

*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.*

v. 1.0, 8/14/20

## **BERKELEY COLLEGE**

### **Non-Title IX Sexual Harassment and Sexual Misconduct Procedures for Students**

#### **Policy**

In accordance with its Title IX (and Non-Title IX) Sexual Harassment and Sexual Misconduct Policy<sup>1</sup> and the definitions contained therein, Berkeley College and BES Inc. (collectively, the “College”) prohibits (a) Title IX Sexual Harassment; (b) Non-Title IX/Other sexual and gender based harassment; (c) sexual assault; (d) domestic violence and dating violence (collectively referred to herein as “intimate partner violence”); (e) stalking; and (f) sexual exploitation.

Retaliation is also prohibited under the Title IX (and Non-Title IX) Sexual Harassment and Sexual Misconduct Policy. No person covered by the Title IX (and Non-Title IX) Sexual Harassment and Sexual Misconduct 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 Title IX (and Non-Title IX) Sexual Harassment and Sexual Misconduct Policy or with a complaint or investigation/adjudication in an external administrative or judicial forum.

#### **Scope**

These Procedures apply to:

1. Reports of Title IX Sexual Harassment, including Dating Violence, Domestic Violence and Stalking, that are reported to have occurred against a person **outside** the United States, **or outside** the Berkeley College Education Program or Activity;
2. Reports of non-Title IX/Other Sexual or Gender Based Harassment and/or Sexual Exploitation, exclusive of any conduct covered by the Title IX Sexual Harassment and Sexual Misconduct Procedures; and
3. Retaliation (in the context of #1 and #2 above) in conjunction with exercising rights connected to the Title IX (and Non-Title IX) Sexual Harassment and Sexual Misconduct Policy.

All allegations of Title IX Sexual Harassment, Dating Violence, Domestic Violence, and Stalking, that are reported to have occurred against a person in the United States **and** within the Berkeley College Education Program or Activity, and all allegations of Sexual Assault regardless of where they are alleged to have occurred, will follow the Title IX Sexual Harassment and Sexual Misconduct Procedures which can be found here: <http://berkeleycollege.edu/pdf/Title-IX-Sexual-Harassment-and-Sexual-Misconduct-Procedures.pdf> .

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<sup>1</sup> Located at <http://berkeleycollege.edu/pdf/Title-IX-Non-Title-IX-Sexual-Harassment-and-Sexual-Misconduct-Policy.pdf>

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## Procedures

### 1. Reporting Options

#### (a) **Non-Confidential Reporting**

- Students can direct complaints to, consult with, and/or file a report involving these matters with, the **Deputy Title IX Coordinator for Students** as follows: LaTysha Gaines, MPA, Assistant Vice President, Student Development and Campus Life, [LaTysha-Gaines@BerkeleyCollege.edu](mailto:LaTysha-Gaines@BerkeleyCollege.edu), 212-986-4343 ext. 4218.<sup>2</sup> The Deputy Title IX Coordinator shall promptly inform the Title IX Coordinator of any inquiries or complaints of which she becomes aware.
- Students may also direct 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, x1391<sup>3</sup>, [TitleIXCoordinator@BerkeleyCollege.edu](mailto: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 respondent 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, [KJC@BerkeleyCollege.edu](mailto:KJC@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 can decline to notify any such authorities or individuals.

#### (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

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<sup>2</sup> Available before and after normal business hours at 201-364-5407.

<sup>3</sup> Available before and after normal business hours at 347-306-1774.

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confidential counseling of all of their reporting options and resources, both inside and outside the College. Students may disclose the incident confidentially and obtain services from state and/or local government services and hotlines. See <https://berkeleycollege.edu/about/administration/general-counsel/title-ix/index.html> for more details and information.

**(c) Reporting Obligations of Associates Who Learn about Prohibited Conduct covered by these Procedures – “Responsible Employees”**

College faculty or staff (other than Personal Counselors) who receive reports or complaints of Prohibited Conduct covered by these Procedures involving students are considered “Responsible Employees” and shall promptly notify the Deputy Title IX Coordinator for Students or the Title IX Coordinator.

**(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.

**2. Duties of Title IX Team upon Receipt of a Report of Prohibited Conduct**

- The Title IX Coordinator and/or Deputy Title IX Coordinator for Students (or designee) shall be available to Complainants 24/7, and:
- Shall communicate to the Complainant, at the first instance of disclosure, the availability of Supportive Measures, as described below, consider the Complainant’s wishes with respect to Supportive Measures, inform the Complainant of the availability of Supportive Measures with or without the filing of a Formal Complaint, and explain to the Complainant the process and procedures for pursuing a Formal Complaint through the College grievance proceedings as described herein.

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- **Shall explain to Complainant the meaning and significance of a Formal Complaint**  
- a document filed by a Complainant or signed by the Title IX Coordinator alleging Prohibited Conduct under the Title IX (and Non-Title IX) Sexual Harassment and Sexual Misconduct Policy against a Respondent and requesting that the College investigate the allegation of Prohibited Conduct. A Formal Complaint must be in writing and may be filed with the Title IX Coordinator in person, by mail, or by electronic mail. The written Formal Complaint must contain the Complainant's physical or digital signature, or otherwise indicate that the Complainant is the person filing the Formal Complaint. Where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a party.
- Shall further communicate to the Complainant, at the first instance of disclosure, that, in addition to the option of filing a Formal Complaint with the College, the right to make a report to local law enforcement, and/or state police or to choose NOT to report to anybody; to be protected by the College from retaliation for reporting an incident; and to receive assistance, resources and supportive measures from the College.
- Shall explain the importance of preserving evidence and obtaining a sexual assault forensic exam, if appropriate.
- Shall explain to the Complainant differences in the standards of proof used in the criminal justice process and the College's grievance process herein;
- Shall explain to the Complainant the right to withdraw a Formal Complaint or involvement from the College process/proceedings at any time;
- Shall explain to the Complainant the differences between Confidentiality and Privacy in this context (*see below*);
- Shall share with the 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 <https://berkeleycollege.edu/about/administration/general-counsel/title-ix/index.html> for more details and resource information.

### **3. 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.**

If you share information with any faculty or staff member, they will be required to disclose that information to the Title IX Coordinator or the Deputy Title IX Coordinator. That information will be used to offer you resources, assistance and supportive measures (see below) 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.

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Anonymity and complete confidentiality cannot be guaranteed once a complaint is made or unlawful behavior or policy violations are discovered.<sup>4</sup>

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<sup>5</sup>. If the College determines that an investigation is required, it will discuss the matter 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.

#### **4. 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

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<sup>4</sup> 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: <https://berkeleycollege.edu/pdf/ferpa-notice.pdf>.

<sup>5</sup> 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;
- The nature of the reported conduct;
- Whether the incident represents escalation in misconduct on behalf of the respondent from previously noted behavior;
- Whether the circumstances suggest an increased risk that the respondent will commit additional acts of violence;
- Whether the respondent is reported to have used a weapon, coercion, threats or force;
- Whether the respondent is reported to have intentionally drugged or caused the incapacitation of another as a means of committing the conduct;
- Whether the respondent is an associate;
- Whether the conduct was reportedly committed by multiple individuals;
- 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.

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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).

## **5. Supportive/Interim Measures and Assistance**

Supportive/Interim measures are designed to restore or preserve equal access to the College's Education Program or Activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the College's educational environment, or deter Prohibited Conduct (as defined in the Title IX Policy). Supportive/Interim measures are available before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Supportive/Interim measures may be requested by the complainant or the respondent.

The College will consider a number of factors in determining which Supportive/Interim Measures to take, including the needs of the student seeking Supportive/Interim Measures; the severity or pervasiveness of the alleged conduct; any continuing effects on the complainant; whether the complainant and the respondent share the same residence hall, academic course(s), or job location(s); and whether judicial measures have been taken to protect the complainant (e.g., protective orders). The College will work in good faith to implement the requirements of judicially issued protective orders and similar orders, to the extent that doing so is within its authority.

The Title IX Coordinator or Deputy Title IX Coordinator for Students are responsible for ensuring the implementation of Supportive/Interim Measures and coordinating the College's response with the appropriate offices on campus. The College will maintain the privacy of any Supportive/Interim Measures provided under these Procedures to the extent practicable and will promptly address any violation of the protective measures.

The Title IX Coordinator or the Deputy Title IX Coordinator for Students (or designee) shall share with the Complainant (and both parties where appropriate) the following:

- a) Supportive/Interim measures may include, for example, counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

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- b) If a Supportive/Interim Measure is implemented, including a no-contact order<sup>6</sup>, both the Complainant and Respondent may request a review, if reasonable under the circumstances, of the need for, and terms of, such measures, with the Title IX Coordinator or Deputy Title IX Coordinator for Students, and shall be allowed to submit evidence in support of their request.
- c) Suspension of one or more individuals is possible, during the pendency of the investigation, with the understanding that the suspension shall be reasonable and tailored to balance the ability of the respondent to complete his/her studies with the safety of the complainant and/or the College community at large. Both the complainant and respondent 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 respondent. Complainants should provide a copy of the court order, and other information about the respondent, 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.

## **6. 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

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<sup>6</sup> If complainant and the respondent are accidentally in the same public place, the respondent has the responsibility to leave the area promptly.

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will conduct its own investigation and take such responsive action as it deems necessary and appropriate to maintain the safety of the College community.

## 7. Investigation

### a. Conduct of Investigation and Rights of Complainant & Respondent

- The right to a prompt response to any complaint, and the right to a prompt, fair and impartial investigation 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 file a Formal Complaint and request that student conduct charges be filed against the respondent 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 community<sup>7</sup>.
- After a Formal 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 respondent 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 respondent 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 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

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<sup>7</sup> The College will use the same factors outlined at the bottom of page 5 to determine a potential risk of harm in the event a student declines to consent to an investigation.



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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 disciplinary proceeding connected to these Procedures 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

During an 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.

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

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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.

## **8. 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.