

2019-2020 GENDER-BASED MISCONDUCT POLICY

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NOTE: Effective August 21, 2019 This policy is subject to review and revision on a regular basis. Please visit www.bard.edu/genderequity/ or contact the Office for Gender Equity to ensure you have the latest version of this policy.

I. NOTICE OF NONDISCRIMINATION

Bard College is committed to ensuring equal access to its educational programs and equal employment without regard to an individual's sex, gender, race, color, national origin, religion, age, disability, gender identity, sexual orientation, predisposing genetic characteristics, marital status, veteran status, military status, domestic violence victim status, ex-offender status, or any other characteristic protected by federal, state, or local law. Students, employees, applicants, and other members of Bard College community (including, but not limited to, 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, employees, or any other member of, or visitor to, the College community. This includes, without limitation, sexual harassment, sexual assault, sexual violence, dating violence, and domestic violence.

Inquiries or complaints regarding any form of discrimination or harassment may be directed to:

Kimberly Alexander
Director of Human Resources
Ludlow
845-758-7516
kalexand@bard.edu

Kimberly I. Gould
Title IX Coordinator
Gahagan House 201
845-758-7542
titleix@bard.edu

David Shein
Associate Vice President for Academic Affairs;
Dean of Studies; ADA Coordinator
Gilson Place
845-758-7454
shein@bard.edu

Inquiries or complaints regarding any form of discrimination or harassment may also be directed to:

Department of Education
Office for Civil Rights (New York Office)
646-428-3800
ocr.newyork@ed.gov

II. POLICY STATEMENT

Bard College and its affiliated programs are committed to providing learning and working environments free of sexual and gender-based harassment, discrimination, sexual assault, sexual exploitation, stalking, and intimate partner violence (hereafter referred to as “gender-based misconduct”).

Bard College is committed to preventing, responding to, and remedying occurrences of gender-based misconduct. To that end, the College provides services and support for individuals 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.

Additionally, the College provides educational and preventative programs for employees and students throughout the academic year that promote awareness of gender-based misconduct. These include: primary prevention and awareness, definitions of domestic and intimate partner violence, dating violence, sexual assault, stalking, consent, bystander intervention techniques and safe practices, and risk reduction in the form of recognizing warning signs and how to avoid unwelcome interaction.

The Gender-Based Misconduct Policy should be interpreted and applied in a manner consistent with the principles of free inquiry, free expression, and free speech to which Bard College is committed. The College’s policy is not intended to stifle these freedoms. Prohibited discrimination, harassment, retaliation, and other misconduct are neither legally protected expression nor the proper exercise of academic freedom.

Bard’s Gender-Based Misconduct Policy is in accordance with federal and state laws and regulations prohibiting discrimination and harassment, as well as provisions of response and services for victims of interpersonal violence. These laws include: Title IX of the Education Amendments Act of 1972, Americans with Disabilities Act (“ADA”), Section 504 of the Rehabilitation Act, Title VII of the Civil Rights Act of 1964, the New York State Human Rights Law, Section 304 of the Violence Against Women Reauthorization Act, the Clery Act, and New York State Education Law 129-B (“Enough is Enough”). These laws and the College prohibit discrimination and harassment, including gender-based misconduct.

III. SCOPE OF POLICY

The College will respond to all reported incidents of gender-based misconduct, including sexual and gender-based harassment, discrimination, sexual assault, sexual exploitation, stalking, and intimate partner violence, involving students, faculty, staff, or any other member of the Bard community, reported to have occurred:

- on campus;
- off campus involving members of the Bard community;

- through social media or other online interactions involving members of the Bard community, particularly if campus safety is affected; or
- during official Bard programs, regardless of location.

Action taken and support provided regarding incidents of misconduct involving contract employees, visitors, and guests may be limited; however, the College will endeavor to respond, sanction, and/or remedy to the extent possible, practical, and reasonable.

IV. DEFINITIONS OF GENDER-BASED MISCONDUCT

It is a violation of Bard College’s Gender-Based Misconduct Policy to commit any of the acts defined in this section.

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.

Harassment

Sexual Harassment: Any unwelcome conduct of a sexual nature, such as unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, written, graphic, online, and/or physical conduct of a sexual nature. Sexual harassment may be disciplined or sanctioned when:

1. It creates a hostile environment; or
2. 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).

Gender-Based Harassment: 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, and/or physical. 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. Gender-based harassment may be disciplined when it creates a hostile environment.

Hostile Environment: A hostile environment is created when sexual and/or gender-based harassment is sufficiently severe, persistent, or pervasive, such that it unreasonably interferes with, denies, or limits 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 and objective perspectives. 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, and/or participation in College programs or activities; and
- Whether the conduct implicates academic freedom or protected speech.

Intimate Partner Violence or Abuse (inclusive of domestic violence and dating violence): Any instance of violence or abuse – verbal, physical, or psychological – that occurs between intimate partners. Intimate partner violence may involve intimidation, economic control, manipulation, humiliation, isolation, coercion, and/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: (1) a person who is or has been in a social relationship of a romantic, emotional, physical, and/or intimate nature with the reporting party; (2) a current or former spouse or intimate partner; (3) a person with whom the reporting party shares a child; or (4) anyone who is protected from the respondent's acts under the domestic or family violence laws of New York.

Retaliation: Any adverse action taken against an individual or group because of something that individual or group did in connection with this policy, or because of their participation in an investigation or proceeding under this policy. Retaliation includes intimidation, threats, harassment, and adverse employment or educational actions. Retaliation may be committed by the responding party, 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.

Sexual Assault: Nonconsensual sexual intercourse or nonconsensual sexual contact, as defined below.

Nonconsensual Sexual Intercourse: Any sexual intercourse without affirmative consent. Sexual intercourse means any penetration, however slight, of a person's oral, anal, or genital opening with a body part or object.

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.

Sexual Exploitation: Sexual exploitation occurs when an individual takes nonconsensual or abusive sexual advantage of another for one's 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 recording of sexual activity;
- Nonconsensual posting, sharing, or publicizing of compromising images and/or videos;
- Going beyond the boundaries of consent (such as letting a friend/friends hide in the closet to watch consensual sexual activity);
- Exposing one's genitals or inducing another to expose their genitals in nonconsensual circumstances; and
- Sexually based hazing and/or bullying.

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 nonconsensual communication or contact (including in-person contact, telephone or voice messages, electronic messages, social media messages, and text messages), unwanted gifts, trespassing, surveillance, and other types of observation.

V. ADDITIONAL DEFINITIONS

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 itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

- Consent cannot be given when it is the result of coercion, intimidation, force, or threat of harm.
- Previous consensual sexual activity or consent to one sexual act does not necessarily constitute consent to any other sexual act.
- 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 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. Minors under the age of consent (17 years of age in New York State) cannot consent to sexual activity.
- Consent is required regardless of whether the person initiating the act is under the influence of illegal substances and/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.

Coercion: Coercion is unreasonable pressure used to compel someone to engage in sexual activity against their will. Coercion may include intimidation, manipulation, or threats. Coercion is evaluated by assessing the duration, frequency, and intensity of the verbal and/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.

Code of Conduct: The written policies adopted by an institution governing student behavior, rights, and responsibilities while such student is matriculated in the institution.

Incapacitation: Incapacitation occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation is a state in which an individual is unable to make reasonable, rational decisions because they lack the capacity to understand the “who, what, where, when, why, or how” of a situation or interaction.

Incapacitation may be associated with being mentally and/or physically helpless, involuntarily restrained, asleep, unconscious, unaware that sexual activity is occurring, under the age of consent,

or having a disability that impedes consent. Under New York State Law, the age of consent is 17 years of age (a person under the age of 17 years of age lacks the capacity to give consent).

Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, and/or other intoxicants may be incapacitated, and thus unable to consent to sexual activity. Incapacitation is a state beyond drunkenness or intoxication. The impact of alcohol and other drugs varies from person to person and there is no specific amount of alcohol and/or drugs that definitively results in incapacitation for all persons.

Warning signs that a person may be incapacitated may include, but are not limited to, slurred or incomprehensible speech, vomiting, unsteady gait, combativeness, emotional volatility, or outrageous or unusual behavior. A person who experiences memory impairment due to alcohol or drug consumption (sometimes referred to as a “black-out”) may be incapacitated. Whether a person is incapacitated is assessed by evaluating the totality of the evidence, including the presence or absence of reasonably observable warning signs of incapacitation.

Whether sexual activity with an incapacitated person constitutes gender-based misconduct may depend on whether the responding party 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 responding party’s position. The use of alcohol and/or drugs is never an excuse for committing gender-based misconduct and does not diminish anyone’s responsibility to obtain affirmative consent.

Reasonable Person: A hypothetical reasonable person under similar circumstances and with similar identities to the reporting or responding party, who would exercise average care, skill, and sober judgment in conduct.

Reporting Party or Complainant: A student, employee, guest, visitor, group, program, or academic or administrative unit who reports potential gender-based misconduct. This shall encompass the term victim, survivor, claimant, witness with victim status, and any other term used to reference an individual who brings forth a report of violation.

Responding Party or Respondent: An individual, group, program, or academic or administrative unit alleged to have committed gender-based misconduct.

Responsible Employee: Any Bard administrator, faculty, professional staff member, Safety and Security officer, or Peer Counselor. Climate 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.

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.

VI. AMNESTY FOR ALCOHOL and/or DRUG USE

The health and safety of every student at Bard College is of utmost importance. Bard College recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that gender-based misconduct occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. Bard College strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to institution officials. A bystander acting in good faith or a reporting individual acting in good faith who discloses any incident of gender-based misconduct to Bard's officials or law enforcement will not be subject to Bard's code of conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the gender-based misconduct. Amnesty is not available to those dealing drugs or to those who have used drugs or alcohol to facilitate gender-based misconduct.

VII. REPORTING OPTIONS AND IMMEDIATE ASSISTANCE

Any member of the Bard community, or a guest or visitor, who believes they have been subjected to 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 law enforcement and/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 resolution or remedy. The College's primary concern is the health, safety, and well-being of its community members, guests, and visitors. If you, or someone you know, have experienced gender-based misconduct, please seek assistance.

A. CONFIDENTIAL REPORTING

Confidential resources listed in this section are not required by law or College policy to relay reports of gender-based misconduct to the Bard College Title IX Coordinator. Information provided to the resources listed below will not be disclosed without stated permission, except in extreme circumstances, such as a health or safety emergency. Rules of 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 only be shielded or protected from disclosure if shared with a medical, licensed counseling, or pastoral provider covered by a legal privilege or protection. Information shared with confidential resources may be reported for statistical purposes without identifying information in accordance with the Clery Act.

On-Campus Confidential Resources:

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| Counseling Services | 845-758-7433 |
| Health Services | 845-758-7433 |
| EAP (Employee Assistance Program) | 800-272-7255 |

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| Chaplaincy | 845-758-7335 |
| BRAVE 24/7 Counselors (Ask for BRAVE) | 845-758-7777 |
| Off-Campus Confidential Resources | |
| Family Services Rape/Sexual Assault Hotline (Dutchess) | 845-452-7272 |
| Family Services Domestic Violence Hotline (Dutchess) | 845-485-5550 |
| Grace Smith House | 845-452-7155 |
| LGBTQ Antiviolence | 212-714-1141 |
| RAINN (Rape, Abuse, and Incest National Network) | 800-656-4673 |
| National Domestic Violence Hotline | 800-799-7233 |

Anonymous reports made within the Bard community are filed and reported for statistical purposes only in accordance with the Clery Act. Reports made to off-campus resources are filed and reported for statistical purposes without identifying information if Bard is made aware of such reports.

B. REPORTING TO THE COLLEGE (PRIVATE, NON-CONFIDENTIAL)

1. Institutional Report

Any member of the community who wishes to file a report of gender-based misconduct with the College may do so by following the procedures outlined below. Bard College offices and employees who cannot guarantee confidentiality will maintain your privacy to the greatest extent possible. Information you provide to a non-confidential resource at the College will be relayed only as necessary for the Title IX Coordinator¹ to investigate and/or seek a resolution. Bard College will limit redisclosure as much as possible and comply with federal and state privacy laws, but information reported to the College may be subject to disclosure pursuant a lawful subpoena issued to the College or pursuant to a request or investigation by an authorized government agency.

Any responsible employee with knowledge of gender-based misconduct involving members of the Bard community must notify the Title IX Coordinator of any and all reports of potential gender-based misconduct that they receive. Upon receiving a report of potential gender-based misconduct, responsible employees must inform a reporting individual of their own reporting responsibilities (i.e., that they can provide privacy, not confidentiality) 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 at the first instance of disclosure of sexual assault, intimate partner violence, and/or stalking:

- You have the right to make a report to Bard College security, local law enforcement, and/or state police, or choose not to report.

¹ Administrators are authorized to delegate responsibility for the functions and roles described herein to other College administrators, provided that such delegation is consistent with College policy and applicable law.

- You have the right to report the incident to your institution, Bard College.
- You have the right to be protected by the College from retaliation for reporting an incident.
- You have the right to receive assistance and resources from the College.

Individuals or persons who have questions regarding the reporting procedures for gender-based misconduct may meet in person or talk by telephone with the Title IX Coordinator, to discuss the process, policies, resources, their institutional rights, as well as rights for reporting to the local authorities. They may also discuss options for No Contact Orders through the College and Orders of Protection through the court system. When information pertaining to specific incidents of reported gender-based misconduct is shared, the Office for Gender Equity 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.

Reports can be submitted by contacting the Office for Gender Equity, either:

- by phone (845-758-7542);
- by email (titleix@bard.edu);
- through campus mail at 201 Gahagan House; or
- through the online reporting system at www.bard.edu/genderequity by clicking “Make a Report.”

2. External Reporting Line

Misconduct Reporting Line: 888-323-4198

Any person who feels uncomfortable or otherwise unable to file a complaint through the channels set forth above may make a report via the Misconduct Reporting Line. The Misconduct Reporting Line is administered by an external entity hired by the College to receive reports on a non-confidential basis. Reports of alleged violations of this policy may be made anonymously to the Misconduct Reporting Line. However, individual identities may be disclosed through the process of investigation.

Alleged violations of this policy will be referred for investigation in accordance with the procedures set forth herein. Any reports received via the Misconduct Reporting Line will be filed for statistical purposes, even if made anonymously. Reports regarding alleged misconduct by the Office for Gender Equity may be made through this reporting line.

3. Anonymous Report

Anonymous reports may be submitted to the Title IX Coordinator by sending a report with no identifying information through campus or regular mail to:

Title IX Coordinator
Office for Gender Equity
Bard College
30 Campus Road/Gahagan House 201
Annandale-on-Hudson, NY 12504-5000

or

Online at: www.tinyurl.com/BardTitleIX

Due to restricted identifying information, the College's ability to investigate and respond to anonymous complaints may be limited.

False Reporting: An individual who is determined to knowingly have made false complaints, or accusations, or provided false information during an investigation, may be subject to disciplinary action by the institution. This provision does not apply to reports made in good faith, even if the facts alleged in the report cannot be substantiated by subsequent investigation.

C. CRIMINAL REPORTING

Individuals have the right to decide whether to file or decline to file a report with the New York State Police or the local law enforcement agency where the misconduct occurred. The Title IX Coordinator and other campus authorities are available to assist individuals in reporting to law enforcement.

What constitutes a criminal act will be defined by the penal code of the jurisdiction in which the alleged misconduct occurred. The College system and legal system have investigation processes that work independently of each other and can happen concurrently. The standard of proof in a criminal proceeding is beyond a reasonable doubt, which is higher than the standard of proof for violations of Bard's Gender-Based Misconduct Policy, which utilizes the preponderance of evidence standard (whether it is more likely than not that a policy violation occurred). In addition, the stringent laws applied in criminal court regarding submission and admissibility of evidence do not apply in the college conduct process, which is not governed by formal rules of evidence.

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

| | |
|----------------------------------------------------------|--------------|
| New York State Police | 845-876-4194 |
| New York State Police Campus Sexual Assault Victims Unit | 844-845-7269 |
| Red Hook Police Department | 845-758-0060 |

VIII. 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 supporting a criminal investigation or prosecution, or in obtaining an Order of Protection or an equivalent protective or restraining order. Examples of evidence may include text messages, emails, social media communications, phone records, photographs, documents, clothing, bedding, and medical information.

Individuals who have experienced a recent sexual assault or act of physical violence are encouraged to seek medical care. In addition, individuals should consider seeking a Sexual Assault Forensic Exam (“SAFE Exam”) at a local hospital, which includes assessment and treatment of injury, addressing concerns of pregnancy and sexually transmitted diseases, and collection of evidence. SAFE Exams are free, and free transportation can be arranged by contacting the Title IX Coordinator, Security, other College administrators, or BRAVE. In New York, individuals may undergo a SAFE Exam without making a report to law enforcement. It is important not to bathe, wash, douche, smoke, change clothing, or brush one’s teeth prior to the examination. If possible, it also best not to take fluids or use the bathroom before the examination. For purposes of evidence collection, the SAFE Exam should be conducted within 96 hours of an incident. If individuals do not opt for forensic evidence collection, health care providers can still treat injuries and take steps to address concerns of pregnancy and/or sexually transmitted infections. BRAVE counselors (845-758-7777; ask for BRAVE) and the Rape/Sexual Assault Hotline (845-452-7272) can assist with access to this free medical examination and be an advocate to provide support and accompany you to the hospital. In addition, the Title IX Coordinator, Security, and other College administrators can assist with accessing a SAFE Exam.

As time passes, evidence may dissipate or become lost or unavailable, thereby making investigation, possible prosecution, disciplinary proceedings, or obtaining protective or restraining orders related to an incident more difficult. If a reporting individual chooses not to make a complaint regarding an incident, they nevertheless should consider preserving evidence and/or speaking with security, law enforcement, or the Title IX Coordinator regarding the preservation of evidence in the event that the reporting individual decides to report the incident to law enforcement or the College at a later date.

IX. INSTITUTIONAL INVESTIGATION PROCESSES

A. PRELIMINARY INQUIRY

The Title IX Coordinator conducts the initial intake and assessment of reports of gender-based misconduct. During the initial intake, assessment, meeting, and/or correspondence with the reporting party, the Title IX Coordinator will take the following actions, as applicable:

- Inform the reporting party that the Title IX Coordinator can offer privacy, not confidentiality, and will maintain reporting party's privacy to the greatest extent possible and disclose information only as necessary pursuant to this policy;
- Assess the reporting party's safety and well-being and offer the College's support and assistance through available resources;
- Inform the reporting party about confidential College and community resources, including counseling, health, and mental health services;
- Inform the reporting party about other resources and support services, both on campus and in the community, and how to request or contact such resources;
- Inform the reporting party of the right to seek appropriate and available interim measures, and discuss such measures and options with the reporting party;
- Inform the reporting party of their right to seek medical treatment (including a Sexual Assault Forensic Exam) and explain the importance of preserving evidence;
- Inform the reporting party of their right to contact law enforcement, be assisted by the College in contacting law enforcement, or decline to contact law enforcement, and their right to seek a protective order;
- Inform the reporting party that the criminal justice system uses different standards of proof and evidence than the College, and that any questions about whether a specific incident constitutes a penal law violation should be addressed by law enforcement or the district attorney;
- Inform the reporting party of the right to seek resolution under this policy; provide the reporting party with an overview of their options under this policy; and inform the reporting party of their right to withdraw from participation in an investigation under this policy at any time, but that declining to participate in an investigation and/or the adjudicatory process under this policy may limit the College's ability to investigate meaningfully and respond to a report of gender-based misconduct, and that the College may be obligated to continue the investigation regardless of the reporting party's participation;
- Ascertain whether the reporting party wishes to pursue an institutional investigation under these procedures, and discuss with the reporting party any concerns or barriers to participating in any investigation and resolution process under this policy;
- Explain that the College prohibits retaliation and that the College will take appropriate action in response to any act of retaliation;
- Inform the reporting party of their rights afforded under the Student Bill of Rights; and
- Communicate with appropriate College officials to determine whether the report triggers any Clery Act obligations, including the issuance of a timely warning.

When the Title IX Coordinator receives a report, which if substantiated would constitute a violation of the Gender-Based Misconduct Policy, the Title IX Coordinator will seek consent from the reporting party prior to initiating an institutional investigation. A reporting party may request

confidentiality, that their name or other identifying information not be disclosed to the responding party, and/or that an investigation not be undertaken. Declining to consent to an investigation shall be honored unless the College determines in good faith that failure to investigate does not adequately mitigate a potential risk of harm to the reporting individual or other members of the community, or otherwise impedes the College's ability to provide a safe and non-discriminatory environment for all community members, including the reporting party. Honoring such a request may limit the College's ability to meaningfully investigate and pursue conduct action against an accused individual. Factors used to determine whether to honor such a request include, but are not limited to:

- Whether there have been other reports of gender-based misconduct about the same individual;
- Whether circumstances suggest that there is a risk that the responding party will commit additional acts of gender-based misconduct, such as history of violent behavior, gender-based misconduct, or an escalation of previously noted behavior;
- Whether the alleged gender-based misconduct involved multiple perpetrators;
- Whether there was a weapon or force used in connection with the alleged gender-based misconduct;
- Whether the College has other means of obtaining relevant evidence;
- Whether the reporting party is under 17 years of age;
- Whether available information reveals a pattern of perpetration at a particular location or by a particular group;
- The seriousness and/or severity of the reported gender-based misconduct; and
- The right of the responding party to receive information about the allegations in an institutional investigation.

If a reporting party declines to participate in an investigation, the College's ability to meaningfully investigate and respond to the report of gender-based misconduct may be limited. Regardless of the reporting party's request for confidentiality, the Title IX Coordinator will assist the reporting party with interim measures and accommodations.

The Title IX Coordinator may initiate the investigative process when they receive a report, which if substantiated would constitute a violation of the Gender-Based Misconduct Policy, and there is adequate information to pursue an investigation. As part of the preliminary inquiry, additional information may be sought or collected to assist in evaluating whether the report is a potential violation of the Gender-Based Misconduct Policy. The Title IX Coordinator will also determine appropriate interim measures and accommodations.

B. INSTITUTIONAL INVESTIGATION

1. Standards, Timelines, and Initial Contact

The College will investigate and adjudicate reports of gender-based misconduct in a thorough, reliable, impartial, and timely manner. The College’s investigation and adjudication will be conducted by individuals who do not have a conflict of interest and who receive annual training in investigations of sexual assault, intimate partner violence, and stalking, the effects of trauma, impartiality, the rights of the parties, including the right to a presumption that the respondent is “not responsible” until a finding of responsibility is made pursuant to the College’s policies and procedures. The standard of evidence for proceedings under this policy will be the “preponderance of evidence” standard. The “preponderance of the evidence” standard requires a determination as to whether it is more likely than not (a greater than 50 percent likelihood) that a policy violation occurred.

The investigation will commence with the goal of completing the process as expeditiously as possible and within 60 days of issuing the Notice of Investigation, not including the time frame for appeal. Any deviation from the 60-day time frame will be communicated promptly to both parties. Time frames may vary due to the complexity of the investigation and the extent of the alleged misconduct. Times frames may be extended due to: compliance with a request from law enforcement; reasonable accommodations for the availability of parties or witnesses; accounting for completion days, vacations, or other significant academic or scheduling matters; accounting for the complexities of a specific investigation, including the number of witnesses and the volume of evidence submitted by the parties.

The reporting and responding parties will be contacted separately by the Title IX Coordinator to review the policy, procedures, and rights of the parties. The Title IX Coordinator will inform the responding party that they have the right to not participate in the investigation, but that the investigation will continue whether they participate or not. The Title IX Coordinator will be available for communication and review of the process throughout the investigation.

2. Advisors

The reporting and responding parties are entitled to an advisor of their choosing to accompany, support, and advise them throughout the reporting, intake, investigation, and resolution process, including all meetings and interviews. An advisor may be a friend, family member, mentor, attorney, union representative, or any other person that a party chooses, except for a member of the campus community who has other adjudicatory responsibilities or is otherwise conflicted.

During interviews and meetings, the advisor may talk quietly with and ask clarifying questions of their advisee, but are not permitted to answer questions or speak on the behalf of their advisee. Advisors are not permitted to disrupt meetings, interviews, or the process, and are expected to refrain from interference with the investigation and resolution process. An advisor who disrupts or otherwise fails to respect the limits of the advisor role will be warned once. If the advisor continues to disrupt or otherwise fail to respect the limits of the advisor role, the advisor will be

asked to leave the meeting or interview, and the meeting or interview will typically continue without the advisor present.

The College will not unreasonably delay the scheduling of meetings or interviews to accommodate an advisor's schedule. The College will make reasonable accommodations to have an advisor attend a meeting or interview via telephone or video chat if the advisor is unable to attend in person.

3. Investigators, Witnesses, and Evidence

Institutional investigations are conducted by trained investigators who are designated by the Office for Gender Equity. Bard College maintains a relationship with an outside panel of trained investigators, primarily attorneys, who are not employees of the institution, and who are charged with conducting a thorough, impartial, reliable, and prompt investigation. The investigator will gather information and interview the reporting and responding parties and any witnesses who have relevant, material knowledge of the alleged incident(s).

Both parties may submit evidence and identify witnesses to the investigator, who has discretion to determine the relevancy to the investigation. Evidence offered for the purpose of providing information about a party's character, general disposition, or qualities will generally not be considered 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. Letters addressing the character of a party will not be considered by the investigator, adjudicator, or appeals panel. The College reserves the right to utilize experts to assist the investigator in analyzing evidence.

The reporting and responding parties have the right to exclude their own prior sexual history with persons other than the other party in the investigation, and the right to exclude their own mental health diagnosis and/or treatment from admittance in the investigations 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 sanctions.

Throughout the investigation, parties may submit written questions to be asked of the other party or witnesses for the investigator's consideration. The investigator does not have the power of subpoena and thus 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.

4. Evidence Review

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 and/or additional questions, which will be considered by the investigator for relevancy. If warranted, the investigator or Title IX Coordinator will provide additional evidence review sessions to ensure that each party has an adequate opportunity to review all statements and evidence.

5. Adjudication Statements

Reporting and responding parties have the right to submit an adjudication statement for consideration. The adjudication statement is an opportunity to address the adjudicator directly, discuss the impact of the events subject to investigation, and/or opine on evidence collected during the investigation. New evidence or information submitted in the adjudication statement will not be considered by the adjudicator. The Title IX Coordinator may set reasonable deadlines for parties to submit adjudication statements. Parties should submit their adjudication statement to the Title IX Coordinator, who will provide any such statements to the adjudicator concurrently with the investigator's report. Parties, advisors, and third parties are prohibited from directly contacting the adjudicator regarding an investigation or adjudication.

6. Adjudication

The investigator will issue a written final investigatory report to the Title IX Coordinator, who will provide the report and any adjudication statements to the adjudicator. The investigator's report will discuss the evidence submitted and the investigator's opinion as to whether or not the preponderance of the evidence supports a determination that the responding party is responsible for violating the College's Gender-Based Misconduct Policy. The adjudicator may consider, but is not bound by, the investigator's findings or opinion.

The adjudicator for institutional investigations under this policy will be designated by the Title IX Coordinator from a pool consisting of the Chief of Staff, the Vice President for Administration, the Vice President of Student Affairs, the Dean of the College, the Dean of the Early Colleges, or their designee(s). Adjudicators may recuse themselves if their participation might compromise the integrity of the adjudication process. If an adjudicator recuses themselves, the Title IX Coordinator will identify a new adjudicator and notify both parties of the recusal and new adjudicator.

The adjudicator will review the report and determine the outcome and any associated sanctions and/or directives. The adjudicator may consult with the Dean of Students, Title IX Coordinator, counsel, or others with specific knowledge or expertise. The adjudicator's determination will be shared with the Title IX Coordinator, who will notify both parties of the outcome simultaneously.

X. NOTIFICATION TO PARTIES

The Title IX Coordinator or designee will provide the reporting and responding parties with regular updates, including the following written notifications at various points during the investigation:

A. NOTICE OF INVESTIGATION

Both parties will be notified when a report is being formally investigated. The Notice of Investigation will state the nature of the allegations being investigated, including, to the extent practicable, the date, time, location, and factual allegations concerning each potential violation, a reference to the policy provisions alleged to have been violated, and possible sanctions.

The College reserves the right to amend, modify, and/or add additional potential violations to any Notice of Investigation based on information elicited through the course of an investigation. Both parties will be notified in writing of any such change.

B. CONCLUSION OF THE INVESTIGATION

Both parties will be simultaneously notified when the investigation has concluded and the report has been sent to the adjudicator.

C. OUTCOME NOTIFICATION

Once the adjudicator has reviewed the investigative report and determined the outcome, the adjudicator will share the outcome with the Title IX Coordinator, who will then simultaneously notify both parties in writing of the outcome, any associated sanctions and/or directives, the rationale for the outcome and any sanctions or directives, the findings of fact, and appeal rights.

XI. SANCTIONS

An individual who has been found to have violated the Gender-Based Misconduct Policy may be subject to sanctions and/or directives including, but not limited to, written reprimand/warning, disciplinary probation, change in academic or employment schedule, change in residence, removal from on-campus or College-owned housing, No Contact Order, educational programming involving gender-based misconduct awareness, counseling, community restitution, prohibition from certain Bard facilities and/or activities, prohibition from campus, suspension, expulsion, admission revocation, revocation of awards or honors, withholding of degree, degree revocation, demotion, termination, a combination of these, or any sanction deemed just and proper.

Sanctioning outcomes/parameters 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.

XII. THE APPEAL PROCESS

Any appeal must be submitted in writing to the Title IX Coordinator within five (5) business days from the date of the outcome notification. The eligible grounds on which an appeal may be based are:

1. Procedural error that substantially impacted the outcome;
2. New evidence that was unavailable at the time of the investigation and could substantially impact the outcome; and/or
3. Sanction substantially disproportionate to the outcome.

In order to effectuate an appeal, parties may request to review a copy of the investigative report and any adjudication statements pursuant to College policy governing privacy and access to personal information within five (5) business days from the date of the outcome notification. Parties may request to have the time period for submitting an appeal extended to five (5) business days from the date of their viewing of the redacted investigative report.

Appeals shall be submitted to the Title IX Coordinator for initial review and determination of whether the appeal is timely and within the limited eligible grounds. If the appeal is found to be ineligible or not timely, the original finding and sanctions will stand and the decision is final. Dissatisfaction with the outcome does not constitute grounds for appeal.

If an appeal is proper, both parties will be notified and informed of the grounds for the appeal. Any sanctions imposed will remain in place during the appeal process. If both the reporting party and the respondent appeal, the appeals will be considered concurrently.

If an appeal is proper, a copy of the appeal 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 exchanged as part of the appeal.

Any statements and evidence submitted will be reviewed by a panel of three administrators designated by the Title IX Coordinator from a pool consisting of the Chief of Staff, the Vice President for Administration, the Vice President of Student Affairs, the Dean of the College, the Dean of the Early Colleges, or their designee(s). Any administrator who has served as the adjudicator for a particular matter will not be on the appeal panel for that same matter.

Parties, advisors, and third parties are prohibited from directly contacting the appeal panel members regarding an investigation, adjudication, or appeal.

If an appeal is denied, the parties will be notified and the matter will be closed. If the 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 panel for consideration.

If an appeal is granted, the panel will issue a decision advising that the appeal was granted and which, if any, sanctions or issues are upheld, overruled, modified, or returned to the adjudicator for reconsideration. Any decisions by the appeal panel will be final.

The Title IX Coordinator will notify the parties in writing of the decisions involving the appeal as well as the disposition.

XIII. GENDER-BASED MISCONDUCT TRANSCRIPT NOTATION

Bard College shall make a notation on the transcript of a student found responsible for violating the College's Gender-Based Misconduct Policy and sanctioned with suspension or expulsion that they were "suspended after a finding of responsibility for a code of conduct violation" or "dismissed after a finding of responsibility for a code of conduct violation." If a responding party withdraws from Bard College while such conduct charges are pending and declines to complete the disciplinary process, Bard shall make a notation on the student's transcript that they "withdrew with conduct charges pending."

Students who are suspended after a finding of responsibility for a gender-based misconduct violation may submit a written appeal to the Title IX Coordinator requesting that the notation be removed from their transcript. Such a notation shall not be removed prior to one year after the conclusion of the suspension. Notations for dismissal will not be removed. If a finding of responsibility is vacated for any reason, any such transcript notation shall be removed.

XIV. INTERIM MEASURES AND ACCOMMODATIONS

Following a report of gender-based misconduct, parties may obtain reasonable and available interim measures and accommodations to help ensure safety and well-being, prevent retaliation, avoid an ongoing hostile environment, and to promote an accessible educational and employment environment. The Title IX Coordinator will provide information regarding interim measures and accommodations, and will implement and/or coordinate their issuance. Interim measures and accommodations may be requested even in cases where institutional investigations are not initiated or either party has declined to participate in an institutional investigation or criminal process. Interim measures and accommodations include, but are not limited to:

- Change in campus housing;
- Changes to academic schedules;
- 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, job assignments, or other work accommodations;

- Access to safety escorts or assisting in transportation changes;
- No Contact Orders; and
- Interim suspensions.

Interim suspensions will only be implemented when a responding party is determined to present a continuing threat to the health and safety of the community.

Both the reporting party and responding party shall be afforded a prompt review, reasonable under the circumstances, of the need for and terms of any such interim measure or accommodation that directly affects them and shall be allowed to submit evidence in support of their request. Interim measures and accommodations are reviewed upon request by the Title IX Coordinator and/or Vice President of Administration, and/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 interim measures and/or accommodations is not a conclusion as to whether there has been a violation of College policy. The Title IX Coordinator has the discretion to issue, modify, or remove any interim measure or accommodation due to new information or change in circumstances.

XV. NO CONTACT ORDERS

In order to promote safety and civility on campus, the Title IX Coordinator is authorized to issue No Contact Orders (“NCOs”) prohibiting contact between or among students, faculty, and/or staff, when there exists 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 a NCO should be issued, including, but not limited to, the following factors:

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

An individual receiving a NCO is to have no contact, direct or indirect, with the requesting individual. Contact includes all forms of written communication (texting, social media, email, etc.) as well as personal contact (face-to-face, telephonic, etc.), both on and off campus. 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 may include additional protective measures or other terms specific to the safety, wellbeing, or other needs of either or both individuals subject to the NCO, when deemed necessary by the College. Any additional terms shall be expressly stated in the NCO.

NCOs are only enforceable by the College. NCOs differ from court imposed Orders of Protection or Restraining Orders, which may be enforced by courts and/or law enforcement. Violations of a NCO should be reported to the Title IX Coordinator. If safety is a concern while on campus, call Security at 845-758-7777. If safety is a concern while off campus, call 911. Bard College is not able to provide immediate or direct assistance off-campus.

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

NCOs related to gender-based misconduct may be issued by the Title IX Coordinator. For emergency situations involving personal safety, the Director of Security and the Dean of Student Affairs may issue temporary NCOs, which shall be confirmed, modified or rescinded by the Title IX Coordinator once all relevant information is reviewed.

Parties to a NCO have the right, upon request, to receive a prompt review, reasonable under the circumstances, of the need for and the terms of a NCO and may submit evidence in support of their request. Requests to modify or rescind a NCO must be submitted in writing to the Title IX Coordinator, and must include the basis for the request and any supporting evidence. Request to modify or rescind NCOs are reviewed by the Title IX Coordinator and/or the Vice President of Administration, or their designees. A NCO is not a conclusion as to whether there has been a violation of College policy. Before modifying a NCO, the College will notify the other party of the request for modification. All parties will be notified if a NCO is modified or rescinded by the College.

Violations of No Contact Orders are subject to discipline under provisions of the Student Handbook, Employee Handbook, Faculty Handbook, or the retaliation provisions of the Gender-Based Misconduct Policy, as appropriate, and could result in interim suspension, additional conduct charges, or other sanctions.

Individuals who have interpersonal conflicts that do not raise concerns for individual health and safety will not be granted NCOs.

XVI. ORDERS OF PROTECTION

The Title IX Coordinator and Security can provide information and to the extent possible, answer questions regarding Orders of Protection or restraining orders, which are issued by courts, not the College. The Title IX Coordinator and Security can provide information and connection to resources to assist in obtaining an Order of Protection, or if outside New York, an equivalent protective or restraining.

Any person who obtains an Order of Protection, or any other protective or restraining order, should provide a copy to Security and the Title IX Coordinator. In the event of a violation of an Order of Protection or similar court order, reporting individuals may receive assistance from the College in contacting law enforcement and affecting an arrest.

XVII. PREVENTION AND ASSESSMENT

A. PREVENTION EDUCATION

Bard College conducts a comprehensive student and employee onboarding and ongoing education campaign to educate members of its community about discrimination, harassment, domestic violence, dating violence, stalking, and sexual assault. The College trains all new students, whether first-year or transfer, undergraduate, graduate, or professional, and all new employees, regarding its policy, resources, institutional assistance, and consequences and sanctions for individuals who commit these violations. Additionally, the College offers all students access to such training programs and educational activities.

The College requires that each student leader and officer of student organizations recognized by the College shall complete training on domestic violence, dating violence, stalking, and sexual assault prior to receiving recognition or registration, and requires that each student athlete complete training prior to participating in intercollegiate athletic competition.

The College will regularly assess programs and policies to determine effectiveness and relevance for students.

B. CAMPUS CLIMATE ASSESSMENTS

Bard College will conduct campus climate assessments which will be administered no less than every other year to ascertain general awareness including student experiences with and knowledge of reporting and college adjudicatory processes, which will be developed using standard and commonly recognized research methods.

XVIII. STUDENTS' BILL OF RIGHTS

All students have the right to:

- Make a report to local law enforcement and/or state police;
- Have disclosures of domestic violence, dating violence, stalking, and sexual assault taken 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 against retaliation by the College, any student, the accused and/ or the respondent, and/or their friends, family and acquaintances within the jurisdiction of the College;
- Access to at least one level of appeal of a determination;
- Be accompanied by an adviser 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 College.

XIX. PARENTAL NOTIFICATION

The College's ability to notify parents or guardians about any complaints or allegations made with respect to this policy is limited by federal law and state law, including but not limited to the Family Educational Rights and Privacy Act (FERPA) and New York State Education Law 129-B ("Enough is Enough").

XX. FILE RETENTION POLICY

The College will maintain disciplinary files 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 the Family Educational Rights and Privacy Act (FERPA).

For more information regarding FERPA, please refer to the College's Notification of Rights Under FERPA, located at www.bard.edu/about/disclosures/.

XXI. REPORTING CRIME STATISTICS AND AGGREGATE DATA

Bard College is required by the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, a federal law, to annually publish the number of reported incidents of certain crimes on or near campus, some of which constitute gender-based misconduct under this policy. Information available to the public in the College's Annual Security Report does not include details of any reported incident or identifying information. The College's Annual Security Report can be found at www.bard.edu/security/.

Additionally, Bard College is required by New York State Education Law Article 129-B to annually submit to the State Education Department aggregate data concerning reports of sexual assault, stalking, dating violence, and domestic violence, made to the College. Information provided to the State Education Department does not include details of any reported incident or identifying information.

XXII. ADDITIONAL INFORMATION

Additional information and resources can be found at www.bard.edu/genderequity/.