

## **2021-2022 GENDER-BASED MISCONDUCT POLICY**

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## **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:

Lauren Gretina  
Title IX & Civil Rights Coordinator  
Sottery 107  
845-758-7542 or [titleix@bard.edu](mailto:titleix@bard.edu)

Kimberly Alexander  
Director of Human Resources  
Ludlow  
845-758-7516 or [kalexand@bard.edu](mailto:kalexand@bard.edu)

Jacob Testa  
Director of Clery Compliance &  
Deputy Title IX & Civil Rights Coordinator  
Gahagan 202  
845-758-7007 or [jtesta@bard.edu](mailto:jtesta@bard.edu)

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

Office for Civil Rights (OCR)  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202-1100  
Customer Service Hotline: 800-421-3481  
Fax: 202-453-6012  
TDD#: 877-521-2172  
[OCR@ed.gov](mailto:OCR@ed.gov)  
<http://www.ed.gov/ocr/>

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

The Equal Employment Opportunity Commission (EEOC) has jurisdiction over Title IX employment claims. Inquiries or complaints involving employees may be directed to:

Equal Employment Opportunity Commission  
33 Whitehall Street, 5<sup>th</sup> Floor  
New York, NY 10004  
Phone: 800-669-4000  
TDD#: 800-669-6820  
<http://www.eeoc.gov/contact/>

## **II. POLICY STATEMENT**

Bard College and its affiliated programs are committed to providing learning and working environments free of sexual and gender-based harassment and discrimination, sexual assault, sexual exploitation, stalking, and intimate partner violence (inclusive of dating and domestic 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, this policy prohibits all forms of gender-based misconduct. 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 sexual harassment, retaliation, and other forms of gender-based 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**

This policy applies to the education program and activities of the College, to conduct that takes place on the campus or on property owned or controlled by the College, at College-sponsored events, or in buildings owned or controlled by the College's recognized student organizations.

This policy can also be applicable to the effects of off-campus misconduct that effectively deprive someone of access to Bard College's educational program. The College may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial College interest.

One or more of the College's personnel policies or faculty and staff handbook policies may overlap with this policy in a particular situation. This policy applies 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. The College will apply this policy to any situation where the College determines that Title IX requires the application of this policy.

The policies of the College are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on the College's education program and activities or use Bard College networks, technology, or equipment. Although the College may not control websites, social media, and other venues in which harassing communications are made, when such communications are reported to the College, it will engage in a variety of means to address and mitigate the effects.

Regardless of where the conduct occurred, the College will address notice/complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity. The Title IX Coordinator, in consultation with other College officials, will, in their discretion, determine whether a College interest has been implicated for purposes of this policy.

If the Respondent is unknown or is not a member of the College community, the Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local law enforcement if the individual would like to file a police report.

Further, even when the Respondent is not a member of the College's community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator or:

Family Services, Inc.  
Center for Victim Safety and Support (CVSS)  
29 N. Hamilton Street  
Poughkeepsie, NY 12601  
845-452-1110, ext. 3400  
<https://familyservicesny.org/>

Non-community members (e.g., family or friends of students, vendors, visiting athletes, etc.) visiting campus, participating in a Bard College program or activity, or interacting with Bard College community members are expected to abide by the behavioral expectations in this policy.

This policy applies campus-wide and sets forth the behavioral expectations for all. However, the applicable formal disciplinary procedure that will be applied in a particular case depends on whether the accused is a student, employee, or a non-community member. A report by anyone against a non-community member (e.g., a visitor, vendor, etc.) will be investigated, but no formal policy or procedure applies. The College may opt to ban the non-community member from College property or take other appropriate responsive measures.

All vendors serving the College through third-party contracts are subject to the policies and procedures of their employers (or to these policies and procedures to which their employer has agreed to be bound by their contracts).

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to report violations through that institution's policies.

Similarly, the Title IX Coordinator may be able to assist and support a student or employee Complainant who experiences gender-based misconduct in an externship, study abroad program, or other environment external to the College where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may also give recourse to the Complainant.

In compliance with New York State law, this policy protects employees, interns (whether paid or unpaid), and non-employees (including independent contractors) who are (or who are employed by) contractors, companies, or organizations contracting to provide services to the College, regardless of immigration status. 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 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. PROCEDURAL SUMMARY**

A person who has experienced gender-based misconduct has several options:

**A report to a Confidential Resource:** A Confidential Resource provides emotional and/or medical services and maintains confidentiality. A report to a Confidential Resource does not result in a College investigation or any other action to respond to the incident.

**A report to a Mandated Reporter:** All Bard College employees (faculty, staff, administrators), Peer Counselors, and Peer Mentors who are not otherwise designated as Confidential Resources are Mandated Reporters. Mandated Reporters will forward reported information about the

incident to the Title IX Coordinator. The Title IX Coordinator will then contact the reporting party to discuss options. The Title IX Coordinator can facilitate the following assistance:

- **Supportive Measures:** Supportive measures are intended to support the individual who experienced gender-based misconduct to continue in their involvement in the College's program and activities. Supportive measures may include: no contact orders; academic accommodations; changes in housing assignment; and/or other academic, residential, or work accommodations.
- **Informal Resolution:** An informal resolution is a resolution that the parties (i.e., the Complainant(s) and Respondent(s)) agree upon to address the situation. Not all incidents are appropriate for informal resolution, and no party may be forced to accept an informal resolution. This is a voluntary process.
- **Formal Grievance Process:** A Formal Grievance Process includes an investigation and adjudication process. The outcome of a Formal Grievance Process is that the person accused of gender-based misconduct is found either responsible or not responsible for having committed a violation of this policy. Violations of this policy result in appropriate sanctions and other remedies to address the violation.

## V. GLOSSARY OF TERMS

- **Advisor of Choice:** A person chosen by a party to accompany the party to meetings related to the investigative and adjudication processes, to advise the party on those processes, and to conduct cross-examination for the party at the hearing, if any. An advisor of choice may be any person, including an attorney. The College does not appoint, train, or pay for an advisor of choice.
- **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.
- As used in this policy, the term "consent" always refers to "affirmative consent" (as defined above). 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 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 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 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. Coercion is more than an effort to persuade, seduce, entice, or attract another person to engage in sexual activity. A person's words or conduct are sufficient to constitute coercion if they deprive another individual of the ability to freely choose whether or not to engage in sexual activity. 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.
- **Complainant:** An individual who is alleged to have experienced the gender-based misconduct that could constitute a violation of this policy, whether or not a formal complaint is filed.
- **Complaint (Formal):** A written document submitted by a Complainant and filed with the Title IX Coordinator alleging sexual harassment or any other form of gender-based misconduct and requesting that the College investigate and adjudicate the allegation. A formal complaint must contain the Complainant's physical or electronic signature, or otherwise indicate that the Complainant is the person filing the formal complaint. A formal complaint is necessary to initiate an investigation and adjudication process. In limited circumstances, the Title IX Coordinator may file a formal complaint as set forth below.
- **Confidential Resource:** An employee who provides confidential emotional and/or medical services and is not a Mandated Reporter of notice of harassment, discrimination, and/or retaliation (irrespective of Clery Act Campus Security Authority status).
- **Day:** A business day.
- **Education Program or Activity:** Locations, events, or circumstances where Bard College exercises substantial control over both the Respondent and the context in which the sexual harassment or other forms of gender-based misconduct occurs and also includes any building owned or controlled by a student organization that is officially recognized by the College.
- **Final Determination:** A conclusion by the preponderance of the evidence that the alleged conduct did or did not violate policy.
- **Formal Grievance Process:** The method of formal resolution designated by the College to address conduct that falls within the policies included below, and which complies with the requirements of the Title IX regulations (34 CFR §106.45).

- **Gender-Based Misconduct:** An umbrella term used in this policy to more conveniently refer to any form of misconduct prohibited by this policy, including, but not limited to, the offenses of sexual harassment, sexual assault, stalking, dating violence, and domestic violence.
- **Grievance Process Pool:** Any hearing officers, appeal officers, informal resolution facilitators, and advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).
- **Institution Advisor:** An advisor appointed by the College to accompany a party to a hearing, at no charge to the party, when that party does not opt for an advisor of choice at the hearing. An institution advisor may be an attorney, but does not represent a party in any legal sense and their role is limited to asking cross-examination questions of the other party and witnesses during a hearing. The party is responsible for formulating the cross-examination questions the institution advisor will pose during the hearing.
- **Investigator:** The person or persons charged by the College with gathering facts about an alleged violation of this policy, assessing relevancy of evidence, synthesizing the evidence, and compiling this information into an investigation report.
- **Mandated Reporter:** An employee of the College who is obligated by policy to share knowledge, notice, and/or reports of harassment or other forms of gender-based misconduct with the Title IX Coordinator. All Bard College employees (faculty, staff, administrators), Peer Counselors, and Peer Mentors who are not otherwise designated as Confidential Resources must notify the Title IX Coordinator of all known details of a report made to them under this policy.<sup>1</sup>
- **Official with Authority (OWA):** An employee of the College explicitly vested with the responsibility to implement corrective measures for harassment, discrimination, and/or retaliation on behalf of the College.
- **Party(ies):** The Complainant(s) and Respondent(s), individually or collectively.
- **Remedies:** Post-finding actions directed to the Complainant and/or the community, as mechanisms to address safety, prevent recurrence, and restore access to the College's educational program.
- **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.
- **Respondent:** An individual alleged to have committed a violation of this policy.

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<sup>1</sup> This is not to be confused with those mandated by state law to report child abuse, elder abuse, and/or abuse of individuals with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility in this policy.

- **Student:** An individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and who maintains an ongoing relationship with the College.

## **VI. DEFINITIONS OF GENDER-BASED MISCONDUCT**

This policy applies to alleged conduct violative of Title IX of the Education Amendments of 1972 (i.e., “Title IX Category” violations), and also applies to a broader range of contexts and behaviors inconsistent with the College’s commitment to equal opportunity (i.e., “College Category” violations).

The designation of conduct or allegations as either “Title IX Category” or “College Category” is not a function of the seriousness of the alleged conduct but rather a function of the scope and coverage of Title IX versus the College’s broader jurisdiction to prohibit and discipline a larger scope of inappropriate behavior.

### **A. Title IX Category Violations**

In accordance with Title IX as interpreted by the Department of Education, the College recognizes the following as conduct violations within the meaning of Title IX, provided that the context and circumstances of the conduct fall within the scope of Title IX, including but not limited to: that the Complainant was in the United States at the time of the alleged conduct; that the Complainant be participating in or seeking to participate in the College’s education program or activity at the time of the complaint; and that the conduct occurred in the context of the College’s education program or activity:

- **Sexual Harassment:** Conduct on the basis of sex (including sex, gender, sexual orientation, gender identity, gender expression, and transgender status) that satisfies one or more of the following:
  - An employee of the College implicitly or explicitly conditioning the provision of an aid, benefit, or service of the College on an individual’s participation in unwelcome sexual conduct (commonly referred to as a “quid pro quo”); or
  - Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it interferes with, limits, or effectively denies a person equal access to the College’s education program or activity (commonly referred to as a sex- or gender-based “hostile environment”).
- **Sexual Assault:** A sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent. Sexual assault consists of the following specific acts:
  - **Rape:** The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

- **Fondling:** The touching of the private body parts (including genital area, anus, groin, buttocks, or breast) of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity.
- **Incest:** Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by New York State law.
- **Statutory Rape:** Non-forcible sexual intercourse with a person who is under the statutory age of consent. The statutory age of consent in New York is 17.
- **Dating Violence.** Violence committed by a person on the basis of sex: (1) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (2) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship.
- **Domestic Violence:** Violence on the basis of sex committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction where the College is located, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.
- **Stalking:** Engaging in a course of conduct on the basis of sex directed at a specific person that would cause a reasonable person to: (1) fear for his or her safety or the safety of others; or (2) 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. Stalking that does not occur on the basis of sex may be addressed under this policy as a College Category Violation as described below.

## **B. College Category Violations**

The College prohibits the following behavior. For the purpose of College Category Violations, the below conduct is prohibited even if the conduct occurs off-campus, outside the United States, the Complainant is not participating or seeking to participate in the College's education program or activity, or otherwise in circumstances over which the College does not have influence or control, including but not limited to during College academic breaks. The College retains discretion to not respond to, investigate, or adjudicate circumstances in which no College interest is implicated.

- **Sexual Harassment:** Unwelcome, offensive conduct that occurs on the basis of sex, sexual-orientation, self-identified sex, gender, gender expression, gender identity, gender-stereotyping or transgender status, but that does not constitute sexual harassment as a Title IX Category Violations as defined above. Sexual harassment can be verbal, written, visual, electronic, or physical.

The fact that a person was personally offended by a statement or incident does not alone constitute a violation. Instead, the determination is based on a “reasonable person” standard and considers the totality of the circumstances. The College considers the context of a communication or incident, the relationship of the individuals involved in the communication or incident, whether an incident was an isolated incident or part of a broader pattern or course of offensive conduct, the seriousness of the incident, the intent of the individual who engaged in the allegedly offensive conduct, and its effect or impact on the individual and the learning or working community.

- **Sexual Assault:** A sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent. Sexual assault includes the “sex acts” defined in the Title IX Category Violation section above, but that does not constitute sexual assault as defined in the Title IX Category Violation section above because of the context in which it occurs (for example, because the Complainant was not in the United States at the time of the alleged conduct, because the Complainant was not participating in or seeking to participate in the College’s education program or activity at the time of the complaint, or because of the conduct did not occur in the context of the College’s education program or activity).
- **Dating Violence:** Violence committed by a person on the basis of sex: (1) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (2) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship; but that does not constitute dating violence as a defined in the Title IX Category Violation section above because of the context in which it occurs.
- **Domestic Violence:** Violence on the basis of sex committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction where the College is located, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of New York, if the conduct does not constitute sexual domestic violence as a defined in the Title IX Category Violation section above because of the context in which it occurs.
- **Sexual Exploitation:** 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 observing or recording of private (such as undressing or showering) or sexual activity;
  - Nonconsensual posting, sharing, or publicizing of compromising images and/or videos;
  - Going beyond the boundaries of consent (such as letting a friend hide in the closet to watch otherwise consensual sexual activity);
  - Exposing one’s genitals or inducing another to expose their genitals in nonconsensual circumstances;
  - Sexually based hazing and/or bullying; and
  - Engaging in consensual sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or other sexually transmitted disease (STD) without informing the other person of such infection.
- **Stalking:** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) fear for their safety or the safety of others; or (2) suffer substantial emotional distress, but that does not constitute stalking as a Title IX Category Violation.
  - **Retaliation:** An adverse act perpetrated to harm or “get back at” a person because the person reported sexual misconduct, filed a complaint, or participated in an investigation or proceeding conducted pursuant to this policy by the College or by an external agency. An act of retaliation may be anything that would tend to discourage an individual from reporting sexual misconduct, pursuing an informal or formal complaint, or from participating in an investigation or adjudication as a party or a witness. Retaliation can include intimidation, threats, harassment, and/or adverse employment or educational actions. Retaliation may be committed by the Respondent, a reporting party, a third party, or any other individual or group. A person who acts in good faith is protected from retaliation. The fact that a statement is not determined to be proven or established following investigation and adjudication does not mean that the statement lacked good faith; a person may provide inaccurate information believing it is accurate, which is still good faith. If a person makes a statement knowing that it is false, the person has acted without good faith.

## **VII. 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 to not bathe, wash, douche, smoke, change clothing, or brush one's teeth prior to the examination. If possible, it is also best to not 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.

### **VIII. 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.

### **IX. REPORTING OPTIONS AND IMMEDIATE ASSISTANCE**

Any Bard community member, 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 wellbeing of its community members, guests, and visitors. If you, or someone you know, have experienced gender-based misconduct, please seek assistance.

There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if a Respondent is no longer subject to Bard College’s jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

Acting on notice/complaints significantly impacted by the passage of time (including, but not limited to, a rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

**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.

<b>On-Campus Confidential Resources</b>	
Counseling Services	845-758-7433
Health Services	845-758-7433
EAP (Employee Assistance Program)	800-272-7255
Chaplaincy	845-758-7335
BRAVE 24/7 Counselors (ask for BRAVE)	845-758-7777

<b>Off-Campus Confidential Resources</b>	
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.<sup>2</sup> Information you provide to a non-confidential resource at the College will be relayed to the Title IX Coordinator and the Title IX Coordinator will follow up with you regarding your options on how to proceed.

Any Mandated Reporter 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. 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.

The College has determined that the following administrators are Officials with Authority (“OWA”) to address and correct harassment, discrimination and/or retaliation so that reports received by any of the following administrators constitute notice to the College: President; Vice President for Administration; Chief of Staff; Director of Security; Vice President for Student Affairs; Dean of Students; Dean of Inclusive Excellence; Dean of the College; Dean of Studies; Title IX Coordinator; Deputy Title IX Coordinator; and Director of Accessibility and Disability Resources.

Upon receiving a report of potential gender-based misconduct, Mandated Reporters 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 other support services. In addition, Mandated Reporters 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.

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<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 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 the Family Educational Rights and Privacy Act (“FERPA”) 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, counselors, and ordained clergy. The College has designated individuals who have the ability to have privileged communications as Confidential Resources. Confidential Resources may share non-identifiable information for statistical tracking purposes as required by the federal Clery Act. Other information may be shared as required by 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, and 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 Title IX Coordinator 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 of Title IX & Nondiscrimination, either:

- By phone (845-758-7542);
- By email ([titleix@bard.edu](mailto:titleix@bard.edu));
- Through campus mail to Sottery Hall; or
- Through the online form ([www.tinyurl.com/BardTitleIX/](http://www.tinyurl.com/BardTitleIX/)).

## **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 of Title IX & Nondiscrimination may be made through this line.

## **3. Anonymous Report**

Anonymous reports may be submitted to the Title IX Coordinator or online at:  
[www.tinyurl.com/BardTitleIX/](http://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 a false complaint or accusations, or who 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). 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

### **X. 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.

### **XI. INITIAL ASSESSMENT FOR PROCEDURAL OPTIONS**

Following receipt of notice or a complaint of an alleged violation of this policy, the Title IX Coordinator engages in an initial assessment to determine how to proceed.

When a report is made, the Title IX Coordinator will reach out to the Complainant to offer supportive measures and seek to determine if the person impacted wishes to make a formal complaint, and will assist them to do so, if desired. The Title IX Coordinator will ensure the

Complainant is aware of the right to have an Advisor of Choice. A Complainant may request confidentiality, that their name or other identifying information not be disclosed to the Respondent, that a formal complaint not be filed, and/or that an investigation not be undertaken. Supportive measures will be available even if the Complainant does not wish to file a formal complaint.

When a formal complaint is made, the Title IX Coordinator works with the Complainant to determine whether the Complainant prefers to pursue an Informal Resolution option or a Formal Grievance Process. If an Informal Resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for Informal Resolution and may seek to determine if the Respondent is also willing to engage in Informal Resolution.

#### **A. Assessment For Eligibility Under This Policy**

When a formal complaint is made, the Title IX Coordinator will determine if the alleged misconduct falls within the scope of Title IX and/or another College policy.

The Title IX Coordinator must “dismiss” Title IX Category violations if it is apparent that the allegations are not within the scope of Title IX, including that the conduct alleged: even if proven, would not constitute sexual harassment as defined as Title IX Category violation; did not occur in the College’s education program or activity; or did not occur against a person in the United States.

The Title IX Coordinator may, but is not required to, dismiss a formal complaints in the following circumstances: when the Complainant withdraws a formal complaint; when the Respondent is no longer enrolled in or employed by the College; and, where specific circumstances prevent the College from gathering evidence (such as where a Complainant refuses to cooperate but does not withdraw the formal complaint).

Notice of dismissal of Title IX Category violations will be in writing to the Complainant and Respondent. The Title IX Coordinator may determine at any point in the process that facts have emerged that require the “dismissal” of a Title IX Category violation. A decision to dismiss a Title IX Category violation is immediately appealable by the Complainant pursuant to the appeal process set forth in this policy.

If Title IX Category violations are dismissed, the College may continue to process the allegations as College Category violations, assuming that the allegations, if true, would constitute College Category violations. The Title IX Coordinator may also assess which other College policies may apply to dismissed Title IX Category violations and refer those allegations for resolution under another applicable policy. The Title IX Coordinator also has the discretion to refer College Category violations for resolution under another College policy, if deemed appropriate given the facts of the matter and the circumstances involved.

## **B. When A Complainant Does Not Wish To Proceed**

If a Complainant's identity is unknown or a Complainant declines to sign a formal complaint or does not wish to participate in the complaint and adjudication process, the Title IX Coordinator will complete a violence risk assessment to determine whether the report indicates a compelling threat to health and/or safety. Declining to consent to an investigation shall be honored unless the College determines in good faith that failure to investigate does not comply with state or federal law, does not adequately mitigate a potential risk of harm to the Complainant or other members of the community, or otherwise impedes the College's ability to provide a safe and nondiscriminatory environment for all community members, including the Complainant. Honoring such a request may limit the College's ability to meaningfully investigate and pursue conduct action against an accused individual. The Title IX Coordinator has the ultimate discretion over whether the College proceeds when the Complainant does not wish to do so. Factors used to determine whether to honor such a request may include, but are not limited to:

- The seriousness and/or severity of the reported gender-based misconduct;
- Whether there have been other reports of gender-based misconduct about the same individual;
- Whether circumstances suggest that there is a risk that the Respondent 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 available information reveals a pattern of perpetration at a particular location or by a particular group;
- Whether the alleged gender-based misconduct involved multiple perpetrators;
- Whether there was a weapon or force used in 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; and
- The right of the Respondent to receive information about the allegations in an institutional investigation.

If the Title IX Coordinator determines there is sufficient cause to file a formal complaint, the Title IX Coordinator may file a formal complaint to initiate a Formal Grievance Process. In such cases, the Title IX Coordinator is not considered to be a Complainant or other party under this policy. The Complainant (or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under the policy irrespective of their level of participation. The Advisor may be appointed as proxy for the Complainant throughout this process, but this proxy role does not extend to the provision of evidence or testimony.

## **C. Other Considerations**

Where the Respondent is not enrolled at the College and is not employed by the College, the College may decline to process the complaint through a Formal Grievance Process and take other steps it deems appropriate under the circumstances.

The Title IX Coordinator may determine, with consultation with other College officials, that alleged misconduct that occurred alongside the alleged gender-based misconduct but falls under another College policy may be investigated and adjudicated under this policy.

## **XII. ADVISORS**

The Complainant and Respondent are entitled to an advisor of their choice 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 so long as the advisor is available, except for a member of the campus community who has other adjudicatory responsibilities under this policy or otherwise has a conflict of interest. The College does not appoint an advisor for a party during the investigation phase of the process.

Advisors may request to meet with the administrative officials conducting interviews/meetings in advance of interviews and meetings in order to clarify and understand their role and the College's policies and procedures.

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.

A party may consent in writing to authorize the College to share any documentation and evidence related to the allegation(s) with their advisors. Advisors are expected to maintain the privacy of records shared with them. If a party wishes to change advisors during the course of this process, they are expected to provide timely notice to the Title IX Coordinator. If a party requests that all communication be made through their attorney advisor, the College will comply with that request at the discretion of the Title IX Coordinator.

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.

## **XIII. SUPPORTIVE MEASURES AND ACCOMMODATIONS**

Following a report of gender-based misconduct, the College will offer and implement appropriate and reasonable supportive measures to the parties to help ensure safety and well-being, prevent retaliation, avoid an ongoing 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 other party.

The Title IX Coordinator will provide information regarding supportive measures and accommodations, and will implement and/or coordinate their issuance. Supportive measures and accommodations are offered regardless of whether a Formal Grievance Process is commenced. Supportive measures and accommodations 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, the Employee Assistance Program (EAP), or support services;
- Changes to work schedules, job assignments, or other work accommodations;
- Access to safety escorts or assisting in transportation changes;
- Mutual No Contact Orders, and in limited circumstances, one-way No Contact Orders;
- Persona Non Grata (PNG) orders; and
- Any other actions deemed appropriate by the Title IX Coordinator.

Both parties 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. Upon request, the Title IX Coordinator, Vice President of Administration, and/or their designees will review requests for supportive measures and accommodations, including requests that are denied. Information about how to request for review will be included in the written communication to the parties outlining the supportive measure. Before modifying an interim measure or accommodation, the College will notify the other party of the request for modification. The issuance of supportive 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 supportive measure or accommodation due to new information or change in circumstances.

#### **XIV. NO CONTACT ORDERS**

In order to promote safety and civility on campus, the Title IX Coordinator is authorized to issue mutual 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; and
- When an NCO is requested or agreed to in good faith by all individuals involved.

Individuals receiving NCOs are to have no contact, direct or indirect, with each other. 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. Any additional terms specific to the safety, wellbeing, or other needs of either or both individuals shall be expressly stated in the NCO.

If the individuals observe each other in a public place, the parties shall act to minimize contact with each other. NCOs do not guarantee that parties will not see each other.

One-way No Contact Orders may be granted under limited circumstances at the discretion of the Title IX Coordinator but, as required by federal law, may not be unreasonably burdensome or punitive on the party subject to the order.

Violations of an 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, an 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.

The Title IX Coordinator may issue NCOs related to gender-based misconduct. 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.

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 additional conduct charges or other disciplinary actions.

## **XV. EMERGENCY REMOVAL OF STUDENT RESPONDENTS**

The College can act to remove a student Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. The Title IX Coordinator performs the safety and risk analysis in conjunction with the Behavioral Intervention Team (BIT) using its standard objective violence risk assessment (VRA) procedures. If the individualized safety and risk analysis determines that

an immediate threat to the physical health or safety of any student, including the student Respondent, or other individual justifies removal, then the student Respondent will be removed.

Emergency removal is not a substitute for reaching a determination as to a Respondent's responsibility for the sexual harassment allegations; rather, emergency removal is for the purpose of addressing imminent threats posed to any person's physical health or safety, which may arise out of the sexual harassment allegations

After determining a student Respondent is an immediate threat to the physical health or safety of an individual, the Title IX Coordinator will provide written notice of the emergency removal to both the Complainant and Respondent. This notice will contain: (1) the date the removal is set to begin; (2) the reason for the emergency removal; (3) the consequences of non-compliance; and (4) how to appeal the decision. If a student Respondent disagrees with the decision to be removed from campus, the Respondent may appeal the decision.

The Respondent must provide written notice of the intent to appeal, which shall include the substance of the appeal, to the Title IX Coordinator within 10 days of receiving the notice of removal. The burden of proof is on the student Respondent to show that the removal decision was inappropriate.

The Title IX Coordinator will, upon request of the Respondent, meet with the Respondent concerning the appeal to provide an opportunity to show cause why the action/removal should not be implemented or should be modified. This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When an appeal is not requested in a timely manner, objections to the emergency removal will be deemed waived. A Complainant and their advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so. This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX. A Respondent may be accompanied by an Advisor of Choice when meeting with the Title IX Coordinator for the meeting.

The Title IX Coordinator has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline.

The College will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions could include, but are not limited to: removing a student from a residence hall; temporarily re-assigning an employee; restricting a student's or employee's access to or use of facilities or equipment; allowing a student to withdraw or take grades of incomplete without financial penalty; authorizing an administrative leave; and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics.

At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to

ensure as minimal an academic impact as possible on the parties.

This section does not apply to Respondents who are employees. Where the Respondent is an employee, they may be placed on administrative leave pursuant to the College's policies and/or collective bargaining agreements during the pendency of a Title IX Formal Grievance Process.

## **XVI. TIMEFRAME FOR COMPLAINT RESOLUTION**

The College acts upon all allegations promptly once it has received a formal complaint. In general, the College will endeavor to conclude all reports of gender-based misconduct within ninety (90) business days (exclusive of any appeal). There are exceptions and extenuating circumstances that can cause a resolution to take longer, such as witness unavailability, breaks in the academic schedule, the complexity of the allegations, and/or other similar or unforeseen circumstances. The College will act to avoid all undue delays within its control. Any time the general timeframes for resolution outlined in this policy will be delayed, the College will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

## **XVII. RESOLUTION PROCESSES WHEN A FORMAL COMPLAINT IS FILED**

Resolution proceedings are private. All persons present at any time during the resolution process 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.

### **A. Informal Resolution**

The Title IX Coordinator will offer the Informal Resolution Process to the parties after a Complainant files a formal complaint. Informal Resolution can include three different approaches:

- When the Title IX 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; see discussion in Section B below.
- When the Respondent accepts responsibility for violating a policy provision, and desires to accept a sanction and end the resolution process (similar to above, but usually occurs post-investigation); see discussion in Section C below.

To initiate Informal Resolution, a Complainant needs to submit a formal complaint, as defined above. A Respondent who wishes to initiate Informal Resolution should contact the Title IX Coordinator. The Informal Resolution process is not available if the Respondent in a 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 Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance 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.

## **B. Alternate 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 under the circumstances.

The Title IX Coordinator has the discretion to appoint an appropriate alternate resolution facilitator either from an external agency or source or from within the College community that is likely to achieve the most successful result for the parties. The facilitator will also be screened to ensure that such person is free from conflicts of interest and bias. Either party can elect to have any meeting occur so that the parties are in different rooms and the facilitator “shuttles” between the parties. The facilitator will not be available as a witness in any hearing that may occur should either party terminate the Informal Resolution process before a resolution. This is in keeping with the concept that the facilitator is impartial and is only facilitating the interaction between the two parties and is not listening or taking notes for any purpose other than assisting the parties.

If there is no agreement on a resolution, the complaint is returned to the Formal Grievance 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 written and signed resolution indicates that the complaint has been resolved under this policy without the need for further investigation or to pursue the Formal Grievance Process. The ultimate determination of whether alternate resolution is available, successful or appropriate is to be made by the Title IX Coordinator. The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions. Results of complaints resolved by Informal Resolution or Alternate Resolution are not appealable.

### **C. 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 Grievance Process will be paused, and the Title IX Coordinator will determine whether an Informal Resolution can be used.

If Informal Resolution is applicable, the Title IX Coordinator will determine whether all parties and the College are able to agree on responsibility, sanctions, and/or remedies. If so, the Title IX Coordinator implements the accepted finding that the Respondent is in violation of College policy and implements agreed-upon sanctions and/or remedies, in coordination with other appropriate administrator(s), as necessary.

This result is not subject to appeal once all parties indicate their written assent to all agreed upon terms of resolution. When the parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused.

When a resolution is accomplished, the appropriate sanction or responsive actions are promptly implemented in order to effectively stop the harassment or discrimination, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

## **XVIII. FORMAL GRIEVANCE PROCESS**

When a formal complaint is filed, and an informal option is not chosen, the Formal Grievance Process is initiated, meaning an investigation and adjudication.

### **A. The Pool**

The Formal Grievance Process relies on a pool of administrators to carry out the process. Pool members are appointed by the Title IX Coordinator, in consultation with the Vice President for Administration, and are trained annually. Pool members can serve in the following roles at the discretion of the Title IX Coordinator: to act as advisor to the parties; to serve in a facilitation role in informal resolution, to serve as a decision-maker regarding a formal complaint; and, to serve as an appeal decision-maker. The Pool members are: Chief of Staff; Vice President for Administration; Vice President for Student Affairs; Dean of the College; Dean of the Early Colleges; Vice President for Institutional Planning and Research; Dean of Inclusive Excellence; Associate Dean of Students; Director of the Institute for Writing and Thinking; and Director of Equity and Inclusion Programs. The College reserves the right to add or remove individuals from the Formal Grievance Process Pool.

Pool members may recuse themselves if their participation might compromise the integrity of the adjudication process. If a Pool member recuses themselves, the Title IX Coordinator will identify a new Pool member for a particular complaint and will notify both parties of the recusal and new Pool member. The Title IX Coordinator retains the discretion to appoint new qualified designees either from an external source or from the College administration as Pool members and to appropriately train those appointees as needed.

## **B. Notice of Investigation and Allegations**

The Title IX Coordinator will provide written notice of the investigation and allegations (the “NOIA”) to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent’s ability to prepare for the interview. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

- A meaningful summary of all of allegations;
- The identity of the involved parties (if known);
- The precise misconduct being alleged;
- The date and location of the alleged incident(s) (if known);
- The specific policies implicated;
- A summary of the investigation and adjudication process;
- A statement of the potential sanctions;
- A statement that the Respondent is presumed not responsible for the alleged misconduct determinations of responsibility are made at the conclusion of the process;
- A statement that, during the inspection and review period, the parties will be given an opportunity to inspect, review, and comment on any evidence obtained in the investigation that is directly related to and/or relevant to the allegations in the complaint;
- A statement about the College’s policy on retaliation;
- Information about the privacy of the process;
- Information on the right of each party to have an Advisor of Choice, who may be, but is not required to be, an attorney;
- A statement informing the parties that the College’s policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process;
- Detail on how the party may request disability accommodations during the interview process,
- A link to the College’s VAWA Brochure;
- The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have; and
- An instruction to preserve any evidence that is directly related to the allegations.

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges.

Notice will be made in writing and may be delivered by one or more of the following methods: in person or emailed to the parties’ College-issued email or designated accounts. Once mailed, emailed, and/or received in person, notice will be presumptively delivered.

### **C. Investigation Timeframe**

The College will endeavor to complete each investigation within thirty (30) days. An investigation may be extended for good cause, such as witness unavailability, breaks in the academic schedule, or other similar circumstances.

### **D. Investigation Procedures**

Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints an individual to conduct an investigation who does not have a conflict of interest. The Investigator is charged with conducting a thorough, impartial, reliable, and prompt investigation. The College may appoint any qualified investigator, who may be a person internal or external to the College. The College may also appoint more than one investigator in the College's sole discretion. The investigation is an impartial fact-finding process.

The Investigator will interview each party and all relevant witnesses, conduct follow-up interviews as necessary, and gather all available relevant evidence.

The Investigator will also provide the parties and witnesses with an opportunity to review and verify the Investigator's summary notes from interviews and meetings with that specific party or witness. Each party will be allowed the opportunity to suggest questions they wish the Investigator(s) to ask of the other party and witnesses.

The Complainant and Respondent will be provided with advance written notice of the date, time, location, participants, and purpose of any meeting or interview in which they are invited to or expected to participate.

The Complainant and the Respondent will be given an equal opportunity to present information. This includes the opportunity to present fact or expert witnesses and other evidence that the party believes tends to prove or disprove the allegations. However, at all times, the burden of gathering evidence remains with the College. The Investigator may decline to interview any witness or to gather information the Investigator finds to be not relevant or otherwise excludable (e.g., sexual history of the Complainant with a person other than the Respondent, materials subject to a recognized privilege, medical records in the absence of a release by the subject of the records, etc.). The Investigator will determine the order and method of investigation.

The investigation and/or hearing does not allow for questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

## **E. Opportunity for Inspection and Review of Evidence**

The Complainant and Respondent will be provided an equal opportunity to inspect and review any evidence obtained in the investigation directly related to the allegations gathered in the investigation and regardless of whether the information will be relied on in reaching a determination. Prior to the conclusion of the investigative report, the Complainant and Respondent, and each party's advisor of choice, if any, will be provided a copy (which may be sent in hard copy or electronic format or made available through an electronic file sharing platform) of the evidence, subject to redaction permitted and/or required by law. The Complainant and Respondent will be provided with at least ten (10) days to submit a written response, which the Investigator will consider prior to completion of the investigative report. The Investigator will determine if additional investigation is necessary and, if so, will complete any additional investigative steps.

## **F. Investigative Report**

At the conclusion of the investigation, the Investigator will complete a written investigative report that fairly summarizes the relevant evidence. The Investigator need not include information in the investigative report that the Investigator determines not relevant or otherwise excludable. The Investigator will submit the investigative report to the Title IX Coordinator. At least ten (10) days prior to a hearing to determine whether there is responsibility for the allegations, the Complainant and Respondent, and each party's advisor if any, will be provided 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 and/or required by law.

## **G. Recording of Interviews**

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If the Investigator elects to audio and/or video record interviews, all involved parties must be made aware of such recording.

## **H. Referral for a Hearing**

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing. The Title IX Coordinator or Deputy Title IX Coordinator can act as a hearing facilitator, which is a non-decision-making role in this process, but will not attend the hearing. The hearing facilitation may assist with administrative issues, such as logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

The hearing cannot be less than ten (10) business days from the conclusion of the investigation – when the final investigation report is transmitted to the parties and the hearing panel Chair –

unless all parties and the Chair agree to an expedited timeline.

### **I. Hearing Decision-maker Composition**

The College will designate a three-member panel from the Grievance Process Pool. The Title IX Coordinator will appoint one of the three members will be appointed as Chair. The hearing panel members (i.e. Decision-makers) will not have had any previous involvement with the investigation or resolution process in the complaint in any capacity. The hearing panel members may be members of the community or may be external to the College, as determined by the Title IX Coordinator.

### **J. Participants**

Participants in the hearing will include the members of the hearing panel, the Complainant and the Respondent, their respective advisors, the Investigator(s) who conducted the investigation, and witnesses (solely during their own testimony). Hearings are private. Observers or additional support personnel, other than the parties' advisors, are not allowed unless deemed necessary by the Title IX Coordinator for purposes such as accommodation of a disability. Parties and their advisors may not use cell phones or recording devices in the hearing room(s).

The Title IX Coordinator may postpone a hearing for good cause as determined by the Title IX Coordinator. Good cause may include, without limitation, unavailability of one or more participants due to unanticipated events or circumstances, the timing of academic breaks or holidays, or other extenuating circumstances.

### **K. Evidentiary Consideration & Procedural Issues in the Hearing**

The Chair of the hearing panel is in charge of organizing the presentation of information to be considered at the hearing and addressing any procedural issues. Any evidence that the Chair of the hearing panel determines is relevant will be considered at the hearing. However, consistent with evidence that is not considered during the investigation, the hearing panel will also not allow for questions and evidence about the Complainant's sexual predisposition or prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

### **L. Notice of Hearing**

No fewer than ten (10) business days prior to the hearing, the Title IX Coordinator will send notice of the hearing to the parties. The notice will contain:

- The time, date, and location of the hearing.
- A statement that a party or witness may request from the Title IX Coordinator, at least five (5) days prior to the date of the hearing, alternative arrangements if they prefer to not attend, or cannot attend, the hearing in person. These alternative arrangements will use technology to

allow remote testimony that will not compromise the fairness of the hearing.

- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the hearing panel members and parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator at least five (5) days prior to the hearing.
- A list of all those who will attend the hearing, including the names of the hearing panel members. The notice will inform the parties that they may challenge the participation of any hearing panel member on the basis of conflict or bias, provided such challenge is submitted to the Title IX Coordinator in writing, detailing the rationale for the objection, at least two (2) business days prior to the hearing. Bias or conflict of interest will be judged by an objective standard (whether a reasonable person would conclude the Decision-maker is biased).
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the party's or witness's testimony and any statements given prior to the hearing by that party or witness will not be considered by the hearing panel for purposes of reaching a decision on responsibility.
- Notification that the parties may have the assistance of an Advisor of Choice at the hearing and will be required to have one present (or be assigned an Institution Advisor) for any questions they may desire to ask of the other party and/or witnesses. The party must notify the Title IX Coordinator at least two (2) days prior to the hearing if they have an Advisor of Choice that will attend the hearing.
- An invitation to each party to submit to the Title IX Coordinator an impact statement prior to the hearing that will be submitted to the hearing panel for review during any sanction determination. Hearing panel members will only review the impact statements upon a decision of responsibility.
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing. The party must notify the Title IX Coordinator at least seven (7) business days prior to the hearing if they have a need for accommodations at the hearing.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by the College and remain within the 90 business day goal for resolution. In these cases, if the Respondent is a graduating student, a hold may be placed on graduation and/or official transcripts until the matter is fully resolved (including any appeal).

## **M. Advisors**

The Complainant and the Respondent may each have present with them during the hearing an Advisor of Choice (at the party's expense, if the advisor is a paid advisor). If a party does not have an Advisor of Choice present at the hearing, the College will provide, without fee or charge to that party, an Institution Advisor of the College's choice for the limited purpose of conducting questioning on behalf of that party as provided in this policy.

Except with respect to questioning as described below, the advisor's role is limited to consulting

with their advisee, and the advisor may not present evidence, address the hearing panel during the hearing, object to any aspect of the proceeding, or disrupt the hearing in any way, and any consultation with the advisee while the hearing is in progress must be done in a quiet, nondisruptive manner or in writing. An advisor's questioning of the other party and any witnesses must be conducted in a respectful, nonintimidating, and non-abusive manner.

If a party's Advisor of Choice refuses to comply with the College's established rules of decorum during the hearing, the College may require the advisor to leave the hearing and the hearing will proceed without an opportunity for the party to obtain a replacement advisor; provided, however, that the College will assign an Institution Advisor of the College's choosing, without charge, for the purpose of conducting questioning on behalf of the party as provided below. If an Institutional Advisor refuses to comply with the rules of decorum, the College may provide that party with a different Institution Advisor to conduct cross-examination on behalf of that party.

#### **N. Pre-Hearing Preparation**

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator. Absent extraordinary circumstances as determined by the Chair of the hearing panel, no party may seek to introduce at the hearing any evidence not previously made available during the investigation and/or in response to the investigation report.

During the ten (10) business day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Chair at the pre-hearing meeting or at the hearing and will be exchanged between each party by the Chair.

#### **O. Pre-Hearing Meetings**

The Chair may convene a pre-hearing meeting(s) with the parties and/or their advisors to invite them to submit the questions or topics they (the parties and/or their advisors) wish to ask or discuss at the hearing, so that the Chair can provide guidance on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing. However, this advance review opportunity does not preclude advisors from asking a question for the first time at the hearing.

The Chair, only with full agreement of the parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator in the investigation report or and the parties do not intend to ask those witnesses any cross-examination questions during the hearing.

At each pre-hearing meeting with a party and their advisor, the Chair will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator may be argued to be relevant. The Chair may rule on these arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing. The Chair may consult with legal counsel and/or the Title IX Coordinator regarding these decisions.

The pre-hearing meeting(s) will not be recorded.

#### **P. Consolidation of Cases and Joint Hearings**

The Title IX Coordinator may determine that where the allegations arise out of the same set of facts should be consolidated for the purposes of the investigation and/or adjudication. Instances where consolidation of complaints may occur include but are not limited to cross-complaint filed by the parties against each other, multiple complaints filed by a single Complainant against a Respondent, or multiple complaints by a single Complainant against multiple Respondents. In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged policy violation.

#### **Q. The Order of the Hearing**

Generally, the hearing will begin with an opportunity for Opening Statement by the Complainant followed by an opportunity for an Opening Statement by the Respondent.

The Investigator will then present a summary of the final investigation report and will be subject to questioning by the hearing panel members and then the parties (through their advisors). The Investigator will be present during the entire hearing process, but not during deliberations. Neither the parties nor the hearing panel members should ask the Investigator their opinion on credibility, recommended findings, or determinations.

Once the Investigator presents their report and is questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant, who may be questioned by the hearing panel and, if desired, on behalf of the Respondent (through their advisor). The hearing panel may then present questions to the Respondent and, if desired, on behalf of the Complainant (through their advisor). The witnesses will then submit to questioning by the hearing panel and then by the parties through their advisors. At the conclusion of the hearing, the Respondent will be provided an opportunity to make a Closing Statement and then the Complainant will be provided an opportunity to make a Closing Statement.

Formal rules of evidence will not apply. Except as otherwise expressly prohibited by this policy, any information that the Chair of the hearing panel determines is relevant may be considered, including hearsay, history and information indicating a pattern of behavior, and character evidence. All evidence previously made available to the parties for inspection and review prior to completion of the investigative report as described above will be made available at the hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of questioning.

The hearing panel will permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility; provided that questions that seek disclosure of information protected under a legally recognized privilege will not be permitted unless the person or entity holding the privilege has waived the privilege in writing. Questioning must be conducted by the party's advisor in a respectful, nonintimidating and non-abusive manner, and never by a party personally. If a party does not have an advisor

present at the hearing, the Title IX Coordinator will arrange for the College to provide, without fee or charge to that party, an Institution Advisor of the College's choice to conduct cross-examination on behalf of that party.

Only relevant questions may be asked by a party's advisor to a party or witness. Questions that repeat, in sum or substance, questions already asked by the hearing panel prior to cross-examination, or by a party's advisor during cross-examination, may be ruled duplicative, and therefore irrelevant. Before the party or witness answers a question posed by an advisor, the Chair of the hearing panel will first determine whether the question is relevant and explain any decision to exclude a question as not relevant. For example, the Chair may determine that a question is irrelevant because it asks about a detail that does not touch on whether a material fact concerning the allegations is more or less likely to be true. As another example, the Chair may determine that a question is irrelevant because it calls for prior sexual behavior information about the Complainant without meeting one of the two exceptions to the rape shield protections. Such decisions by the Chair are final and not subject to objection or reconsideration during the hearing.

The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair has final say on all questions and determinations of relevance. The Chair may consult with legal counsel on any questions of admissibility.

If the parties raise an issue of bias or conflict of interest of an Investigator or Decision-maker at the hearing, the Chair may elect to address those issues, consult with legal counsel, and/or refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not in issue at the hearing, the Chair should not permit irrelevant questions that probe for bias.

#### **R. Refusal to Submit to Cross-Examination and Inferences**

If a party or witness chooses to not submit to cross-examination at the hearing, either because they do not attend the meeting, or they attend but refuse to participate in questioning, then the Decision-makers may not rely on any prior statement made by that party or witness, during the hearing or during the investigation, in the ultimate determination of responsibility. Evidence provided that is something other than a statement by the party or witness may be considered.

The hearing panel members may not draw any inference as to responsibility based on a party' or witness's absence from the hearing or refusal to answer cross-examination questions.

#### **S. Recording Hearings**

Hearings (but not deliberations) are recorded by the College in a manner determined by the Title IX Coordinator for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The hearing recording or transcript will be made available to the parties, upon request, for inspection and review. Prior to obtaining access to the recording or transcript, the parties and their advisors must acknowledge in writing that they will not disseminate any of the testimony

heard or evidence obtained in the hearing or use such testimony or evidence for any purpose unrelated to the grievance process. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

## **T. Hearing Determinations**

The hearing panel will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the alleged policy violation(s). A simple majority vote is required to determine the finding. The hearing panel will use the “preponderance of the evidence” standard of proof. The “preponderance of the evidence” standard requires a determination as to whether it is more likely than not that a policy violation occurred. The hearing facilitator may be invited to attend the deliberation by the Chair, but is there only to facilitate procedurally, not to address the substance of the allegations.

Each party may submit a written personal impact statement to the Title IX Coordinator for consideration by the hearing panel in determining an appropriate sanction if there is a finding of responsibility on one or more of the charges. The parties must submit their statements to the Title IX Coordinator prior to the hearing.

When there is a finding of responsibility on one or more of the allegations, the hearing panel members may then consider the previously submitted impact statements in determining appropriate sanction(s). The Chair will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The hearing panel members may – at their discretion – consider the statements, but they are not binding. In addition to the impact statement(s), if any, factors considered when determining sanctions may include:

- The nature and severity of, and circumstances surrounding, the violation(s);
- The Respondent’s state of mind at the time of the violation(s) (intentional, knowing, bias-motivated, reckless, negligent, etc.);
- The Respondent’s previous disciplinary history;
- The need to remedy the effects of the conduct on the Complainant and/or the community;
- The impact of potential sanctions on the Respondent;
- Sanctions imposed by the College in other matters involving comparable conduct; and
- Any other lawful factors deemed relevant by the hearing panel.

## **U. Notice of Outcome**

The hearing panel will issue a written determination including the following information:

- A description of the charges that were adjudicated;
- A description of the procedural steps taken from the submission of the formal complaint through the determination, including notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the policy to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination

regarding responsibility, any disciplinary sanctions to be imposed on the Respondent, and whether remedies designed to restore or preserve equal access to the College's educational programs or activities will be provided to the Complainant; and

- The procedures and permissible bases for the Complainant and Respondent to appeal.

The Title IX Coordinator will provide the written determination to the parties simultaneously by email or in person.

## **XIX. SANCTIONS**

Sanctioning outcomes/parameters may be impacted by information deemed relevant by the Decision-makers which may include the following criteria: severity of the violation; motivation of behavior; disciplinary record; the impact on the parties; the need to remedy the effects of the discrimination and/or harassment on the Complainant and the community; and the impact of safety concerns to the greater campus community.

A student, organization, or employee found to have violated the Gender-Based Misconduct Policy may be subject to sanctions and/or directives as deemed appropriate by the Decision-makers 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, a permanent 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.

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility. This information is only considered at the sanction stage of the process, and is not shared with the hearing panel members until then.

All Respondents are expected to comply with the assigned sanctions within the timeframe specified by the hearing panel and/or appeal panel. Failure to abide by or complete the sanctions may result in additional sanctions, and may be noted on a student's official transcript.

## **XX. THE APPEAL PROCESS**

A Respondent or Complainant may appeal: (1) a determination regarding responsibility; and/or (2) the College's dismissal of a formal complaint or any allegations therein. Any party may file a Request for Appeal in writing to the Title IX Coordinator within seven (7) days from the delivery of the Notice of Outcome or, in the case of an appeal of a dismissal, the written notification of the dismissal notice.

The Title IX Coordinator will designate a three-member appeal panel chosen from the Formal Grievance Process Pool, as well as an Appeal Chair. The appeal panelists will not include any of the same individuals who served as hearing panel members that reached the determination

regarding responsibility or dismissal, the Investigator(s), or the Title IX Coordinator. In any case where a Respondent is a College employee, the Title IX Coordinator will have discretion to appoint a single Appeal Officer to decide the appeal, and the Appeal Officer's decision shall be final.

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; and/or
3. The Title IX Coordinator, Investigator, or Decision-makers had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent in the matter that affected the outcome.

Dissatisfaction with the outcome does not constitute grounds for appeal.

If any of the grounds in the Request for Appeal do not meet the grounds in this policy, that request will be denied by the Appeal Chair and the parties and their advisors will be notified in writing of the denial and the rationale.

When a party submits a written notice of its intent to appeal to the Title IX Coordinator within 7 days of the appealable decision, the College will notify the other party in writing and implement appeal procedures equally for both parties. If no written notice of either party's intent to appeal is sent, then the written determination becomes final after the time period to file an appeal (7 days) has expired.

Each party will be given a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome. Each party will have at least 5 days to submit its written statement.

Decisions on appeal are to be deferential to the original decision, making changes to the finding only when there is clear error and to the sanction/responsive action only if there is a compelling justification to do so. The appeal panel may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. The Title IX Coordinator will maintain documentation of all such consultation. All decisions are by majority vote and apply the preponderance of the evidence standard.

The appeal panel will issue a written decision describing the result of the appeal and the rationale for the result. This decision will be provided to both parties simultaneously and in writing. Once the appeal decision has been sent to the parties, the appeal decision is final.

In rare cases where a procedural or substantive error cannot be cured by the original Decision-makers (as in cases of bias), the appeal may order a new hearing with new Decision-makers. The results of a new hearing can be appealed, once, on any of the three available appeal grounds.

## **Sanctions Status During the Appeal**

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.

### **XXI. 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 student Respondent 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.

### **XXII. 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**

Consistent with New York State law, 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.

### **XXIII. 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 Advisor of Choice who may assist and advise a reporting individual, accused, or Respondent throughout the judicial or conduct process, including during all meetings and hearings related to such process; and
- Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the College.

### **XXIV. 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").

### **XXV. RECORDS RETENTION POLICY**

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 the Family Educational Rights and Privacy Act (FERPA) and are in accordance with New York State law and any other applicable federal law.

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

## **XXVI. REPORTING CRIME STATISTICS AND AGGREGATE DATA**

The federal Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act requires Bard College 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/](http://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, dating violence, domestic violence, and stalking made to the College. Information provided to the State Education Department does not include details of any reported incident or identifying information.

## **XXVII. ADDITIONAL INFORMATION**

Additional information and resources can be found at [www.bard.edu/titleix/](http://www.bard.edu/titleix/).

NOTE: This policy is effective August 20, 2021. This policy is subject to review and revision on a regular basis as necessary. Please visit [www.bard.edu/titleix/](http://www.bard.edu/titleix/) or contact the Office of Title IX & Nondiscrimination to ensure you have the latest version of this policy.