

BERKELEY COLLEGE

Equal Opportunity Complaint Procedures for Students

Policy

In accordance with its Equal Opportunity Policy,¹ Berkeley College and BES Inc. (collectively, the “College”) prohibits (a) discrimination on the basis of sex, gender, gender identity or expression, sexual orientation, pregnancy and the status of being transgender – such sex discrimination includes sexual and gender based harassment; sexual assault; and sexual exploitation, all prohibited under the Equal Opportunity Policy; (b) domestic violence and dating violence (collectively referred to herein as “intimate partner violence”); (c) stalking; (d) discrimination or harassment on the basis of race, color, creed, religion, national origin, age, genetic characteristics, ancestry, disability, veteran status, marital status, civil union or partnership status, alienage or citizenship status; and (e) bullying of students by other students, including but not limited to cyber-bullying.

Retaliation is also prohibited under the Equal Opportunity Policy. No person covered by the Equal Opportunity Policy shall be subject to an adverse education related action because that person, in good faith, reports an incident, complains, provides information or testimony, or otherwise assists in any investigation connected with the Equal Opportunity Policy or with a complaint or investigation/adjudication in an external administrative or judicial forum.

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

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.

Rights of Reporting Individuals

Reporting Options

1(a). Non-Confidential Reporting

- Students can direct complaints to, consult with, and/or file a report involving such matters with, the **Deputy Title IX Coordinator for Students** as follows: LaTysha Gaines, MPA, Assistant Vice President, Student Development and Campus Life,

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.

LaTysha-Gaines@BerkeleyCollege.edu, 212-986-4343 ext. 4218.⁴ The Deputy Title IX Coordinator shall promptly inform the Title IX Coordinator of any Title IX, VAWA or 129-B related inquiries or complaints of which she becomes aware.

- Students may also direct Title IX, VAWA or 129-B related inquiries, complaints, and/or reports to the designated **Title IX Coordinator** for Berkeley College - who serves as the overall College coordinator for Title IX, VAWA and NY 129-B compliance - Dallas F. Reed, Vice President, Student Development and Campus Life, who can be reached at 973-278-5400, x1391⁵, titleixcoordinator@berkeleycollege.edu.
- Students may also report these matters to **College Public Safety, local law enforcement and/or the NY state police** (if applicable). The Title IX Coordinator and/or the College Public Safety Department can assist you with contacting local law enforcement and/or the NY state police, upon request.
- Where the accused is a Berkeley College associate, students may report these types of incidents to the College's **Deputy Title IX Coordinator for Associates**: Karen Carpentieri, VP for Human Resources, kic@berkeleycollege.edu, 201-291-1111 x5162 or have the right to request that a confidential or private employee assist in reporting to Deputy Title IX Coordinator for Associates.
- Students may contact the U.S. Department of Education, Office for Civil Rights with Title IX related complaints, at 800-421-3481 or ocr@ed.gov.
- Students can decline to notify any such authorities or individuals.

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 shall inform students who seek confidential counseling of all of their reporting options and resources, both inside and outside the College. Students may disclose confidentially the incident and obtain services from state and/or local government services and hotlines. See http://berkeleycollege.edu/berkeley_bc/title-ix-resources-and-education.htm for more details and information.

1(c). **Reporting Obligations of Associates Who Learn about Title IX, VAWA or 129-B Allegations – "Responsible Employees"**

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

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

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.

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.

Duties of Title IX Team

The Title IX Coordinator and/or Deputy Title IX Coordinator (or designee):

- Shall be available to complainants 24/7;
- Shall provide information to each complainant, at the first instance of disclosure, that he or she has the right to make a report to the College’s public safety department, local law enforcement, and/or state police or choose not to report; to report the incident to the College; to be protected by the College from retaliation for reporting an incident; and to receive assistance and resources from the College.
- Shall provide information to complainants regarding additional reporting options, the importance of preserving evidence and obtaining a sexual assault forensic exam, if appropriate.
- Shall explain to complainant the process and procedures for pursuing a complaint through College disciplinary proceedings (if the accused is a member of the College community);
- Shall explain to complainant the differences in standards of proof and evidence as between the criminal justice process compared to College disciplinary proceedings;

- Shall explain to the complainant that he/she has the right to withdraw a complaint or involvement from the College process/proceedings at any time;
- Shall explain to complainant the differences between confidentiality and privacy in this context;
- Shall share with complainant internal and community resources and provide referral assistance for medical, mental health and legal resources, including how to initiate legal proceedings in family or civil court. See http://berkeleycollege.edu/berkeley_bc/title-ix-resources-and-education.htm for more details and resource information.

Privacy and Confidentiality

If you wish to speak to someone confidentially on campus, you are encouraged to speak to one of the College Personal Counselors. **The College Personal Counselors are the only Berkeley College associates who are not legally required to inform the Title IX Coordinator about these serious matters.** Berkeley College has a duty to investigate allegations of sexual assault, intimate partner violence, or stalking when the accused person is a member of the College community.

If you share information with any faculty or staff member, they will be required to disclose that information to the Deputy Title IX Coordinator. That information will be used to offer you resources and assistance and may be used as part of an official investigation by the College. You may be contacted by an investigator to discuss your experience, as the College works to redress the matter and prevent such incidents in the future.

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 community⁷. If the College determines that an investigation is required, it will discuss the matter

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.

⁷ The College will weigh a number of factors when determining whether to honor a confidentiality request, including, but not limited to:

- Whether the respondent has a history of violent behavior or is a repeat offender
- Whether the incident represents escalation in unlawful conduct on behalf of the respondent from previously noted behavior;
- The increased risk that the respondent will commit additional acts of violence;
- Whether the respondent used a weapon or force;
- Whether the reporting individual is a minor; and
- Whether the College possesses other means to obtain evidence such as security footage, and whether available information reveals a pattern of perpetration at a given location or by a particular group.

with the reporting individual and take immediate action as necessary to protect and assist him/her. 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.

2. 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).

3. Interim Measures and Assistance

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. Interim measures may be requested by the complainant or the accused. The Deputy Title IX Coordinator for Students shall share with both parties (where appropriate) the following:

- a) 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). Both the complainant and accused may request a review, if reasonable under the circumstances, of the need for, and terms of, such changes, with

the Deputy Title IX Coordinator and shall be allowed to submit evidence in support of his or her request;

b) 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, and may submit evidence in support of his or her request;

c) 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

d) complainant's rights and College responsibility regarding orders of protection and restraining orders. The College will endeavor to enforce any orders of protection or restraining orders obtained from the courts that have been provided. Although not required, complainants are encouraged to provide the College with a photo of, and other identifying information about, the accused. Complainants should provide a copy of the court order, and other information about the accused, to the Deputy Title IX Coordinator for Students or to the Public Safety Department. Either party may obtain a copy of the order of protection or restraining order from the Public Safety Department (if such order has been provided to the College), and may request an appointment to speak with a Public Safety associate about the order and ask questions. The Public Safety Department will contact and assist local law enforcement in effecting an arrest for a violation of any order of protection or restraining order. Students subject to an order of protection or restraining order may face consequences for any violation, including, but not limited to, arrest, additional conduct charges, and/or interim suspension.

Note: The Public Safety Department is available to assist students in obtaining an order of protection or restraining order. However, the College cannot obtain such order on the student's behalf. The Public Safety Department can assist with identifying and obtaining contact information for local law enforcement and nearby legal services.

4. 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 and endeavor to have the College's investigation/proceeding run concurrently with any criminal justice investigation and proceeding. 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. Temporary delays should not last more than ten days except when law enforcement specifically requests and justifies a longer delay. 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.

5. Investigation

a. Conduct of Investigation and Rights of Complainant & Accused

- The right to a prompt response to any complaint, and the right to a prompt, fair and impartial investigation⁸ and resolution, usually within 60 days of a complaint being received by the Title IX Coordinator or one of the Deputy Title IX Coordinators.
- Complainant has the right to request that student conduct charges be filed against the accused in proceedings governed by state law and College procedures. The College will seek consent from the complainant prior to conducting an investigation, unless the College determines in good faith that a failure to investigate would not adequately mitigate a potential risk of harm to the complainant or the College community⁹.
- After a complaint is filed, the right to receive a written notice describing the date, time, location, and factual allegations concerning the alleged violation(s); reference to a specific code of conduct or policy provision alleged to have been violated; and possible sanctions for the accused based upon the outcome of the conduct process.
- The right to receive written or electronic notice, provided in advance, of any formal interview or adjudicatory proceeding that they are required or eligible to attend, and their right to have an **advisor of choice** present at any such interview or proceeding (see section (b) below).
- The right to have the investigation/proceedings coordinated by the College Title IX Investigator(s), with the assistance of the Berkeley College Public Safety Department if necessary, who receive pertinent annual training and do not have a conflict of interest.
- The right to make an oral or written statement outside the presence of the other party (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.
- The right to be heard and participate in the proceedings, including the right to offer pertinent witnesses or other evidence that the College deems appropriate, under the circumstances. Any such evidence offered shall be preserved and maintained for at least

⁸ 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/129-B 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.

⁹ The College will use the same factors outlined at the bottom of page 4 to determine a potential risk of harm in the event a student declines to consent to an investigation.

5 years from such proceeding and may include a transcript, recording, or other appropriate record.

- The right to 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.
- The right to have the College's investigation/proceeding run concurrently with any criminal justice investigation and proceeding, except for temporary delays as requested by external municipal entities while law enforcement gathers evidence. Temporary delays should not last more than ten days except when law enforcement specifically requests and justifies a longer delay.
- The right to exclude their own prior sexual history with persons *other than the other party* in the conduct proceeding and/or their own mental health diagnosis and/ or treatment from admittance in the stage of the investigation/proceeding that determines responsibility. Past findings of domestic violence, dating violence, stalking, or sexual assault may be admissible in the sanctioning stage of the investigation/proceeding.
- The right to make an impact statement during the time when the decision maker is deliberating on appropriate sanctions.
- 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).
- 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.
- The right to be informed simultaneously, in writing, of the determination of the Deputy Title IX Coordinator, the factual basis for the determination, any sanctions along with a rationale, as appropriate, and College appeal procedures.
- The right to choose whether to disclose or discuss the determination.
- The right to have all information obtained during the course of the investigation and proceeding be protected from public release until the appeals process (if any) results in a final determination, unless otherwise required by law.

b. Advisors

VAWA/129-B 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.

6. 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.

7. 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 complaint, 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.