

BERKELEY COLLEGE

Equal Opportunity Complaint Procedures for Students

Policy

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; (f) bullying of students by other students, including but not limited to cyber-bullying; and (g) retaliation for complaints, reports, or testimony in connection with its Equal Opportunity Policy.

A. Procedures for Title IX, VAWA² and NY 129-B³ Related Inquiries or Complaints (Discrimination Based on Gender (Including Gender Identity or Expression), Sex, Sexual Orientation or Pregnancy; Sexual Harassment; Sexual Exploitation; Sexual Assault; Intimate Partner Violence; Stalking; or Retaliation in Connection with Reporting Same)

1 (a). Reporting (Not Confidential)

Students should direct complaints involving such matters to the **Deputy Title IX Coordinator for Students** as follows:

LaTysha Gaines, MPA, Assistant Vice President, Student Development and Campus Life, LaTysha-Gaines@BerkeleyCollege.edu, 212-986-4343 ext. 4218.⁴

Students may also direct Title IX or VAWA related inquiries or complaints to the designated **Title IX Coordinator** for Berkeley College - who serves as the overall College coordinator for Title IX and VAWA compliance - Dallas F. Reed, Vice President, Student Development and Campus Life, who can be reached at 212-986-4343, x4211⁵, titleixcoordinator@berkeleycollege.edu.

The Deputy Title IX Coordinator shall promptly inform the Title IX Coordinator of any Title IX or VAWA related inquiries or complaints of which she becomes aware.

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

² Violence Against Women Reauthorization Act of 2013.

³ NY Education Law Article 129-B of 2015.

⁴ Available before and after normal business hours at 201-364-5407.

⁵ Available before and after normal business hours at 347-306-1774.

In addition, students may contact the U.S. Department of Education, Office for Civil Rights with complaints, at 800-421-3481 or ocr@ed.gov.

Privacy and Confidentiality

The College will treat any such matter confidentially to the extent possible under the circumstances. However, anonymity and complete confidentiality cannot be guaranteed once a complaint is made or unlawful behavior or policy violations are discovered.⁶ If a request for confidentiality is made, the College shall weigh the confidentiality request against the College's obligation to provide a safe, non-discriminatory environment for all members of its community. Even Berkeley College associates who cannot guarantee confidentiality will maintain a complainant's privacy to the greatest extent possible. The information a complainant provides to a non-confidential resource will be relayed only as necessary for the Title IX Investigators/Deputy Coordinator to investigate and/or seek a resolution.

Pursuant to the Clery Act, 20 U.S.C. 1092(f), the College is required to provide statistical crime data reflecting certain crimes occurring in specific geographic locations to the federal government and the College community in an Annual Security Report, in an anonymized manner that identifies neither the specifics of the crime nor the identity of the reporting individual. A complainant's personally identifiable information will not be included in any publicly available record-keeping, including the Annual Security Report or the daily crime log.

Drug and Alcohol Use Amnesty in Connection with Reporting

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

⁶ The Family Educational Rights and Privacy Act, 20 U.S.C. 1232g ("FERPA") allows Berkeley College to share information with parents when 1) there is a health or safety emergency or 2) when the student is a dependent on either parent's prior year federal income tax return. Generally, the College will not share information about a report of domestic violence, dating violence, stalking, or sexual assault with parents without the permission of the reporting individual. For more information on FERPA, please see the College Student Records Policy here: http://berkeleycollege.edu/files_bc/FERPA_Notice_Berkeley_1099.pdf.

1 (b). Confidential Assistance

Students seeking confidential assistance should consider speaking in confidence to a college “Personal Counselor,” located at each campus location. College Personal Counselors who acquire confidential information in the course of providing counseling services are not required to report the matter to the Title IX Coordinators. **Personal Counselors are the only designated/recognized confidential resource at the College.** Nevertheless, Personal Counselors are encouraged to inform students who seek confidential counseling of all of their reporting options and resources, both inside and outside the College.

1 (c). Reporting Obligations of Associates Who Learn about Title IX or VAWA Allegations – “Responsible Employees”

College faculty or staff (other than Personal Counselors) who receive reports or complaints of sexual discrimination, sexual harassment, sexual exploitation, sexual assault, intimate partner violence, or stalking involving students are considered “Responsible Employees” under Title IX and shall promptly notify the Deputy Title IX Coordinator for Students or the Title IX Coordinator.

1(d). Information Learned at Public Awareness and Advocacy Events

If an individual discloses information through a public awareness event such as candlelight vigils, protests, or other public events, Berkeley College is not obligated to begin an investigation based on such information. The College may use the information provided at such an event to inform its efforts for additional education and training.

2. Sexual Assault/VAWA Emergency Procedures

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 Students, the Title IX Coordinator, or the College Public Safety Department (or a College Personal Counselor for confidential assistance). 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 Students 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 Students will initiate such investigation and responsive action as it deems necessary and appropriate to maintain the safety of the College community.

3. Timely Warnings

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

4. Rights, Resources and Interim Assistance

Upon receiving a report of sexual discrimination, sexual harassment, sexual exploitation, sexual assault, intimate partner violence, or stalking, and pending the completion of any related investigation, the Deputy Title IX Coordinator for Students shall share with the complainant (and *both parties* where appropriate) the following:

- 1) **complainant's reporting options** – including an offer to provide the complainant assistance therewith if requested - such as a) reporting to local law enforcement; and/or b) 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 c) the option to *decline* to notify any such authorities;
- 2) complainant's rights and College responsibility regarding orders of protection, restraining orders, etc.;
- 3) existence of *on-campus* confidential counseling;
- 4) existence of, contact information for, and assistance with *off-campus* medical, mental health and other appropriate resources;
- 5) if requested, arranging for a change of living location (if applicable), academic schedule, transportation and/or working situations, if alternatives are reasonably available (the College will attempt to maintain the confidentiality of such interim assistance, if possible);
- 6) the possibility of no-contact orders during the pendency of the investigation, with the understanding that, if complainant and the accused are accidentally in the same public place, the accused has the responsibility to leave the area promptly. Both the complainant and accused under no contact orders may request a review of the need for, and terms of, such orders with the Deputy Title IX Coordinator;

7) the possibility of suspension of one or more individuals, during the pendency of the investigation, with the understanding that the suspension shall be reasonable and tailored to balance the ability of the accused to complete his/her studies with the safety of the complainant and/or the College community at large. Both the complainant and accused may request a review of the need for, and terms of, an interim suspension with the Deputy Title IX Coordinator; and

8) 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 Students 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. A complainant's right to interim measures applies regardless of whether he/she decides to formally report and/or participate in an investigation.

5. 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. In all cases, however, the College will conduct its own investigation and take such responsive action as it deems necessary and appropriate to maintain the safety of the College community.

6. Investigation

a. Conduct of Investigation

The College will fairly and promptly investigate⁷ any sexual discrimination, sexual harassment, sexual exploitation, sexual assault, intimate partner violence or stalking complaints against a member of the Berkeley College community, or occurring on or adjacent to College property, or in connection with a College-sponsored activity, and will make a reasonable effort to conclude such investigation within sixty (60) days, as circumstances permit. Those College officials investigating and adjudicating such complaints will receive relevant and pertinent annual training relating thereto, including, but not limited to, assessing credibility and evidence; protecting the safety of all parties involved;

⁷ Once a report of sexual misconduct, intimate partner violence or stalking has been made to the Deputy Title IX Coordinator for Students, 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 Students (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.

An investigation of alleged sexual discrimination, sexual harassment, sexual exploitation, sexual assault, intimate partner violence or stalking involving a student shall be coordinated by the College Title IX Investigator(s), with the assistance of the Berkeley College Public Safety Department, if necessary, and shall afford an opportunity for both the complainant and the accused to make an oral or written statement outside the presence of the other (which, if oral, shall not be formally transcribed); if the complainant makes a written statement, the accused will be given an opportunity to review it and provide a written response to it, within a designated period of time. Both the complainant and the accused shall be allowed to offer pertinent witnesses or other evidence that the College deems appropriate, under the circumstances. The parties' prior sexual history shall not be deemed relevant to any determination reached. Both parties will be afforded similar and timely access to any documentary, photographic or physical evidence that will be used to reach a determination, including access to any written statements or other written evidence, an oral summary of any pertinent testimony given during the investigation *not* reduced to writing, as well as review of the investigation summary document.

At the conclusion of the investigation, the Title IX Investigator(s) shall prepare findings and recommendations – regarding both responsibility and sanctioning, if appropriate - for submission to the Deputy Title IX Coordinator. The Deputy Title IX Coordinator shall then reach a determination, based upon a preponderance of the evidence, after considering all of the relevant evidence and the recommendation of the Title IX Investigator(s). Once the investigation is complete, and a determination has been reached, the College shall promptly take such action as it deems appropriate under the circumstances.

Sanctions imposed by the institution following a Title IX/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 academic, working or living arrangements (if applicable), revocation of campus privileges, suspension (length of which, and reinstatement conditions, shall depend upon the nature and severity of the offense) and dismissal/termination.

Both the complainant and the accused will be informed simultaneously in writing of the determination of the Deputy Title IX Coordinator, the basis for the determination, any sanctions, as appropriate, and appeal procedures.

b. Advisors

VAWA Investigations

During a sexual assault, intimate partner violence or stalking investigation, upon request of a party, the Title IX Investigator shall grant permission for 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.

Title IX Investigations

During a sexual discrimination, sexual harassment or sexual exploitation investigation, upon request of a party, the Title IX Investigator shall grant permission for 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; **however, neither party may be represented by counsel or accompanied by someone under the age of 18, in such investigations.**

General Procedures In any case, if one party has a third party present, the other party shall be afforded the same opportunity.

In any proceedings conducted in accordance with these procedures, advisors may not present evidence, question witnesses or otherwise interrupt or participate in the proceedings. The parties are responsible for presenting evidence on their own behalf. If, in the sole judgment of the Title IX Investigator, the advisor violates any of these rules of conduct, the Title IX Investigator has the discretion to exclude the advisor from the meeting/proceeding, which may then continue.

7. Appeals

Any party may appeal the decision of the Deputy Title IX Coordinator within ten (10) business days of its issuance (the "Appeal Period").

Parties wishing to appeal may do so only by (1) notifying the **Title IX Coordinator** 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 Title IX Coordinator 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 Title IX Coordinator shall advise all parties of any party's intention to appeal and furnish each party copies of any appeal statements 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 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.

In each instance, the College will convene a panel of not less than three (3) members to decide an appeal based upon the appeal statement(s) and the original record; and the decision of the appeal panel by majority vote 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.

8. No Mediation

Mediation, or other informal methods of dispute resolution, will not be used to resolve complaints of sexual assault.

B. Procedures for *Other* Student Equal Opportunity Complaints

1. Reporting

Within thirty (30) days of the event that causes the concern, students should direct complaints involving equal opportunity issues that do **not** involve discrimination based on sex, gender, sexual orientation, pregnancy; sexual harassment; sexual exploitation; sexual assault; intimate partner violence or stalking, in writing to the Equal Opportunity Coordinator for Students, as follows:

Ashante S. (Barnes) Connor, M.S. HRD, Chief Administrative Officer, Student Development and Campus Life, ABA@BerkeleyCollege.edu, 973-278-5400 ext. 5757.

2. Investigation

The Equal Opportunity Coordinator for Students will review the written statement, initiate any investigation(s) he or she deems appropriate under the circumstances to achieve a prompt and equitable resolution of the complaint, and notify the student promptly of a determination. If corrective action is required, it will be initiated as soon as practicable. All determinations shall be automatically reviewed by the Vice President, Student Development and Campus Life, whose decision will be final.

C. Procedures for Requesting a Reasonable Accommodation of a Disability

In accordance with its Equal Opportunity Policy, the College strives to accommodate reasonably the needs of students with disabilities. While students are expected to meet the College's academic standards and requirements, Berkeley encourages any student or applicant with a disability (as defined in the Equal Opportunity Policy [\[http://berkeleycollege.edu/files_bc/Equal_Opportunity_Policy.pdf\]](http://berkeleycollege.edu/files_bc/Equal_Opportunity_Policy.pdf)), who seeks reasonable accommodations, to submit an appropriate request and supporting documentation, as soon as the need becomes apparent, so that the circumstances may be evaluated in a timely manner. An applicant's request for an ADA accommodation will not affect the disposition of his or her application to attend the College.

Any student who seeks a reasonable accommodation of a disability with respect to an **academic** matter should submit a signed *Request for Accommodation of Disability* form specifying the accommodation sought, as well as the reason for and duration of the need, with appropriate supporting documentation attached, to the ADA Coordinator for Students, as follows:

- For the Manhattan, Brooklyn, and White Plains locations:
Adam Rosen, Psy.D., 212-986-4343, x4216 or amr@berkeleycollege.edu
- For the Woodland Park, Newark, Paramus, Dover and Woodbridge locations:
Sandra Coppola, Ph.D., 973-278-5400, x1320 or sec@berkeleycollege.edu
- For Berkeley College Online:
Katherine Wu, Ed.M., LMHC, LPC, 973-405-2111, x1394 or knw@berkeleycollege.edu

Students can obtain said form from one of the ADA Coordinators for Students. Such requests will be determined by the relevant Department Chair in consultation with the relevant instructor and with the concurrence of the ADA Coordinator for Students and the Director of Disability Services. The academic accommodation will be determined based upon the level of disability, its impact on learning, and the College's ability to provide the accommodation without incurring undue burden or fundamentally altering its programs, facilities, policies or activities.

Any student who seeks a reasonable accommodation of a disability with respect to a **non-academic** matter should submit a signed *Request for Accommodation of Disability* form specifying the accommodation sought, as well as the reason for and duration of the need, with appropriate supporting documentation attached, to the appropriate ADA Coordinator for Students. Students can obtain said form from one of the ADA Coordinators for Students. Such requests shall be determined by the Campus Operating Officer, with the concurrence of the ADA Coordinator for Students and the Director of Disability Services.

Once a student requests an accommodation for a disability, the College will enter into an interactive process with the student, which may include, but not be limited to, further discussions with the student, faculty and others, and seeking additional medical documentation, all in an effort to assess how the requested accommodation, or other accommodations, may enable the student to participate equally in school programs and activities. All such requests will be considered carefully and promptly. The determination shall be in writing and shall describe, and specify the duration of, any approved accommodation. Specific details of the disability will remain confidential as between the student and the ADA Coordinator/Director of Disability Services, unless the student chooses to disclose, or there is a legitimate academic need for disclosure, on a case-by-case basis.

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.

Should the College deny a student's request for an accommodation, within ten (10) calendar days after the issuance of the denial, the student may seek a review of the determination by submitting a written request to the Vice President of Student Development and Campus Life.

The College will make a reasonable effort to complete the review promptly, and will inform the student of the outcome in writing. The determination of the Vice President of Student Development and Campus Life will be final.