidentiality” have distinct meanings. Privacy means that information related to a complaint will be shared only with a limited number of Bard College Employees who “need to know” in order to assist in the assessment, investigation, and resolution of the report. The privacy of student education records will be protected in accordance with European, German and State laws and the privacy of Employee records will be protected in accordance with Human Resources policies. Confidentiality exists in the context of laws that create a privilege and protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, lawyers, counselors, and ordained clergy.

An individual who is determined to have made a false complaint or accusation, or who provided false information during an investigation, may be subject to action in accordance with criminal law, including § 186, § 187 StGB and to disciplinary action by the College.

#### 3.4.3. Criminal Reporting

Individuals who have experienced Gender-Based Misconduct have the right to file or decline to file a criminal complaint with the police. The Gender Equity Coordinator, Deputy and other campus authorities are available to assist individuals in filing a complaint with the police.

To file a criminal complaint, individuals may contact the following or any other appropriate law enforcement agency:

Pankow Police Department:  
Polizeidirektion 1, Abschnitt 13  
Hadlichstraße 37-42,  
13187 Berlin  
030 4664113700

Criminal Investigation Division of the Berlin Police:

Landeskriminalamt Berlin  
LKA 413  
Keitstraße 30  
10787 Berlin

#### 3.4.4. Preservation of Evidence

The College encourages all individuals to preserve evidence relating to reports of Gender-Based Misconduct. Evidence may be important for an investigation under this policy, for a criminal investigation or prosecution, or in obtaining an order of protection or an equivalent protective or restraining order (“Kontaktverbot”). Examples of evidence include text messages, emails, social media communications, phone records, photographs, videos, documents, clothing, bedding and medical information.

Individuals who have experienced a sexual assault or act of physical violence are encouraged to seek medical care within 24 hours or as quickly as possible. In addition, individuals should consider seeking a Sexual Assault Forensic Exam (“medizinische Befundsicherung”) at a local hospital, which includes assessment and treatment of injury, addressing concerns of pregnancy and sexually transmitted diseases, and collection of evidence. Sexual Assault Forensic Exams are covered by public health insurance and free of charge. The Gender Equity

Coordinator may be able to provide support in accessing examinations or transportation to a hospital or a clinic.

### 3.4.5. Amnesty Policy

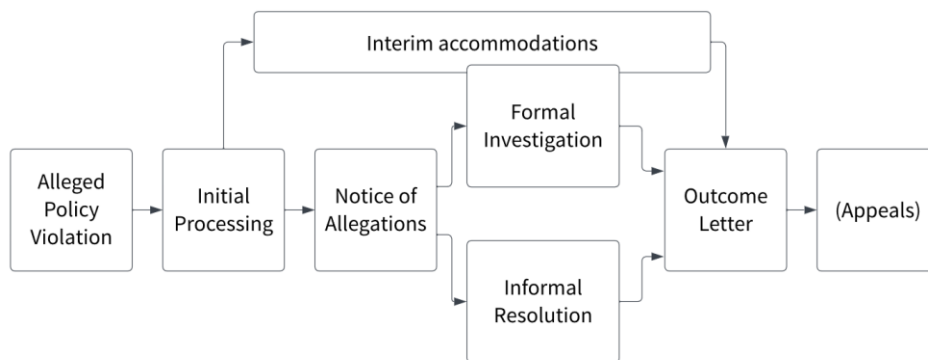
The College recognizes that a health or safety emergency may be related to the use of alcohol or other substances and that the potential for disciplinary action by the College may deter students from seeking assistance for themselves or for other members of the community. In all such matters, the health and safety of the students at risk is the College's first priority. Medical assistance should always be sought out first and without delay. In such cases, students should call 112 followed by calling the Bard College Berlin 24-hour emergency phone to ask for assistance. If students are unsure of what to do, they should call the Bard College Berlin 24-hour emergency phone to ask for assistance.

Should a student, or another individual on behalf of that student, seek assistance in a situation involving the over-consumption or abuse of alcohol or other substances, the College's response will be first and foremost focused on medical treatment, counseling and educational interventions.

However, the College reserves the right to address any acts that compromise the well-being of the community and its members such as harassment, violence, damage, harm to self or others, or distribution of illegal substances on a case-by-case basis, as deemed appropriate and necessary.

## 4. Institutional Gender-Based Misconduct Processes

The College will investigate and adjudicate reports of Gender-Based Misconduct in a thorough, reliable, impartial, and timely manner, as described below.



Misconduct proceedings are private. All persons involved are expected to maintain the privacy of the proceedings in accordance with College policy. Although there is an expectation of privacy around what Investigators share with parties during interviews, the parties have discretion to share their own knowledge and evidence with others if they so choose, with the exception of information the parties agree not to disclose related to Informal Resolution, discussed below.

#### 4.1. Preliminary Inquiry

Once a report has been made, the Gender Equity Coordinator will assign one member of the Coordination team (either the Coordinator or the Deputy Coordinator) as primary contact and to conduct the initial intake and assessment of reports of Gender-Based Misconduct. The Coordinator or Deputy Coordinator may seek additional information to evaluate whether the event reported constitutes a potential violation of the Sexual Violence and Gender-Based Misconduct Policy. In affirmative cases, the potential Complainant (when not the Reporting Party) will be contacted as quickly as possible to begin the intake process.

During the intake and initial correspondence, meeting or assessment with the Complainant, the Gender Equity Coordinator or the Deputy Coordinator assigned as primary contact will assess the Complainant's safety and well-being and review with the Complainant the College Policy. They will inform the Complainant that the Gender Equity staff can offer privacy but not confidentiality, share information about criminal, informal and formal institutional investigation reporting options and processes, note supportive measure options and provide information about off-campus resources.

To initiate a formal institutional investigation or an informal resolution process, the Gender Equity Coordinator or Deputy must obtain a written complaint from the Complainant. A written complaint is a signed and dated document submitted by the Complainant and filed with the Gender Equity Coordinator, alleging Sexual Violence or Gender-Based Misconduct and requesting that the College investigate and adjudicate the allegation.

A Complainant may request that their name or other identifying information not be disclosed to the Respondent or that no investigation be undertaken. A student can decline their consent to an institutional investigation or informal resolution process, unless the College determines that an investigation is needed to provide a safe and non-discriminatory environment or to mitigate a potential risk of harm to the student or other members of the community. Students may change their minds and request that an investigation be conducted, even though they previously requested that no investigation be conducted.

Regardless of a Complainant's request that their name or other identifying information not be disclosed to the Respondent or that no investigation be undertaken, the Gender Equity Coordinator will assist the Complainant with interim measures or accommodations.

#### 4.1.1. Interim and Supportive Measures and Accommodations

Following a report of Sexual Violence and Gender-Based Misconduct, the College will offer appropriate and reasonable supportive measures to the Complainant and the Respondent to help ensure their safety and wellbeing, prevent retaliation, avoid a perceived hostile environment and to promote an accessible educational and employment environment.

Supportive measures are offered free of charge and are intended to restore or preserve, to the extent practicable, equal access to the College's educational programs. Supportive measures are non-disciplinary, non-punitive individualized services that are implemented in a way that does not unreasonably burden the Complainant or the Respondent.

The Gender Equity Coordinator or Deputy will provide information regarding supportive measures and accommodations, and will implement or coordinate their issuance. Supportive measures and accommodations are offered regardless of whether a Formal Investigation Process is commenced. Supportive measures and accommodations can include but are not limited to:

- Change in campus housing and academic schedules if these requests are made by a party and are reasonably available;
- Academic accommodations (extensions, excusing absences, opportunities to complete missed coursework, access to academic support, etc.);
- Access to counseling or support services;
- Changes to work schedules, task assignments, or other work accommodations;
- Mutual No Contact Orders, and in limited circumstances, one-way No Contact Orders; and
- Other actions deemed appropriate by the (Deputy) Gender Equity Coordinator and feasible for university implementation.

Both parties shall be afforded a prompt review, reasonable under the circumstances, of the need for and terms of any such interim measures or accommodations that directly affect them and both parties may submit evidence in support of their request. Interim measures and accommodations will be reviewed upon request by the Gender Equity Coordinator in charge of the case, or their designees. Before modifying an interim measure or accommodation, the College will notify the other party of the request for modification.

The issuance of supportive measures or accommodations shall not constitute a determination as to whether a violation of College policy has taken place. The Gender Equity Coordinator may issue, modify, or remove any supportive measure or accommodation due to new information or change in circumstances.

#### 4.1.2. No Contact Order

As an interim supportive measure, or as part of an outcome, in order to promote safety and civility on campus, the Gender Equity Coordinator (or the Deputy the Gender Equity Coordinator) is authorized to issue No-Contact Orders (NCOs) prohibiting contact between or among students, faculty, and staff, when there is a reasonable concern that physical or psychological harm may result from such contact.

The College will consider all facts and circumstances that may be relevant to whether an NCO should be issued, including the following:

- Whether there are allegations, threats, or evidence of physical violence by one individual against another;
- Whether there are allegations, threats, or evidence of emotional abuse or harassment by one individual of another;
- Whether there is a substantial risk of emotional harm from continued contact between individuals;
- Whether continued contact between individuals may have a material impact on campus disciplinary proceedings;
- Whether an NCO is requested or agreed to in good faith; and,
- Whether there are allegations of serious violations of College policy.

An individual receiving an NCO shall have no contact, direct or indirect, on-campus or off-campus, with the other party. Contact includes all forms of written communication (texting, social media, email, etc.) as well as personal contact (face-to-face, telephonic, etc.). This includes indirect contact through other persons or through asynchronous modes of electronic communication.

If the requesting individual and receiving individual observe each other in a public place, it shall be the responsibility of the receiving individual to leave the area immediately and without direct contact. However, NCOs do not guarantee that parties will not see each other.

NCOs are only enforceable by the College. They differ from court-imposed orders of protection or restraining orders (“Kontaktverbote”), which may be imposed by courts or law enforcement. Violations of an NCO should be reported to the Gender Equity Officer or Head of Student Life. If safety is a concern, please call the police (110) and then the Bard College Berlin 24-hour emergency phone.

An NCO remains in effect until the graduation, withdrawal, termination, or end of employment of at least one of the parties, unless it expressly provides otherwise or is modified or rescinded by the College.

Violations of NCOs are subject to discipline under the provisions of the Student Handbook or the retaliation provisions of the Sexual Violence and Gender-Based Misconduct Policy and could result in interim suspension, additional conduct charges, or other outcomes.

#### 4.1.2.1. Support Person

The Complainant and Respondent are entitled to a Support Person of their choice to accompany them throughout the reporting, intake, investigation, and resolution process, including all meetings and interviews. A Support Person may be a friend, family member, lawyer, union representative, or any other person that a party chooses (so long as this person is available), except for persons who have other adjudicatory responsibilities under this policy or otherwise have a conflict of interest. The College does not appoint a Support Person for a party during the investigation phase of the process.

Support Persons may attend interviews and meetings and may talk quietly with the Complainant or Respondent who has chosen them, but they are not permitted to answer questions or speak on the Complainant or Respondent's behalf. Support Persons are not permitted to disrupt meetings, interviews, or the process and are expected to refrain from interference with the investigation and resolution process. Support Persons who disrupt or otherwise fail to respect the limits of the role will be warned once. If they continue to disrupt or otherwise fail to respect the limits of the role, they will be required to leave the meeting or interview, which will typically continue without their presence. Support persons are expected to maintain the privacy of information and records shared with them.

## 5. Investigation Procedures

### 5.1. Formal Investigation Process

When a Complainant chooses to pursue a formal Investigation Process, or when the College chooses to pursue an investigation for reasons noted above, the investigation and adjudication will be conducted by a designated Investigator or Investigators charged by the College with gathering facts about an alleged violation of this policy, assessing the relevance of evidence provided, gathering, ordering and summarizing the evidence, and compiling this information into an Investigation Report.

The Gender Equity Coordinator or Deputy Gender Equity Coordinator who acts as initial primary contact for the case will determine in consultation with the Head of Student Life which Gender Equity staff member will act as Investigator in the case. This will normally be

the Gender Equity Coordinator but may be the Deputy Gender Equity Coordinator. In circumstances of conflict of interest or potential bias, it may also be an external consultant or a trained College official not otherwise implicated in the case. If the situation involves a faculty member, the Dean of the College will be notified at this stage; If the situation involves an Employee of the College the Berlin-based Managing Director will be notified at this stage.

The Investigator will interview each party and all relevant witnesses, conduct follow-up interviews as necessary, and gather all available and relevant evidence. No unauthorized audio or video recording of any kind is permitted during investigation meetings. If the Investigator would like to record interviews, all involved parties must consent to such recording.

The Complainant and Respondent have the right to exclude their own prior sexual history with persons other than the other party in the investigation from the investigation. They have the right to exclude their mental health diagnoses or treatment from admittance in the investigation stage that determines responsibility. Past findings of domestic violence, dating violence, stalking, or sexual assault related to criminal convictions or conduct violations may be considered when determining outcomes.

Both parties may submit statements and identify witnesses to the Investigator, who has discretion to determine their relevance to the investigation. Statements or letters offered for the purpose of providing information about a party's character, general disposition or qualities will generally not be admitted as relevant. The Investigator will not interview any witness identified by a party whose sole purpose is to provide character information or specialized expertise about a particular subject matter. The College reserves the right to ask experts to assist the Investigator in analyzing evidence. Throughout the investigation, parties may submit written questions to be asked of the other party or witnesses for the Investigator's consideration. The evidence gathered by the Investigator is restricted to that which is voluntarily submitted. Both parties and all witnesses will be given the opportunity to review the Investigator's summary related to their own statement to ensure accuracy.

Prior to the conclusion of the investigation, the Investigator will provide both parties with the opportunity to review documentary evidence submitted by the other party, in the presence of the Investigator and consistent with privacy laws, regulations, and policies. The Investigator will also provide each party with the opportunity to review the interview summary related to the other party's statement, and the statements of witnesses, in the presence of the Investigator and consistent with privacy laws, regulations, and policies. After reviewing the statements, each party will have the opportunity to submit comments or additional questions, which will be considered by the Investigator for relevancy. If warranted, the Investigator will provide additional evidence review sessions to ensure that each party has an adequate opportunity to review all statements and evidence.



If the Gender Equity Coordinator is not the Investigator, a written Report of Findings will be issued and filed with the Gender Equity Coordinator at the conclusion of the investigation. The Investigator need not include information in the Report that they determine not to be relevant. The Complainant and Respondent, and each party's Support Person, if any, will be provided with a copy of the investigative Report (which may be sent in hard copy or electronic format or made available through an electronic file sharing platform), subject to redaction permitted or required by law. The Gender Equity Coordinator will submit the report to the Head of Student Life, who will determine what steps, if any, should occur next, including any Outcomes determination. In cases involving an employee of the College, the Gender Equity Coordinator will submit the report to the Berlin-based Managing Director. In cases involving a member of the faculty, the Gender Equity Coordinator will submit the report to the Dean of the College. In such cases, the Managing Director or Dean will be involved in the process to identify next steps or Outcomes.

## 5.2. Outcomes

An individual who has been found to have violated the Sexual Violence and Gender-Based Misconduct Policy may be subject to Outcomes or directives permissible by law such as:

- Any of the Outcomes listed in the Code of Conduct, change in academic or employment schedule
- Admission revocation
- Change in on-campus residence assignment
- Community restitution
- Degree revocation
- Demotion
- Expulsion
- No Contact Order
- Participation in educational programming involving Gender-Based Misconduct awareness, counseling
- Prohibition from campus
- Prohibition from certain Bard College Berlin facilities or activities,
- Revocation of awards or honors
- Suspension
- Termination
- Withholding of degree
- Or any sanction deemed just and proper

Outcomes may be impacted by the following criteria: severity of the violation, motivation of behavior, disciplinary record, and the impact of safety concerns to the greater campus community.

### 5.3. Appeals Process

Appeals against the Outcomes determination for violations of the Gender-Based Misconduct Policy must be submitted in writing to the College's Grievance Committee. The Grievance Committee is chaired by the Associate Dean of the College and consists in addition of two faculty or staff members of the Academic Senate, selected annually. When a student is the Complainant and a staff or faculty member is the Respondent, the New-York-based Managing Director will join the Grievance Committee as part of the Appeal Panel. No one who has served as the adjudicator for a particular case may be on the Appeal Panel for that same case; in cases where one of the members of the Grievance Committee faces a conflict of interest, the Associate Dean may nominate another member of the Academic Senate to take their place on the Appeal Panel.

If the appeal falls within eligible grounds, as defined below, the Complainant and Respondent will be notified and informed of the grounds for the appeal. Any Outcome imposed will remain in place during the appeal process. If both the Complainant and the Respondent appeal, the appeals will be considered concurrently.

The eligible grounds on which an appeal may be based are:

1. Procedural error that substantially affected the Outcome;
2. New evidence that was not reasonably available at the time of the investigation and could substantially affect the Outcome; or
3. The (Deputy) Gender Equity Coordinator, Investigator, or Decision-makers had a conflict of interest or bias for or against the Complainant or Respondent that affected the Outcome.

Dissatisfaction with the Outcome does not constitute grounds for an appeal.

In the case of eligible appeals, a copy of the written appeal to the Grievance Committee will be provided to the other party, who will then be given five (5) business days to submit a written response, which will also be provided to the other party.

Parties from the incident, Support Persons, and third parties are prohibited from contacting the members of the Appeal Panel regarding an investigation, adjudication, or appeal.

If the Appeal Panel determines that it needs additional information, it may refer the matter back to the Investigator for further investigation or request additional information to be submitted to the Appeal Panel for consideration.

If the appeal is denied, the parties will be notified and the matter will be closed.

If the appeal is granted, the Appeal Panel will issue a decision advising that the appeal was granted and which, if any, outcomes or penalties are upheld, overruled, modified, or returned to the adjudicators for reconsideration.

The Associate Dean of the College will notify the parties in writing of the decisions involving the appeal as well as the disposition. Any sanctions imposed as a result of the hearing are stayed during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

The Gender Equity Coordinator will maintain documentation of all such consultation. All decisions are by majority vote and apply the preponderance of the evidence standard.

#### 5.4. Informal Resolution

The College Informal Resolution processes can include three different approaches:

- The Gender Equity Coordinator or Deputy Gender Equity Coordinator can resolve the matter informally by providing supportive measures to remedy the situation.
- When the parties agree to resolve the matter through an Alternate Resolution mechanism as described below, usually before a formal investigation takes place.
- When the Respondent accepts responsibility for violating a policy provision, and desires to accept sanctions and end the resolution process (similar to the above, but usually occurring after the investigation).

A Respondent who wishes to initiate Informal Resolution should inform the Gender Equity Coordinator (or Deputy Gender Equity Coordinator). The Informal Resolution process is not available if the Respondent in a Sexual Violence and Gender-Based Misconduct complaint is a faculty or staff member of the College and the Complainant is a student.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Investigation Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Investigation Process.

Prior to implementing Informal Resolution, the College will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by the College.

The College will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

## 5.5. Alternative Resolution Mechanism

Alternate Resolution is an informal mechanism by which the parties reach a mutually agreed upon resolution of an allegation. All parties must consent to the use of an Alternate Resolution mechanism. Alternate Resolution can include mediation, restorative justice practices, or other dispute resolution mechanisms as deemed appropriate by the parties and the College under the circumstances.

The Gender Equity Coordinator normally facilitates this process, but in specific cases the Deputy may serve. In cases of potential conflict of interest or bias with both coordinators, an appropriate alternative resolution facilitator may be requested. The alternative facilitator may be appointed either from an external source or from within the College community when a specific individual is likely to achieve the most successful result for the parties.

If a resolution is not agreed upon, the complaint is returned to the Formal Investigation Process outlined in this policy. If a resolution is reached, the facilitator will draft a document reflecting the agreement between the parties that becomes final once it is signed by both parties. This signed resolution indicates that the complaint has been resolved under this policy without the need for further investigation or need to pursue the formal Investigation Process. The ultimate determination of whether alternate resolution is available, successful or appropriate is to be made by the Head of Student Life (or the Associate Dean of the College, if the Head of Student Life faces a conflict of interest). The Gender Equity Coordinator (or Deputy Gender Equity Coordinator) maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive or disciplinary actions. Results of complaints resolved by Informal Resolution or Alternate Resolution cannot be appealed.

### 5.5.1. 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 indicates intent to accept responsibility for all of the alleged misconduct, the Formal Investigation Process will be paused, and the (Deputy) Gender Equity Coordinator will determine whether an Informal Resolution can be used and determine whether all parties and the College are able to agree on responsibility, sanctions, or remedies. If so, the Gender Equity Coordinator (or Deputy Gender Equity Coordinator) implements the accepted finding that the Respondent is in violation of the Gender-Based Misconduct Policy and implements agreed-upon sanctions or remedies, in coordination with other appropriate administrators. Once the parties have given their written assent to the terms of resolution, the resolution cannot be appealed. If the parties cannot agree on all terms of resolution, the Formal Investigation Process will resume at the point where it was paused.

## 5.6. Gender-Based Misconduct Procedures for Faculty and Staff

The following procedures apply when the Complainant and Respondent are both employees of the College (members of the faculty or staff), not students.

All employees have the right to report to the Gender Equity Coordinator (“Gleichstellungsbeauftragter”) or Deputy and receive consultation about their options (criminal complaint, informal resolution, institutional investigation). Any report alleging Gender-Based Misconduct by an Employee of the College must be sent to the Berlin-based Managing Director immediately upon receipt. The Managing Director will coordinate with the Gender Equity Coordinator to investigate and resolve the complaint, in accordance with German labor law, criminal law, anti-discrimination law and all other applicable laws, and within the timelines required therein.

- The Berlin-based Managing Director will be notified (or the New York-based Managing Director in case of conflict of interest) immediately upon receipt of the report,
- The Dean will also be notified if the employee is a faculty member (with the Associate Dean standing as alternate for cases of conflict of interest),
- The Gender Equity Coordinator (or an external consultant in cases of potential bias or conflict of interest) will be appointed as Investigator, to work in consultation with the Managing Director and the Dean or their aforementioned alternates,
- The Investigator will interview the Complainant and Respondent as well as any additional individuals, and produce a Report,
- All attempts will be made to maintain the privacy of all parties (as per section 3.4)
- The Report will be filed with the Managing Director and Dean (when a faculty member is involved) or alternates for outcomes determination,
- All Outcomes must be in accordance with German law,
- All parties will be notified in writing of Outcomes.

## 6. Glossary of Terms

### 6.1. Affirmative Consent

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 themselves, do not demonstrate Consent. The definition of Consent does not vary based upon a participant’s sex, sexual orientation, gender identity, or gender expression.

- Under circumstances of coercion, intimidation, force, or threat of harm, will and choice have been taken away, thereby removing the possibility any individual to give consent
- Previous consensual sexual activity or consent to one sexual act does not necessarily constitute Consent to any subsequent sexual act.
- Consent cannot be given when a person lacks the ability to knowingly choose to participate in sexual activity. Such incapacitation may be caused by lack of consciousness, being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. 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 to sexual activity.
- Consent is required regardless of whether the person initiating the act is under the influence of illegal substances or alcohol.
- Consent may be initially given but withdrawn at any time.
- When consent is withdrawn or can no longer be given, sexual activity must stop.

## 6.2. Age of Consent

Under German Law the ability to give Consent to sexual activity depends on the age of the individuals involved. The General Age of consent is 18.<sup>3</sup>

## 6.3. Coercion

Coercion is unreasonable pressure used to compel someone to commit an act or engage in an activity against their will. Coercion may include intimidation, manipulation, or threats. Coercion is evaluated by assessing the duration, frequency, and intensity of the verbal or physical conduct, as well as the degree of isolation or confinement. When a person makes clear that they do not want to participate in sexual activity, that they want to stop sexual activity, or that they do not want to go past a certain point of sexual interaction, continued pressure can be coercive.

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<sup>3</sup> Any and all sexual acts on, in front of and with a child under the age of 14 years of age are considered abuse and are forbidden under the law. In principle, consensual sex among minors over the age of 14 is exempt from punishment. For adults, sex with minors under the age of 18 is not permitted if payment is involved. Sex with juveniles under 16 is punishable for persons over 21. Attempts to sexually abuse people under the age of consent are already punishable. For more information please see [Strafgesetzbuch concerning Sexueller Mißbrauch von Jugendlichen](#).

## 6.4. Complainant

An individual who alleges is is alleged to have experienced Gender-Based Misconduct that could constitute a violation of this policy, whether or not a formal complaint is filed.

## 6.5. Confidential Employee

A Confidential Employee is bound by a confidentiality agreement and will not share any identifying information with anyone. The professional counselors available to students via Linden are Confidential Employees.

## 6.6. False Reporting

False reporting includes making false complaints, false accusations, or providing false information during an investigation. False reporting may be illegal according to § 186 and § 187 StGB.

## 6.7. Gender-Based Discrimination

Actions that limit, deprive, or deny an individual or group of educational or employment benefits, opportunities or access on the basis of gender, gender identity, sexual orientation, or sex.

## 6.8. Sexual and Gender-Based Harassment

Any unwelcome conduct of a sexual nature, such as unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, written, graphic, online, or physical conduct of a sexual nature (Sexual Harassment) as well as any unwelcome conduct based on gender, gender identity, gender expression, gender-stereotyping, sexual orientation, or sex, which includes acts of aggression, intimidation, stalking, or hostility, whether verbal, nonverbal, written, graphic, online, or physical (Gender-based Harassment). Gender-based harassment may occur when individuals are harassed for exhibiting what is perceived as a stereotypical characteristic of their gender, or for failing to conform with stereotypical notions of masculinity or femininity.

Harassment may be disciplined when:

- It creates a hostile environment; or
- Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment, academic standing, or participation in any College program or activity, or is used as the basis for College decisions affecting the individual (often referred to as „quid pro quo“ harassment).

## 6.9. Hostile Environment

A hostile environment is created when sexual or gender-based harassment is sufficiently severe, persistent, or pervasive to interfere with, deny or limit an individual's ability to participate in or benefit from the College's educational or employment programs, activities, or opportunities. The determination of whether a hostile environment exists is made with consideration of both subjective perspectives and objective facts. A single or isolated incident of sexual or gender-based harassment may create a hostile environment if the incident is sufficiently severe.

To determine whether a hostile environment exists, the College will consider the totality of known circumstances, including but not limited to:

- The frequency, nature, and severity of the conduct;
- Whether the conduct was physically threatening;
- The effect of the conduct on the Reporting Party's mental or emotional state;
- Whether the conduct was directed at more than one person;
- Whether the conduct arose in the context of other discriminatory conduct;
- Whether there is a power differential between the parties;
- Whether the conduct unreasonably interfered with the Reporting Party's educational or work performance, or participation in College programs or activities; and
- Whether the conduct implicates academic freedom or protected speech.

## 6.10. Incapacitation

Incapacitation occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be associated with being mentally or physically helpless, involuntarily restrained, asleep, unconscious, unaware that sexual activity is occurring, or under the age of consent. Whether sexual activity with an incapacitated person constitutes Gender-Based Misconduct may depend on whether the Respondent knew or should have known of the Reporting Party's incapacitation based on objectively and reasonably apparent indications when viewed from the perspective of a sober, Reasonable Person in the Respondent's position. The use of alcohol or drugs is never an excuse for committing Gender-Based Misconduct and does not diminish anyone's responsibility to obtain affirmative consent.



### 6.11. Intimate Partner Violence or Abuse

Any instance of violence or abuse – verbal, physical, or psychological – that occurs between intimate partners. Intimate partner violence includes domestic violence and dating violence. Intimate partner violence may involve intimidation, economic control, manipulation, humiliation, isolation, coercion, or threat of harm to one’s self, an intimate partner, or the family members, friends, pets, or personal property of an intimate partner. Intimate partner violence can be a single act or a pattern of behavior, based on the frequency, nature, and severity of the conduct. Intimate partner is defined as:

- a person who is or has been in a social relationship of a romantic, emotional, physical or intimate nature with the Reporting Party;
- a current or former spouse or intimate partner;
- a person with whom the Reporting Party shares a child or anyone who is protected from the respondent’s acts under the domestic or family violence laws of Germany.

### 6.12. Nonconsensual Sexual Contact

Any intentional sexual contact without affirmative consent. Sexual contact includes:

- the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, chest, inner thigh, or buttocks of another person, or intentionally touching another person with these body parts, or making another touch anyone or themselves with or on these body parts;
- making another person touch anyone or themselves with or on the genitalia, anus, groin, breast, inner thigh, or buttocks, either directly or through clothing;
- the intentional emission or ejaculate on the clothing or body of another person; and
- the intentional touching of another person’s body for the purpose of sexual gratification, arousal, humiliation, harassment, or degradation.

### 6.13. Reasonable Person

A hypothetical person under similar circumstances and with similar identities to the Complainant, who exercises average care, skill, and sober judgment in conduct.

### 6.14. Reporting Party

A person who makes a report of Gender-Based Misconduct. This may or may not be the same individual as a Complainant, a witness, or a bystander.

## 6.15. Respondent

An individual alleged to have committed a violation of this policy.

## 6.16. Responsible Employee

Specified administrators (including the Managing Directors, Head of Student Life, Director of Residential Life & Housing, Registrar, Dean, Associate Dean) are considered Responsible Employees. Responsible Employees who become aware of sexual violence or Gender-Based Misconduct involving student members of the community will maintain privacy to the greatest extent possible but are required to report the details to the Gender Equity Coordinator.

All other employees (faculty and staff) and Residential Assistants who are not designated as Responsible or Confidential Employees and who become aware of sexual violence or Gender-Based Misconduct are strongly recommended but not required to report the details to the Gender Equity Coordinator or Deputy. These individuals should also maintain privacy to the greatest extent possible.

## 6.17. Retaliation

Any adverse action taken against an individual or group because of something that individual or group because of their participation in an investigation or proceeding under this policy. Retaliation includes intimidation, threats, harassment, assault and adverse employment or educational actions. Retaliation may be committed by the Respondent, the Reporting Party, third parties, or any other individual or group. Retaliation may be found even when an underlying report made in good faith was not substantiated. Retaliation does not include good faith actions pursued in connection to a report of Gender-Based Misconduct, or in connection with an investigation or proceeding under this policy.

## 6.18. Sexual Assault; Sexual Coercion; Rape

A sexual act of assault, coercion, or rape is performed against someone's discernable will. Whoever performs sexual acts on a person or has a person perform sexual acts on them, or causes a person to perform or acquiesce to sexual acts being performed on or by a third person without consent is committing a criminal act of sexual violence punishable by law. These acts are further outlined with repercussions in Section 177 of the Strafgesetzbuch (StGB). (EN translation by the German Federal Ministry of Justice)

## 6.19. Sexual Exploitation

Sexual exploitation occurs when an individual takes non-consensual or abusive sexual advantage of another for their own advantage or benefit, or to the benefit or advantage of anyone other than the one being exploited. Examples of sexual exploitation include, but are not limited to:

- Invasion of sexual privacy;
- Causing the prostitution of another person;
- Nonconsensual observing or recording of private activity (such as undressing or showering) or sexual activity;
- Nonconsensual posting, sharing, or publicizing of compromising images or videos;
- Going beyond the boundaries of consent (such as letting a third party watch otherwise consensual sexual activity, without the affirmative consent of all involved);
- Exposing one's genitals or inducing another to expose their genitals in nonconsensual circumstances;
- Sexually based hazing or bullying; and
- Engaging in consensual sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or another sexually transmitted disease (STD) without informing the other person of such infection.

## 6.20. Stalking

A course of conduct directed at a specific person that would cause a Reasonable Person to fear for their safety or the safety of others, or to suffer substantial emotional distress. Course of conduct means two or more acts, including, but not limited to, acts in which the stalker 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. Stalking behaviors may include pursuing or following, unwanted or non-consensual communication or contact (including in-person contact, telephone or voice messages, electronic messages, social media messages or text messages), unwanted gifts, trespassing, surveillance and other types of observation.

## 6.21. Student Code of Conduct

The Student Code of Conduct is the written policy adopted by Bard College Berlin governing student behavior, rights, and responsibilities while such student is matriculated at the institution.

## 6.22. Witness

A person who has relevant information about an incident that will tend to prove, disprove, or otherwise inform an investigation of a report of Gender-Based Misconduct.

Note: Nothing in this policy can limit or is intended to limit an individual's right to seek forms of response and redress provided by the German legal system.

NOTE: This policy is subject to review and revision on a regular basis as necessary. Please visit [www.bard.edu/nondiscrimination/](http://www.bard.edu/nondiscrimination/) or contact the DEI and Gender Equity Office to ensure you have the latest version of this policy.