

BERKELEY COLLEGE Equal Opportunity Policy

Purpose

Recognizing that its diversity greatly enhances the workplace and opportunities for learning, Berkeley is firmly committed to providing all associates, including faculty, and students equal access to its programs, services, activities, opportunities, and facilities.

Scope

This Policy applies to all Berkeley College students, trustees and associates and all BES directors and associates. For purposes of this Policy and any procedures promulgated in connection with it, the term "College" shall include Berkeley College and BES, the associates of which shall be collectively referred to as "associates."

A. Prohibited Conduct

Discrimination or harassment based on 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 are prohibited by various federal and state laws including, without limitation, Title VII of the Civil Rights Act of 1964 (associates), Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Americans with Disabilities Amendments Act of 2008 and Title IX of the Education Amendments of 1972 ("Title IX"). Sexual assault, dating violence, domestic violence and stalking are prohibited by various federal and state laws, including but not limited to, the Violence Against Women Reauthorization Act of 2013 ("VAWA") and New York Education Law Article 129-B.

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 in this Policy 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 this Equal Opportunity Policy. Violations of this Policy may result in disciplinary action, including but not limited to termination of employment (associates) or dismissal from the College (students).

This Policy declares the College's goal to achieve zero tolerance with regard to such prohibited conduct; but it is not designed or intended to limit the authority or discretion of College officials with regard to decisions about discipline, discharge, or other corrective action concerning conduct that the College deems unacceptable.

B. Definitions

For purposes of this Policy and related procedures, the following definitions apply:

1. Discrimination Based on 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

Discrimination based on 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, or civil union or partnership status, alienage or citizenship status, involves the unequal treatment of an individual - for example, granting or denying admission, opportunities, benefits, or services in or to the College, the workplace, educational programs of study or academic pursuits, or College-sponsored activities - because of one or more of those protected characteristics.

2. Sexual Harassment

Sexual harassment may involve an attempt by someone in a position of power to require sexual favors in exchange for providing opportunities, benefits or services, or alternatively, denying said opportunities, benefits or services when such sexual advances have been rejected. Sexual harassment may also involve unwelcome verbal, physical or expressive behavior of a sexual nature (including, but not limited to, graphic verbal commentary about a person's body; sexually degrading words to describe an individual; the display of sexually suggestive objects or pictures; repeated and unwelcome flirtation or requests for "dates"; sexual slurs and jokes; inquiries about a person's sexual habits; and unnecessary touching) that is sufficiently severe, persistent or pervasive as to create a hostile employment environment or unreasonably interfere with a student's ability to participate in or benefit from the College's educational programs or activities. Sexual harassment can also include sexual assault.

3. Sexual Exploitation

Sexual exploitation, which is a form of discrimination on the basis of sex, means taking sexual advantage of another person and includes, without limitation: recording, photographing and/or transmitting images of private sexual activity and/or the intimate parts of another person(s) via web-cam, camera, cell phone, Internet, etc., without the knowledge and consent of all persons; allowing third persons to observe private sexual acts or nudity without the knowledge and consent of all persons; and indecent exposure.

4. Sexual Assault

Sexual assault is a crime prohibited by state law, and is also considered a form of sexual harassment prohibited by Title IX of the Education Amendments of 1972 (Title 20 U.S.C. Sections 1681-1688) and the VAWA¹. Sexual assault includes any sexual act directed against another person involving the use of force; against that person's will; in violation of law; or under circumstances where the victim is deemed physically, mentally, or legally incapable of giving affirmative consent.

5. Affirmative Consent

Consent to a sexual act requires a clear, affirmative, current, and mutual agreement to take or permit such action. Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon an individual's sex, sexual orientation, gender identity, or gender expression. Although consent need not be verbal, verbal communication is often the most reliable means of ensuring consent to sexual activity.

Consent to any one or prior sexual act does not constitute consent to any other or future sexual act. Consent to sexual activity may be withdrawn at any time, in which case the activity must cease immediately. Consent cannot be obtained by physical force, threats, or intimidation. Consent is required regardless of whether the person *initiating* the act is under the influence of drugs and/or alcohol.

Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by a lack of consciousness or being asleep, being involuntarily restrained, or can exist if an individual's ability to make decisions is otherwise compromised. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.

Consent cannot be given by a person who is under the legal age of consent. In addition, consent cannot be given by an individual with a mental, intellectual, physical or other disability that renders him/her incapable of giving consent.

6. Intimate Partner Violence

Intimate partner violence, which is also referred to as dating violence, domestic violence and relationship violence, can be a state law crime and is prohibited by the VAWA. It includes any act of violence or threatened violence against an individual by a person who is, or has been, involved in a sexual, dating, domestic or other intimate relationship with

¹ References to "VAWA" herein include NY 129-B incidents as well because NY 129-B, like VAWA, relates to the prevention, investigation and adjudication of sexual assault, intimate partner violence and stalking complaints in the college community.

that individual. Intimate partner violence can encompass a broad range of behavior, including but not limited to physical violence, sexual violence, emotional violence and economic abuse. It may take the form of threats, assault, property damage, and violence or threat of violence to one's self, one's sexual or romantic partner or to the family members or friends of the sexual or romantic partner. The offending act need not be sexual in nature to be considered "intimate partner violence" if it occurs within or in connection with a past or present sexual or romantic relationship.

7. Stalking

Stalking, which can be a state law crime and is prohibited by the VAWA, is generally a pattern of repeated and unwanted attention, harassment, communications, contact or any other course of conduct directed at a specific person that would cause a reasonable person to become alarmed or be in fear of harm or injury, including physical, psychological, or emotional harm. Stalking may include repeatedly telephoning or following someone in a way that causes them alarm or discomfort or cyber-stalking, a particular form of stalking in which electronic media such as the Internet, social networks, blogs, cell phones, texts or other similar devices or forms of contact are used to pursue, harass, intimidate, threaten or make unwelcome contact with another person. Stalking generally involves one person's obsessive and unwanted behavior toward another person.

8. Bullying

Bullying generally includes any gesture, any oral, written, or electronic communications, or any physical act by a student of the College against another student or group of students of the College, whether it be a single incident or a series of incidents, that is reasonably perceived as being intended to maliciously harass, insult, defame, intimidate, or embarrass such student or group of students in a way that could disrupt or interfere with the orderly operation of the College.

9. Disability²

A physical, medical, psychological or mental impairment that substantially limits one or more major life activities or which is demonstrable by medically accepted clinical or laboratory diagnostic techniques. A person is considered to have a disability if he or she (1) has such an impairment, (2) has a record or history of such an impairment, or (3) is perceived by others as having such an impairment. "Disability" under this Policy includes a temporary disability.

² See also the College *Disability Services Accommodations Policy for Students* and the *Disability Services Accommodations Policy for Associates*, and related policies and documents referenced therein, regarding College policy and procedures for reasonably accommodating disabilities.

C. Registered Sex Offenders

Federal regulations require the College to inform you that registered sex offenders are listed on the Internet at njsp.org/info/reg_sexoffend.html (New Jersey) and <http://www.criminaljustice.ny.gov/nsor/> (New York).

D. Equal Opportunity Procedures

The College has adopted procedures to implement this Policy. Equal Opportunity Complaint Procedures for both associates and students are available at http://berkeleycollege.edu/files_bc/Equal_Opportunity_Complaint_Procedures_Associates.pdf and http://berkeleycollege.edu/files_bc/Equal_Opportunity_Complaint_Procedures_for_Students.pdf

In the event that a Title IX, VAWA or NY 129-B related complaint arising under this Policy involves both a student and an associate, the Equal Opportunity Complaint Procedures for Students shall be followed. In such instances, the Deputy Title IX Coordinator for Associates (or her delegee) and the Deputy Title IX Coordinator for Students shall work together in the investigation and disposition of the complaint.

In addition to the above-referenced Procedures, for more information regarding Title IX, VAWA and/or NY 129-B, please see the College Title IX page http://berkeleycollege.edu/berkeley_bc/title-ix.htm and the Resource Brochure http://berkeleycollege.edu/files_bc/VAWA_Brochure.pdf