

## **BERKELEY COLLEGE**

### **Equal Opportunity Complaint Procedures for Associates**

#### **Purpose**

In accordance with its Equal Opportunity Policy<sup>1</sup>, 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 College Equal Opportunity Policy; (b) domestic violence and dating violence (collectively referred to herein as “intimate partner violence”); (c) stalking; and (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.

Retaliation is also prohibited under the Equal Opportunity Policy. No person covered by the Equal Opportunity Policy shall be subject to an adverse employment 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 another administrative or judicial forum.

#### **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. (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. Reporting Violations**

Associates who **experience, observe** or **learn about** instances of discrimination, sexual harassment or other conduct that violates the Equal Opportunity Policy, where Sexual Assault, Intimate Partner Violence or Stalking are **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 matter promptly to the Vice President of Human Resources, Karen Carpentieri, [kjc@berkeleycollege.edu](mailto:kjc@berkeleycollege.edu), 201-291-1111 x5162. (Paid or unpaid interns, independent contractors, vendors, guests, applicants for

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<sup>1</sup> Located at [http://berkeleycollege.edu/files/bc/Equal\\_Opportunity\\_Policy.pdf](http://berkeleycollege.edu/files/bc/Equal_Opportunity_Policy.pdf)

admission and employment and other non-employees who experience discrimination or sexual harassment are encouraged to report the matter in the same way.)

All **supervisors and managers** who know, reasonably suspect or learn about a complaint or behavior that allegedly violates the Equal Opportunity Policy **are required** to report such suspected activity.

Reports under this Policy may be made orally or in writing. Complaint forms for a **sexual or gender based harassment complaint** can be found both on HR on SharePoint, and on the Office of the General Counsel web page, directly following the link to these Procedures. Complaint forms for **any and all other types of Equal Opportunity complaints** can be found here: <https://berkeley.i-sight.com/external/case/new>

Associates are encouraged to use the Complaint Forms to report Equal Opportunity complaints.

With respect to violations of the Equal Opportunity Policy involving sexual or gender based harassment or sexual discrimination, or retaliation for making or providing information concerning such matters, the Vice President of Human Resources also 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/gender harassment allegations, she shall promptly inform the College Title IX Coordinator of such allegations. The College 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.

## **B. Investigation**

Where a violation of the Equal Opportunity Policy **not** involving sexual assault, intimate partner violence or stalking is reported (orally or in writing), the Vice President of Human Resources/Deputy Title IX Coordinator for Associates (or designee) shall promptly commence an investigation. Investigations shall be conducted in a fair, impartial, thorough and timely manner and shall be private, to the extent possible. 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. Assuming the College determines that an investigation is necessary, it will discuss the matter with the reporting individual and take immediate action as necessary to protect and assist him/her. Berkeley College associates who cannot guarantee confidentiality<sup>2</sup> shall maintain a complainant's/respondent's privacy to the greatest extent possible.

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<sup>2</sup> 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. (See page 9 herein for information on the EAP.)

The investigation *may* consist of the College investigator taking the following steps; the College has discretion, however, to initiate *only* the steps that it deems appropriate in any given case:

- Upon receipt of a complaint, conduct an immediate review of the allegations, and take any interim measures, as appropriate.
- If documents, emails, etc., are relevant to the allegations, take steps to obtain and preserve them.
- Alert the respondent as to the nature of the complaint and potential policy violations.
- Request and review all relevant documents, including all electronic communications, etc.
- Interview all parties involved, including any relevant witnesses.
- Create and preserve written documentation of the investigation which a) details all investigative steps taken; b) contains a summary of all party and witness statements, documents and all evidence gathered; and c) contains the final resolution of the complaint, together with any recommended corrective action(s).

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

At the conclusion of the investigation, the College shall make a determination which shall be final. The College shall promptly implement any corrective action identified and take any other action it deems appropriate in response to the complaint. The College shall inform the individual who complained of his/her right to file a complaint or charge externally as outlined in the Appendix herein.

## **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](mailto: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, x1391 or at [titleixcoordinator@berkeleycollege.edu](mailto: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 these Procedures and the VAWA Brochure, also found here: [http://berkeleycollege.edu/files\\_bc/VAWA\\_Brochure.pdf](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 investigate<sup>3</sup> 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.

The investigation may consist of the investigator taking the following steps:

- Upon receipt of a complaint, conduct an immediate review of the allegations, and take any interim measures, as appropriate.
- If documents, emails, etc., are relevant to the allegations, take steps to obtain and preserve them.
- Alert the respondent as to the nature of the complaint and potential policy violations.

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<sup>3</sup> 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.

- Request and review all relevant documents, including all electronic communications, etc.
- Interview all parties involved, including any relevant witnesses.
- Create and preserve written documentation of the investigation which a) details all investigative steps taken; b) contains a summary of all party and witness statements, documents and all evidence gathered; and c) contains the final resolution of the complaint, together with any recommended corrective action(s).

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; 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 Support through the Employee Assistance Program**

Associates seeking confidential assistance concerning sexual assault, intimate partner violence, or stalking issues (among other issues) may contact the Employee Assistance Program (“EAP”) by calling **Toll-Free 855-RSL-HELP (855-775-4357)**, a confidential crisis line, or <http://rsli.acieap.com>

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.

## Appendix

### **Legal Protections and External Remedies for Discrimination and Harassment**

Discrimination and Harassment is not only prohibited by Berkeley College, but is also prohibited by state, federal, and, where applicable, local law. Aside from the internal process at Berkeley College, associates may also choose to pursue legal remedies with the following governmental entities **at any time**.

#### **New York**

##### **New York State Human Rights Law**

The Human Rights Law (HRL), codified as N.Y. Executive Law, art. 15, § 290 et seq., applies to employers in New York State with regard to discrimination and sexual harassment, and protects employees, paid or unpaid interns and non-employees regardless of immigration status. A complaint alleging violation of the Human Rights Law may be filed either with DHR or in New York State Supreme Court.

Complaints with DHR may be filed any time **within one (1) year** of the discrimination or harassment. If an individual did not file at DHR, they can sue directly in state court under the HRL, **within three (3) years** of the alleged discrimination/harassment. An individual may not file with DHR if they have already filed a HRL complaint in state court.

DHR will investigate the complaint and determine whether there is probable cause to believe that discrimination/harassment has occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If discrimination/harassment is found after a hearing, DHR has the power to award relief, which varies, but may include requiring your employer to take action to stop the harassment, or redress the damage caused, including paying monetary damages, attorney's fees and civil fines.

DHR's main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458, (718) 741-8400, [www.dhr.ny.gov](http://www.dhr.ny.gov)

Contact DHR at (888) 392-3644 or visit [dhr.ny.gov/complaint](http://dhr.ny.gov/complaint) for more information about filing a complaint.

#### **New Jersey**

##### **New Jersey Law Against Discrimination**

The [New Jersey Law Against Discrimination](#) (LAD) prohibits employers from discriminating in any job-related action, including recruitment, interviewing, hiring, promotions, discharge, compensation and the terms, conditions and privileges of employment on the basis of any of the law's specified protected categories. These protected categories are: race, creed, color, national origin, nationality, ancestry, age, sex (including pregnancy and sexual harassment), marital status, domestic partnership or civil union status, affectional or sexual orientation, gender identity

or expression, atypical hereditary cellular or blood trait, genetic information liability for military service, or mental or physical disability, including AIDS and HIV related illnesses. The LAD prohibits intentional discrimination based on any of these characteristics. Intentional discrimination may take the form of differential treatment or statements and conduct that reflect discriminatory animus or bias.

Discrimination/harassment claims can be filed in New Jersey either with the state administrative agency, the **New Jersey Division on Civil Rights** (DCR) or the federal administrative agency, the Equal Employment Opportunity Commission (EEOC).

There are several steps in the DCR process. A complaint is filed and the DCR will fully investigate the complaint. Then the investigator will recommend either that there is—or is not—probable cause to support the allegations.

The DCR Director will review the investigation report, the investigator's recommendation, and reach a finding. If the Director finds that probable cause exists to support the claim, the matter proceeds to the Office of Administrative Law where a hearing is conducted before an Administrative Law Judge (ALJ). A decision is issued by the ALJ. The DCR Director then decides whether or not to adopt the ALJ's decision and findings. The case ends when the DCR Director issues a final order.

Complaints must be filed with the Division on Civil Rights **within 180 days** after the alleged act of discrimination or harassment.

For more information on how to file a complaint with the DCR, go here: <https://www.nj.gov/oag/dcr/filing.html>

In the alternative, an individual who believes he or she has been discriminated against in violation of the LAD may file a complaint in New Jersey Superior Court. A party cannot file with the DCR and in Superior Court at the same time. A Superior Court action must be filed within **two (2) years** from the act of discrimination/harassment.

## **Federal**

### **Civil Rights Act of 1964**

The US Equal Employment Opportunity Commission (EEOC) enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act (codified as 42 U.S.C. § 2000e et seq.). An individual can file a complaint with the EEOC anytime **within 300 days** from the discrimination/harassment in New York or New Jersey. The EEOC will investigate the complaint, and determine whether there is reasonable cause to believe that discrimination has occurred, at which point the EEOC will issue a Right to Sue letter permitting the individual to file a complaint in federal court.

The EEOC does not hold hearings or award relief, but may take other action including pursuing cases in federal court on behalf of complaining parties. Federal courts may award remedies if discrimination is found to have occurred.

If an employee believes that he/she has been discriminated against at work, he/she can file a "Charge of Discrimination." The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by calling 1-800-669-4000 (1-800-669-6820 (TTY)), visiting their website at [www.eeoc.gov](http://www.eeoc.gov) or via email at [info@eeoc.gov](mailto:info@eeoc.gov)

### **Local Protections**

Many localities enforce laws protecting individuals from sexual harassment and discrimination. An individual should contact the county, city or town in which they live to find out if such a law exists. For example, employees who work in New York City may file complaints of discrimination or sexual harassment with the **New York City Commission on Human Rights**. Contact their main office at Law Enforcement Bureau of the NYC Commission on Human Rights, 40 Rector Street, 10th Floor, New York, New York; call 311 or (212) 306-7450; or visit [www.nyc.gov/html/cchr/html/home/home.shtml](http://www.nyc.gov/html/cchr/html/home/home.shtml)

### **Contact the Local Police Department**

If sexual harassment involves physical touching, coerced physical confinement or coerced sex acts (sexual assault), the conduct may constitute a crime. Contact the local police department.