

BERKELEY COLLEGE

Equal Opportunity Complaint Procedures for Associates

Purpose

In accordance with its Equal Opportunity Policy¹, Berkeley College and BES (collectively, the “College”) prohibits (a) discrimination or harassment on the basis of sex, gender (including gender identity or expression), sexual orientation, pregnancy, race, color, creed, religion, national origin, age, genetic characteristics, ancestry, disability, veteran status, marital status, civil union or partnership status, alienage or citizenship status; (b) sexual assault (which is a form of sexual/gender harassment that includes unwelcome physical contact of a sexual nature); (c) sexual exploitation (which is a form of discrimination on the basis of sex); (d) domestic violence and dating violence (collectively referred to herein as “intimate partner violence”); (e) stalking; and (f) retaliation for complaints, reports, or testimony in connection with its Equal Opportunity Policy.

Scope

These procedures are intended for use in handling associates’ conduct covered by the Equal Opportunity Policy, except for allegations of sexual misconduct involving students or related acts of retaliation. (Sexual misconduct involving students, even where it also involves non-students, is handled in accordance with the Equal Opportunity Complaint Procedures for Students.)

I. Discrimination, Harassment or Retaliation Not Involving Sexual Assault, Intimate Partner Violence or Stalking

A. Reports of Violations

Associates who experience instances of discrimination or harassment in violation of the Equal Opportunity Policy where Sexual Assault, Intimate Partner Violence or Stalking is **not** involved, or who believe that they have been subjected to retaliation for making or providing information concerning any of the matters covered by the Equal Opportunity Policy, are urged to report the circumstances promptly to the Vice President of Human Resources. With respect to violations of the Equal Opportunity Policy involving sexual harassment or sexual discrimination, or retaliation for making or providing information concerning such matters, the Vice President of Human Resources serves as the Deputy Title IX Coordinator for Associates. Should the Vice President of Human Resources/Deputy Title IX Coordinator for Associates learn of any sexual discrimination or sexual harassment allegations, she shall promptly inform the Title IX Coordinator of such allegations. The Title IX Coordinator has overall responsibility for verifying that sexual discrimination, sexual harassment and related retaliation matters, among other things, are handled in accordance with the College Equal Opportunity Policy and Procedures.

¹ Located at http://berkeleycollege.edu/files_bc/Equal_Opportunity_Policy.pdf

While reasonable efforts will be made to protect the privacy of associates who are involved in such matters, it may not always be possible to avoid disclosing the relevant circumstances to other College officials, counsel, associates, or students who may have a legitimate need for such information.

Alternatively, associates seeking confidential assistance with such matters may obtain confidential assistance through the Employee Assistance Plan (“EAP”). Reports to the EAP, however, will not be provided to the College and will not result in investigation or disciplinary action by the College.

B. Investigation of Non-Confidential Reports

Where a violation of the Equal Opportunity Policy **not** involving sexual assault, intimate partner violence or stalking is reported, the Deputy Title IX Coordinator for Associates (or designee) shall review the circumstances and promptly initiate such investigation as she deems appropriate to achieve a prompt and equitable resolution of the complaint. The College will make a reasonable effort to conclude such investigation as promptly as circumstances permit. The investigation may, but is not required to, include personal interviews of relevant individuals and a review of relevant documents.

C. Disposition of Equal Opportunity Matters Not Involving Sexual Assault, Intimate Partner Violence or Stalking

The College, in its sole discretion, may take such action as it deems appropriate, if any, in response to such a complaint and may determine whether to issue a written report or finding. Associates who, acting in good faith, report possible violations of the Equal Opportunity Policy or provide relevant information in any investigation by the College with respect to such matters will not be subject to any form of retaliation for doing so. The Vice President of Human Resources shall make such determinations in conjunction with College Senior Management and the Title IX Coordinator (in cases of sexual discrimination or sexual harassment). A senior College official will automatically review any determination based upon the original record and his/her review shall be final.

II. Incidents Involving Sexual Assault, Intimate Partner Violence or Stalking

A. Emergency Action by Victims of Sexual Assault, Intimate Partner Violence, or Stalking

If you are a victim of a sexual assault, intimate partner violence, or stalking, your first priority should be to get to a place of safety and/or call 911 for emergency assistance. You should then obtain any necessary medical treatment. The College urges victims of sexual assault, intimate partner violence or stalking to report such incidents as soon as possible to the local police or medical personnel, if warranted. Alternatively, you may report the incident to a College official, such as the Deputy Title IX Coordinator for Associates, the Title IX Coordinator, or the College Public Safety Department (or the EAP for confidential assistance), who will discuss reporting options, available support services, safety concerns,

and other important topics. Keep in mind that reporting an incident of sexual assault, intimate partner violence, or stalking promptly may be critical to preserving and collecting important evidence of the incident.

The victim of a sexual assault, intimate partner violence or stalking may choose to have an investigation pursued through the criminal justice system and/or College disciplinary proceedings, if the alleged accused is a member of the College community. The Deputy Title IX Coordinator for Associates will guide the victim through the available options. In all cases, however, the Public Safety Department in conjunction with the Deputy Title IX Coordinator for Associates will initiate such investigation and responsive action as it deems necessary and appropriate to maintain the safety of the College community.

B. Reporting Sexual Misconduct Involving Sexual Assault, Intimate Partner Violence, or Stalking

If you are a victim of sexual assault, intimate partner violence, or stalking, you are urged to report the circumstances promptly to the Deputy Title IX Coordinator for Associates: Karen Carpentieri, VP for Human Resources, kjc@berkeleycollege.edu, 201-291-1111 x5162; or to the College Public Safety Department.

Alternatively, associates may direct inquiries or complaints concerning such matters directly to the designated Title IX Coordinator for the College, Dr. Dallas F. Reed, Vice President, Student Development and Campus Life, who can be reached at 212-986-4343, x4211 or at titleixcoordinator@berkeleycollege.edu. The Title IX Coordinator has overall responsibility for verifying that sexual assault, intimate partner violence, stalking and related retaliation matters, among other things, are handled in accordance with the College Equal Opportunity Policy and Procedures.

The Deputy Title IX Coordinator for Associates and the Office of Public Safety shall promptly inform the Title IX Coordinator of any complaints of sexual assault, intimate partner violence, or stalking of which they become aware.

C. Institutional Responses to Reports of Sexual Assault, Intimate Partner Violence, or Stalking

1. Reporting Obligations of Associates Who Learn about Instances of Sexual Assault, Intimate Partner Violence, or Stalking

College faculty or staff who receive reports or complaints, or otherwise learn about possible instances, of sexual assault, intimate partner violence, or stalking shall promptly notify the Deputy Title IX Coordinator for Associates (or the Deputy Title IX Coordinator for Students, in the case of reports received from or concerning students), the Title IX Coordinator, or the Public Safety Department.

2. Information/Assistance to be Provided by the Deputy Title IX Coordinator for Associates (or Designee) to Victims of Sexual Assault, Intimate Partner Violence, or Stalking

Upon receiving a report involving sexual assault, intimate partner violence, or stalking, and pending the completion of any related investigation, the Deputy Title IX Coordinator for Associates or (designee) shall inform and assist the complainant if requested (and both parties to the extent deemed appropriate) concerning the following:

- a. the complainant's reporting options, such as (i) reporting to local law enforcement; and/or (ii) pursuing an investigation through College disciplinary proceedings (if the alleged accused is a member of the College community) and the procedures governing any such College disciplinary proceedings; or (iii) the option to decline to notify any such authorities;
- b. the complainant's rights and College responsibility regarding orders of protection, restraining orders, etc.;
- c. if requested, temporary changes in assignments or working situations, and other immediate actions, to the extent reasonably available (the College will attempt to maintain the confidentiality of such interim assistance, if possible);
- d. the possibility of no-contact orders and/or suspension of one or more individuals, during the pendency of the investigation;
- e. the existence of the Employee Assistance Program for confidential assistance;
- f. the existence of, contact information for, and assistance with off-campus medical, mental health and other appropriate resources; and
- g. the potential importance of taking prompt action to preserve evidence.

These rights, options, interim measures and resources shall be both explained to the complainant orally and given to the complainant in writing, via the VAWA Brochure, also found here: http://berkeleycollege.edu/files_bc/VAWA_Brochure.pdf The Deputy Title IX Coordinator for Associates shall be empowered to take any steps deemed necessary to maintain order and protect both parties and the Berkeley College community, during the pendency of the investigation.

3. Preservation of Privacy/Confidentiality

While reasonable efforts will be made to respect the privacy of the parties involved in these matters, it may not always be possible to avoid disclosing the relevant circumstances to other College officials, counsel, associates, or students who may have a legitimate need for such information. Except for confidential EAP communications, anonymity and complete confidentiality cannot be guaranteed once a complaint is made or violations of College policy have been discovered. If a request for confidentiality is made, the College shall weigh the confidentiality request against the alleged accused's potential danger to the College community. Regardless of whether confidentiality can be maintained, the College will endeavor to protect the privacy of those involved in these matters and only share information on a "need to know" basis. In all cases, a complainant's personally identifiable information will not

be included in any publicly available record-keeping, including Clery Act reporting or the daily crime log.

4. Timely Warnings

Any College official who receives a report of a sexual assault, intimate partner violence, or stalking on or adjacent to College property must promptly report it to the Public Safety Department. In accordance with College policy and procedures, the AVP for Public Safety or his designee will initiate a conversation regarding the issuing of a Timely Warning Notification. This conversation will include the Campus Operating Officer, the Title IX Coordinator (or her designee) and an attorney from the Office of General Counsel. The AVP for Public Safety will provide to the group his rationale for the need for the Notification, and specify to what population it will be directed. In the event that an investigation is needed to verify the validity of the original crime or threat, the decision to notify may be delayed until such time as the threat can be verified. The above-described group will decide whether to issue a Notification and its content. The Public Safety Department will issue the Notification, in a way that withholds the name of the alleged victim(s).

5. Investigation and Determination of Circumstances Involving Sexual Assault, Intimate Partner Violence, or Stalking

a. Conduct of Investigation

The College will promptly and fairly investigate² any allegations of sexual assault, intimate partner violence, or stalking against a member of the Berkeley College community, or occurring on or adjacent to College property, or in connection with a College-sponsored activity. The Deputy Title IX Coordinator for Associates shall coordinate any investigation of an allegation or report involving sexual assault, intimate partner violence, or stalking involving an associate with appropriate assistance from the Public Safety Department. Investigations may include interviews, review of relevant documents, and such other factual investigation as the Deputy Title IX Coordinator for Associates deems necessary and appropriate to achieve a prompt, fair resolution. Both parties will be provided the same opportunities to present witnesses and present and/or review evidence, including the review of any evidence that will be used to reach a determination, which shall not include notes prepared by a College investigator. Those College officials investigating and adjudicating allegations of sexual misconduct will receive appropriate training annually, including, but not limited to, assessing credibility and evidence; protecting the safety of all parties involved;

² Once a report of sexual assault, intimate partner violence or stalking has been made to the Deputy Title IX Coordinator for Associates, the Coordinator will make a threshold determination as to whether there is sufficient information/evidence to indicate that a violation of College (Title IX/VAWA) policy has occurred, thus triggering a College Title IX/VAWA investigation. The Deputy Title IX Coordinator for Associates (with consultation of others if necessary) has the discretion to determine that a Title IX/VAWA investigation is NOT warranted, under the facts and circumstances of any given case. The College may nevertheless still investigate the matter, but pursuant to a non-Title IX/VAWA investigatory track.

avoiding actual and perceived conflicts of interest; and promoting transparency and accountability of the process.

b. Advisors

At the request of a party, the Deputy Title IX Coordinator (or designee) shall permit a party to be accompanied by one advisor of his or her choice in any formal interview of that party or adjudicatory proceeding at which that party is present. Any such advisor may not present evidence, question witnesses, or otherwise interrupt or participate in the proceedings. The parties are responsible for presenting testimony and other relevant evidence on their own behalf. If, in the sole judgment of the Deputy Title IX Coordinator, the advisor violates any of these rules of conduct, the Deputy Title IX Coordinator may exclude the advisor from the meeting or proceeding, which may then continue.

c. Prompt Resolution

In cases of sexual assault, intimate partner violence, or stalking, the College shall make a reasonable effort to conclude such investigation within sixty (60) days, as circumstances permit. The complainant's prior sexual history shall not be deemed relevant to any determination reached. The Deputy Title IX Coordinator for Associates shall issue, and simultaneously provide both parties with, a written determination, which shall explain the basis for the determination, any penalty levied and appeal procedures. The Title IX Coordinator may, in her sole discretion, review and question the determination before it is issued and provided to the parties. Determinations shall be based upon a "preponderance of the evidence" (meaning that it appears more likely than not that a violation of the Equal Opportunity Policy and applicable law did or did not occur).

Sanctions imposed by the institution following a VAWA disciplinary proceeding may include, but are not limited to, oral or written warning/probation, mandatory counseling, education and training requirements, no-contact orders, changes to working arrangements, suspension (with or without pay) (length of which, and reinstatement conditions, shall depend upon the nature and severity of the offense) and termination from employment.

d. Coordination with Law Enforcement

Where a criminal investigation is initiated by law enforcement, the College will take reasonable steps to coordinate its investigation with law enforcement authorities. Such coordination may include temporary suspension of the College's investigation to the extent appropriate in order to avoid interfering with an ongoing investigation by law enforcement officers. Thereafter, the College will proceed with its own investigation and take such responsive action as it deems necessary and appropriate to maintain the safety of the College community.

e. No Mediation

The College shall not resort to mediation or other informal methods of dispute resolution in cases involving allegations of sexual assault.

f. Appeals

In matters involving allegations of sexual assault, intimate partner violence or stalking, any party may appeal the decision of the Deputy Title IX Coordinator for Associates within ten (10) business days of its issuance (the "Appeal Period").

Parties wishing to appeal may do so only by (1) notifying the Deputy Title IX Coordinator for Associates in writing of the party's intent to appeal, and (2) submitting a written statement prior to the expiration of the Appeal Period.

In her sole discretion, the Deputy Title IX Coordinator for Associates may grant a brief extension of the Appeal Period for good cause shown upon a party's written request, and such extension shall apply to all parties.

The Deputy Title IX Coordinator for Associates shall advise all parties of any party's intention to appeal and furnish each party copies of any appeal statements and related communications simultaneously. If one party submits a written statement during the Appeal Period, the other party will be given an opportunity to submit a written statement in response within a designated time period.

Determinations by the Deputy Title IX Coordinator for Associates will only be overturned or modified on appeal to the extent that (i) the determination is arbitrary, based upon a misunderstanding or misstatement of material facts, or not reasonably supported by the evidence; (ii) serious procedural errors undermined the integrity of the process; or (iii) the interests of justice require that the determination be modified or overturned.

The College will appoint a senior College official to decide an appeal based upon the appeal statement(s) and the original record; and the decision of the reviewing official will be final. Whenever practicable, such review will be completed within thirty (30) business days, and both parties will be informed of the result simultaneously in writing.

III. Seeking Confidential Advice through the Employee Assistance Program

Associates seeking confidential assistance concerning sexual assault, intimate partner violence, or stalking issues (among others) may contact the EAP by calling 1-800-767-5320, a confidential, toll-free crisis line. The EAP is available regardless of whether an incident is reported to the College or law enforcement. Reports to the EAP, however, will not be provided to the College and will not result in investigation or disciplinary action by the College.

IV. Procedures for Requesting a Reasonable Accommodation of a Disability

In accordance with its Equal Opportunity Policy and applicable laws and regulations, the College strives to reasonably accommodate qualified associates with disabilities. An associate who seeks a reasonable accommodation of a disability should submit the request as soon as the need becomes apparent, along with appropriate medical documentation, to the ADA Coordinator for Associates, Karen Carpentieri, Vice President, Human Resources, kjc@berkeleycollege.edu, 201-291-1111 x5162.

Upon receipt of an associate's request for a reasonable accommodation, the ADA Coordinator will review all relevant information and documentation, and engage in an interactive process with the associate, including, but not limited to, consulting further with the associate, and others, including, but not limited to, the associate's immediate supervisor, to assess how the requested accommodation, or alternative accommodations, may help the associate to perform the essential functions of his/her position. As part of the interactive process, additional medical or other relevant documentation may be requested; however, the requesting associate shall not be required to submit to an examination by a designee of the College.

Requests for accommodation will be considered carefully and promptly in light of all relevant circumstances and the associate will be informed of a determination, which may specify the duration of any accommodation to be granted and any applicable conditions. The College will strive to make reasonable modifications to its policies, practices, and procedures unless, in the sole discretion of the College, doing so would fundamentally alter the nature of the service, program, or activity, or pose an undue administrative or financial burden.