

If you are a victim of a Sexual Assault, Domestic Violence, Dating 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. 2.0, 8/1/24

BERKELEY COLLEGE

Title IX Sex Discrimination, Sex-Based Harassment and Sexual Misconduct Policy

I. Introduction

Berkeley College (the "College") is committed to providing a learning and working environment that promotes mutual respect, civility, and diversity, in an environment free of discrimination on the basis of sex.¹ The College does not discriminate on the basis of sex or gender in any of its education or employment programs or activities—including in its admissions or employment processes—and it does not tolerate discrimination or harassment on the basis of sex. This includes harassment or discrimination based on sex, gender, sexual orientation, gender identity, sex stereotypes, sex characteristics, and pregnancy or related conditions. Sex-Based Harassment, Sexual Assault, Dating Violence, Domestic Violence, and Stalking are prohibited forms of Sex Discrimination and will not be tolerated, as described in this Policy.

This Policy has been drafted to comply with the requirements of Title IX and its implementing regulations, 34 C.F.R. Part 106, including the final Title IX regulations issued by the U.S. Department of Education's Office for Civil Rights in April 2024, which prohibit discrimination on the basis of sex in educational programs or activities receiving federal financial assistance. The requirement not to discriminate on the basis of sex in the education program or activity extends to admissions and employment. This Policy has also been drafted to comply with Title VII of the Civil Rights Act of 1964, relevant provisions of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), as amended by relevant provisions of the Violence Against Women Reauthorization Act of 2013 (VAWA), in New York with the New York State and City Human Rights Laws and Article 129-B of the New York Education Law, and in New Jersey with the New Jersey Law against Discrimination.

II. Scope and Jurisdiction

This Policy applies to all Berkeley College students, trustees, faculty, staff and third parties.² For purposes of this Policy, the term "College" shall include Berkeley College and BES Inc., all employees of which shall be collectively referred to as "associates."

Any individual may report Sex Discrimination, Sex-Based Harassment, or Sexual Misconduct to the College.

¹ The College prohibits discrimination based on all protected classes in its Equal Opportunity Policy found here: <https://berkeleycollege.edu/pdf/equal-opportunity-policy.pdf>. As noted throughout this Policy, Sex Discrimination is addressed through this Policy and process.

² Third parties can include, for example, paid or unpaid interns, independent contractors, vendors, guests, applicants for admission and employment and other non-employees.

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The following persons have a right to make a Complaint of Sex Discrimination, Sex-Based Harassment, or Sexual Misconduct and request that the College investigate and make a determination about the alleged conduct: 1) a Complainant,³ 2) A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a Complainant, and 3) the Title IX Coordinator.

Complainants are entitled to receive access to reasonably available Supportive Measures. In the absence of a Complaint or the withdrawal of any or all of the allegations in a Complaint, the Title IX Coordinator may undertake a fact-specific determination to determine whether to initiate a Complaint of Sex Discrimination. This Policy includes the factors used to make that fact-specific determination.

The College's ability to respond to reports of Prohibited Conduct under this Policy is tied to its disciplinary authority over the Respondent (the individual accused of violating the Policy). The College has jurisdiction when the conduct occurs in the College's Education Program or Activity, which includes:

- 1) all of the College's operations, including locations, events, or circumstances over which the College exercises substantial control over both the Respondent and the context in which the conduct occurs;
- 2) any building owned or controlled by a student organization that is officially recognized by the College; and
- 3) conduct that is subject to the College's disciplinary authority.

If the Respondent is not an associate or student, the College's ability to take disciplinary action may be limited and will be determined by the context of the Prohibited Conduct and the nature of the relationship of the third-party Respondent to the College. The Title IX regulations, which direct the College's response to reports of Sex Discrimination as defined in the Title IX regulations, do not draw a line between on campus, off campus, or online, provided the conduct occurred in the Education Program or Activity. Examples include College-sponsored, College-funded or otherwise College-supported study off campus, research, internship, mentorship, summer session, conferences, meetings, social events, or other affiliated programs or premises within the United States. With regard to conduct that occurs *outside the United States* but within the Education Program or Activity, such as a

³ "Complainant" means:

- A. A student or associate who is alleged to have been subjected to conduct that could constitute Sex Discrimination under Title IX or its regulations; or
- B. A person other than a student or associate who is alleged to have been subjected to conduct that could constitute Sex Discrimination under Title IX or its regulations and who was participating or attempting to participate in the College's education program or activity at the time of the alleged Sex Discrimination.

If you are a victim of a Sexual Assault, Domestic Violence, Dating 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.

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College-supported study abroad program, the College prohibits and will address allegations of Sexual Assault, Dating Violence, Domestic Violence and Stalking.

This Policy also applies to reports of Prohibited Conduct that occur outside of the Education Program or Activity (and/or outside the United States) where that conduct has contributed to a sex-based hostile environment in the Education Program or Activity (and/or within the United States), or that fall within the scope of conduct otherwise regulated by the College. For example, this Policy may apply to a report of an off-campus sexual assault committed by a student or associate if that off-campus sexual assault contributes to a sex-based hostile environment in the Education Program or Activity.

The Title IX Coordinator will select the appropriate process to use in a given situation based on the nature of the Prohibited Conduct reported, the role of the Respondent, and whether the conduct occurred within the Education Program or Activity. All of the College's processes, however, incorporate important procedural protections and are designed to be fair, impartial, prompt and equitable.

III. Coordination with Other Policies

Reports of Prohibited Conduct may sometimes implicate conduct prohibited by another College Policy. Student, staff and faculty conduct is also governed by the following College policies:

- Ex: Student Rights and Responsibilities in Student Handbook(s)
<https://berkeleycollege.edu/student-rights-and-responsibilities/index.html>
- Ex: Associate Policies on HR on SharePoint
<https://berkeleycollege.edu/HRpolicy/index.html>
- Ex: Faculty Handbook
<https://berkeleycollege.edu/facultyhandbook/index.html>

Where conduct involves the potential violation of both this Policy and another College policy, the College may choose to address other potential misconduct under the procedures set forth in this Policy, provided that doing so does not impair the College's ability to provide a prompt and equitable resolution to a Complaint of Sex Discrimination.

IV. Prohibited Conduct

This Policy prohibits a broad range of behaviors, which are referred to collectively as "Prohibited Conduct." In determining whether reported conduct violates this Policy, the College will consider the totality of the facts and circumstances involved in the incident, including the nature of the reported conduct and the context in which it occurred. Prohibited Conduct can be committed by or against individuals of any sex or gender and can occur between individuals of the same sex/gender or different sexes/genders. Prohibited Conduct can occur between strangers or acquaintances, as well as persons involved in intimate, sexual, dating, domestic, or familial relationships. **Prohibited Conduct includes:**

- A. **Sex Discrimination:** An umbrella term that includes discrimination on the basis of sex, gender, sexual orientation, gender identity, sex stereotypes, sex characteristics, and pregnancy⁴ or related conditions. Sex Discrimination involves the unequal treatment of an individual - for example, granting, limiting or denying admission, opportunities, aid, benefits, or services in or to the College, the workplace, educational programs of study or academic pursuits, or College-sponsored activities - because of that individual's sex, gender, sexual orientation, gender identity, sex stereotypes, sex characteristics, and pregnancy or related conditions. Examples of discriminatory conduct may include, but are not limited to: significant changes in a person's academic or employment status, such as loss of privileges, academic probation, course failure, dismissal from a program, termination of employment, demotion, failure to promote, suspension, dismissal from the College, significant change in aid or benefits, or removal and exclusion from Berkeley College property.

Furthermore, the College shall not adopt or implement any policy, practice or procedure concerning a student's current, potential or past parental, family or marital status that treats students differently on the basis of sex.

- B. **Sex-Based Harassment:** Sex-Based Harassment includes Sexual Harassment and other harassment on the basis of sex, gender, sexual orientation, gender identity, sex stereotypes, sex characteristics, and pregnancy or related conditions that is:
- Quid Pro Quo Sex-Based Harassment;
 - Hostile Environment Sex-Based Harassment; or
 - Specific offenses, as defined below: Sexual Assault, Dating Violence, Domestic Violence, and Stalking
- C. **Quid Pro Quo Sex-Based Harassment⁵:** An associate, agent, or other person authorized by the College to provide an aid, benefit, or service under the College's Education Program or Activity explicitly or implicitly conditioning provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct.

⁴ For rules and rights under Title IX relating to pregnancy and related conditions, see <https://berkeleycollege.edu/pdf/pregnancy-policy.pdf>

⁵ This definition is intended to encompass quid pro quo harassment addressed by Title VII of the Civil Rights Act of 1964, the New York State Human Rights Law, the New York City Human Rights Law, and the New Jersey Law against Discrimination.

- D. **Hostile Environment Sex-Based Harassment**⁶: Unwelcome sex-based conduct or conduct of a sexual nature, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive⁷ that it limits or denies a person's ability to participate in or benefit from Berkeley's Education Program or Activities (i.e., creates a hostile environment).

Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

1. The degree to which the conduct affected the Complainant's ability to access Berkeley's Education Program or Activities;
2. The type, frequency, and duration of the conduct;
3. The parties' ages, roles within Berkeley's Education Program or Activities, previous interactions, and other factors about each party that may be relevant to evaluating the effects of the conduct;
4. The location of the conduct and the context in which the conduct occurred; and
5. Other Sex-Based Harassment in Berkeley's Education Program or Activities reported or otherwise known to Berkeley.

- E. **Sexual Assault**: Sexual assault is having or attempting to have sexual contact with another individual without consent or where the individual cannot consent because of age or temporary or permanent mental incapacity (see below for definition of **consent**, including **incapacitation**). Sexual contact includes:

1. sexual intercourse (anal, oral, or vaginal), including penetration with a body part (e.g., penis, finger, hand, or tongue) or an object, or requiring another to penetrate themselves with a body part or an object, however slight; or

⁶ This definition is intended to encompass sexual or gender-based harassment prohibited by Title VII of the Civil Rights Act of 1964, the New York State Human Rights Law, the New York City Human Rights Law, and the New Jersey Law against Discrimination.

⁷ Unlike Federal and NJ law, neither New York State nor New York City requires harassment to be "severe or pervasive." New York defines harassing conduct as any conduct that subjects an employee to inferior terms, conditions, or privileges of employment because of an individual's gender, or membership in any other protected category. Harassment in New York, however, does not include behaviors that a reasonable person would consider petty slights or trivial inconveniences.

2. sexual touching of the private body parts, including, but not limited to, contact with the breasts, buttocks, groin, genitals, or other intimate part of an individual's body for the purpose of sexual gratification.
3. attempts to commit sexual assault.

F. **Dating and Domestic Violence:** Dating and Domestic Violence includes any act of violence against a Complainant who is or has been involved in a sexual, dating, domestic, or other intimate relationship with the Respondent, or against a person with whom the Respondent has sought to have such a relationship, as follows:

1. **Dating Violence:** includes any act of violence committed by a person:
 - a. Who is or has been in a social relationship of a romantic or intimate nature with the Complainant; and
 - b. Where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - i. the length of the relationship;
 - ii. the type of relationship; and
 - iii. the frequency of interaction between the persons involved in the relationship.
2. **Domestic Violence:** includes any act of violence committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the Complainant under New Jersey and/or New York state law, respectively; or by any other person against an adult or minor Complainant who is protected from that person's acts under New Jersey and/or New York state law, respectively;

Dating or Domestic Violence may also include forms of Sexual Harassment under this policy, including Sexual Assault, Sexual Exploitation, and Stalking.

G. **Stalking:** Stalking occurs when a person engages in a course of conduct directed at a specific person under circumstances that would cause a reasonable person to fear for their own safety or the safety of others or suffer substantial emotional distress.

Course of conduct means two or more instances including but not limited to unwelcome acts in which an individual directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property. Substantial emotional distress means significant mental suffering or anguish.

Stalking includes the concept of 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.

- H. **Retaliation** is also prohibited under this Policy. Retaliation means any adverse action, intimidation, threat, coercion or discrimination against an individual for the purpose of interfering with any right or privilege secured by Title IX or its regulations, or because the individual has made a report or Complaint of Prohibited Conduct, testified, assisted, or participated or refused to participate in any manner in any investigation, proceeding or hearing under this Policy.

Retaliation includes such conduct through associates or agents of a Complainant, Respondent, or participant in any investigation or proceeding related to this Policy. In addition, no person covered by this Policy shall be subject to an adverse action (employment or educational) because that person provides information or testimony, or otherwise assists in an external administrative or judicial forum. Retaliation includes peer retaliation, which is retaliation by a student against another student.

- I. **Sexual Exploitation:** Sexual exploitation, which is a form of Sex Discrimination, 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.

V. **Related Definitions**

A. **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.

Minors (individuals under age 18 for purposes of this policy and consistent with New York law) are legally incapable to consent to any sexual activity with an adult; therefore, there is no such thing as consensual sexual activity between a minor and an adult member of the College community. The College strictly prohibits sexual activity of any type between adult associates and minors in connection with any of its programs or activities. Any reports or Complaints of unlawful sexual activity involving minors will be reported to appropriate law enforcement and social services agencies consistent with New York state law.

- B. **Complainant** refers to a student or associate who is alleged to be the subject of conduct that could constitute Prohibited Conduct under this Policy. A Complainant also includes a person other than a student or associate who is alleged to have been subject to conduct that could constitute Prohibited Conduct and who was participating or attempting to participate in the College's Education Program or Activity at the time of the alleged conduct.
- C. **Confidential Resource:** At Berkeley College, the only confidential resources for students are the Personal Counselors who are part of Wellness Services. Personal Counselors maintain a legally-protected privileged relationship with their patients. As stated below, Associates may also access the Employee Assistance Program (EAP) as a confidential resource.
- D. **Education Program or Activity** refers to all of the College's operations, including locations, events, or circumstances over which the College has

disciplinary authority (e.g., exercises substantial control over both the Respondent and the context in which the conduct occurs), and any building owned or controlled by a student organization that is officially recognized by the College. The College's Education Program or Activity includes its academic, extracurricular, clinical training, and other programs or activities.

- E. **Complaint** means an oral or written request that objectively can be understood as a request for the College to investigate and make a determination regarding Prohibited Conduct.
- F. **Investigator:** A neutral and objective individual who is trained to conduct a prompt, thorough, fair, reliable, and impartial investigation and, in certain cases, reach a determination as to responsibility. The Investigator may be a campus administrator or an external professional. The Investigator will be impartial and free from conflicts of interest or bias for or against Complainants or Respondents generally or for or against the Complainant or Respondent in the case under investigation.
- G. **Prohibited Conduct:** An umbrella term referencing conduct prohibited by this Policy and Title IX, including Sex Discrimination, Sex-based Harassment, Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence, Stalking, Sexual Exploitation, and Retaliation,
- H. **Relevant:** Related to the allegations of Prohibited Conduct. Questions are relevant when they seek evidence that may aid in showing whether the reported conduct occurred, and evidence is relevant when it may aid the Decision Maker in determining whether the reported conduct occurred.
- I. **Remedies:** Measures provided, as appropriate, to a Complainant or any other person the College identifies as having had their equal access to the College's Education Program or Activity limited or denied by Prohibited Conduct. These measures are provided to restore or preserve that person's access to the College's Education Program or Activity after the College determines that Prohibited Conduct occurred.
- J. **Respondent:** An individual who has been accused of Prohibited Conduct.
- K. **Responsible Employees:** All College associates, with the exception of Confidential Resources, who have information about conduct that reasonably may constitute Prohibited Conduct are, in each case, required to immediately inform the Title IX Coordinator or Deputy Title IX Coordinator.
- L. **Supportive Measures:** Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the making of a Complaint or where no Complaint has been made. Supportive measures may not unreasonably burden a Complainant or Respondent. Such measures are

designed to restore or preserve equal access to the College's Education Program or Activities, including measures designed to protect the safety of all parties or the education environment, provide support during a resolution process under this Policy, or deter Sex Discrimination. Supportive Measures may include 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 locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

VI. Considerations in Advance of Reporting

A. Understanding the Difference Between Privacy and Confidentiality

Berkeley College is committed to protecting the privacy of all individuals involved in a report of Prohibited Conduct under this policy. All associates who are involved in the College's response to Prohibited Conduct, including the Title IX Coordinator, investigators and adjudicators, receive specific training and guidance about safeguarding private information, including the protections set forth in Title IX, the Clery Act, and the Family Educational Rights and Privacy Act ("FERPA").

Privacy and **Confidentiality** have distinct meanings under this Policy.

Privacy: refers to the discretion that will be exercised by the College in the course of any investigation or disciplinary processes under this Policy. Information related to a report of Prohibited Conduct will be handled discreetly and shared with a limited circle of College associates or designees who need to know in order to assist in the assessment, investigation, and resolution of the report and related issues. The College will make reasonable efforts to investigate and address reports of Prohibited Conduct under this Policy, and information may be disclosed to participants in an investigation as necessary to facilitate the thoroughness and integrity of the investigation. In all such proceedings, the College will maintain the privacy of the parties to the extent reasonably possible.

Confidentiality: refers to the statutory protections provided to individuals who disclose information in legally-protected or privileged relationships, including College **Personal Counselors** (students) and the **Employee Assistance Program** (associates) (Confidential Resources). Information shared by an individual with a Confidential Resource, on campus or in the community, intended as a confidential communication, cannot be revealed to any other individual without express permission of the individual seeking services, unless there is an imminent threat of harm to self or others, or the conduct involves suspected abuse of a minor. When a report involves suspected abuse of a minor under the age of 18, these Confidential Resources are required by state law to notify child protective services and/or local law enforcement.

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Similarly, an individual's medical and counseling records are confidential and cannot be released without the individual's written permission or unless permitted or required consistent with ethical or legal obligations.

If you share information about Prohibited Conduct with any faculty or staff member who is not a designated Confidential Resource, that faculty or staff member will share that information with the Title IX Coordinator. Upon receiving such information, the Title IX Coordinator will offer Supportive Measures to a Complainant, inform the Complainant of the availability of Supportive Measures with or without the making of a Complaint, and explain to the Complainant the process for making a Complaint. The Title IX Coordinator will consider the Complainant's wishes with respect to Supportive Measures and seek to respect a Complainant's autonomy in making the determination regarding how to proceed.

The Complaint process does not provide for anonymity and complete confidentiality, although the principles of privacy, described above, apply throughout all processes.⁸

In limited circumstances, the College may need to initiate a Complaint. In the absence of a Complaint or the withdrawal of any or all of the allegations in a Complaint, the College will determine whether to initiate a Complaint of Sex Discrimination that complies with the grievance procedures. To make this determination, the College will undertake a fact-specific determination which will include consideration of certain factors.⁹ If, after considering these and other relevant factors, the Title IX Coordinator determines that the conduct as alleged presents an imminent and serious threat to the health or safety of the Complainant or other person, or that the conduct as alleged prevents the College from ensuring equal access on

⁸ 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>.

⁹ The College will weigh a number of factors when determining whether the Title IX Coordinator will initiate a Complaint. These factors will include, but not be limited to:

- The Complainant's request not to proceed with the initiation of a Complaint;
- The Complainant's reasonable safety concerns regarding initiation of a Complaint;
- The risk that additional acts of Sex Discrimination would occur if a Complaint is not initiated;
- The severity of the alleged Sex Discrimination, including whether the discrimination, if established, would require the removal of a Respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence;
- The age and relationship of the parties, including whether the Respondent is an employee of the College;
- The scope of the alleged Sex Discrimination, including information suggesting a pattern, ongoing Sex Discrimination, or Sex Discrimination alleged to have impacted multiple individuals;
- The availability of evidence to assist a Decision Maker in determining whether Sex Discrimination occurred; and
- Whether the College could end the alleged Sex Discrimination and prevent its recurrence without initiating its grievance procedures.

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the basis of sex to its education program or activity, the Title IX Coordinator may initiate a Complaint. In such circumstances, the reasons and steps the College will take will be explained to the Complainant.

B. Release of Information by the College

Pursuant to the Clery Act, Berkeley College must disclose statistics about Clery Act crimes in its daily crime log and Annual Security Report and provides those statistics to the U.S. Department of Education. If a report of Prohibited Conduct discloses a serious or continuing threat to the campus community, the College will issue a timely warning notification to the community to protect the health and safety of the community as required by the Clery Act (See section VII (C) below). In all of these instances, the information is reported in a manner that does not include personally identifying information about persons involved in an incident. In addition, Confidential Resources may submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client, patient or student.

The College will not release the name of the Complainant, the Respondent or witnesses to the general public except as otherwise permitted or required by law. The College will also maintain the confidentiality of any Supportive Measures provided to a Complainant, to the extent that maintaining such confidentiality would not impair the College's ability to provide the supportive measures. The College may also share non-personally identifying information about reports received in aggregate form, including data about outcomes and sanctions. All Berkeley College proceedings are conducted in compliance with the requirements of FERPA, the Clery Act (as amended by VAWA), Title IX, state and local law, and College policy.

VII. Reporting Responsibilities of College Employees

A. Confidential Resources

As described above, Confidential Resources are prohibited from sharing information unless required or permitted by law or ethical obligations. Confidential Resources on campus and in the community include: for students, Personal Counselors; and for associates, the Employee Assistance Program.

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 <https://berkeleycollege.edu/about/administration/general-counsel/title-ix/index.html> for more details and information.

Associates seeking confidential assistance may contact the Employee Assistance Program ("EAP") by calling Toll-Free 855-RSL-HELP (855-775-4357), a confidential crisis line, or

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<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.

B. All Other Employees

College faculty or staff (other than Personal Counselors) who receive reports or Complaints of Prohibited Conduct are considered “Responsible Employees” and are expected to promptly notify the Title IX Coordinator or Deputy Title IX Coordinators. The College seeks to remove barriers and foster increased reporting in order to ensure equitable access to Supportive Measures, policies, and procedures for all College community members. Centralized reporting and recordkeeping also enhances the College’s ability to identify and track patterns, trends and impacts on campus climate.

In keeping with these values, Responsible Employees must report all known information, including the identities of the parties, the date, time and location and any details about the reported incident to the Title IX Coordinator. Responsible Employees may not promise Confidentiality or withhold information about Prohibited Conduct from the Title IX Coordinator. Failure by a Responsible Employee to report suspected Prohibited Conduct in a timely manner may subject them to appropriate discipline, including removal from a position or termination of employment.

If a reporting individual discloses an incident of Prohibited Conduct to a Responsible Employee but wishes to maintain Confidentiality or does not consent to the College’s request to initiate an investigation, the Title IX Coordinator, or Deputy Title IX Coordinators, must weigh the request against the College’s obligation to provide a safe, non-discriminatory environment for all members of its community.

Neither Title IX Coordinators nor associates are obligated to attend public awareness events such as “Take Back the Night;” but if a Responsible Employee attends and learns information about Sex-Based Harassment, they are obligated to report it to the Title IX Coordinator. When the Title IX Coordinator is notified of information about conduct that reasonably may constitute Sex-Based Harassment that was provided by a person during a public event to raise awareness about Sex-Based Harassment that was held on campus or through an online platform sponsored by the College, the College is not obligated to act in response to the information, *unless* it indicates an imminent and serious threat to the health or safety of a Complainant, any students, associates, or other persons. However, in all cases the College must use this information to inform its efforts to prevent Sex-Based Harassment, including by providing tailored training to address alleged Sex-Based Harassment in a particular part of its education program or activity or at a specific location when information indicates there may be multiple incidents of Sex-Based Harassment.

C. Timely Warnings

Any College official who receives a report of Sexual Assault, Dating Violence, Domestic Violence, and Stalking (and other Clery Act-defined crimes), alleged to have occurred 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).

VIII. How to Report Prohibited Conduct

A. Emergency and/or Medical Assistance

If applicable, Complainants are encouraged to seek immediate medical treatment and preserve physical evidence following an incident of Prohibited Conduct even if they have not decided whether they wish to pursue any campus or law enforcement action. This will help to ensure that a Complainant receives proper care, preserve any available evidence, and support their opportunity to support a disciplinary or criminal action at a later time. A list of local area hospitals that can assist Complainants in preserving evidence is available at <https://berkeleycollege.edu/pdf/vawa-brochure.pdf>.

Complainants are also encouraged to contact law enforcement as soon as possible following an incident that may pose a threat to safety or physical well-being or that is potentially a criminal act under New Jersey or New York state law.

Berkeley College community members with an immediate safety concern or medical injury can call 911 or College Public Safety at (973) 200-1172.

B. Reporting Prohibited Conduct to the College

Berkeley College encourages anyone who has experienced Prohibited Conduct to report it to the College. A Complainant does not need to know whether they wish to request any particular course of action or how to label what happened. An individual who is uncertain what they wish to do in response to an alleged incident of Prohibited Conduct, including how or whether to report the conduct, may contact and consult a Confidential Resource to address questions and concerns in a confidential setting. Individuals with questions or concerns about the College's processes may also contact the Title IX Coordinator directly to learn more about resources and procedural options.

Any individual may make a report of Prohibited Conduct under this Policy regardless of affiliation with Berkeley College and regardless of whether or not the person reporting is the person alleged to be the victim of conduct. Reports can be made in person, by mail, by telephone, or by electronic mail.

Reports of Prohibited Conduct should be made to:

- Students can direct Complaints to, consult with, and/or make a report of Prohibited Conduct with, the **Deputy Title IX Coordinator for Students** as follows: LaTysha Gaines, MPA, Campus Operating Officer for Woodland Park, LaTyshaGaines@BerkeleyCollege.edu, 973-368-9857.¹⁰
- The Deputy Title IX Coordinator shall promptly inform the Title IX Coordinator of any Sex Discrimination related inquires or Complaints of which she becomes aware.
- Students may also direct Prohibited Conduct 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 – Sherrille Shabazz, Vice President, Student Development and Campus Life, who can be reached at TitleIXCoordinator@BerkeleyCollege.edu or 646-948-1361.¹¹
- 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, 862-437-8532 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.
- Associates can direct Complaints to, consult with, and/or make a report involving sexual harassment with the College’s **Deputy Title IX Coordinator for Associates:** Karen Carpentieri, VP for Human Resources, KJC@BerkeleyCollege.edu, 862-437-8532 or to the **Title IX Coordinator** for Berkeley College – who serves as the overall College coordinator for Title IX, VAWA and NY 129-B compliance – Sherrille Shabazz, Vice President, Student

¹⁰ Available before and after normal business hours at 973-368-9857.

¹¹ Available before and after normal business hours at 646-948-1361.

If you are a victim of a Sexual Assault, Domestic Violence, Dating 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.

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Development and Campus Life, who can be reached at TitleIXCoordinator@BerkeleyCollege.edu or 646-948-1361.¹²

- Students and Associates can decline to notify any such authorities or individuals.

Berkeley College recognizes that deciding whether to make a report of Prohibited Conduct is a personal decision. Making a report is different from making a Complaint. When the College receives a report of Prohibited Conduct, the College will offer Supportive Measures to a Complainant, inform the Complainant of the availability of Supportive Measures with or without the making of a Complaint, and explain to the Complainant the process for making a Complaint. The College will consider the Complainant's wishes with respect to Supportive Measures and seek to respect a Complainant's autonomy in making the determination regarding how to proceed.

The most efficient and effective way to learn about the College's resources and procedural options, access Supportive Measures, or to make a Complaint is by directly contacting the Title IX Coordinator.

C. The Title IX Coordinator

Berkeley College has appointed a Title IX Coordinator to oversee the consistent implementation of this Policy, and to ensure compliance with Title IX, its implementing regulations, and other applicable federal and state laws. The College's Title IX Coordinator is responsible for educating the College community about Title IX, applicable policies, procedures, resources, and reporting options; developing educational programming and initiatives; overseeing the College's response to reports of Prohibited Conduct and related conduct, including coordinating Supportive Measures; overseeing prompt and equitable investigations and resolutions of reports of Prohibited Conduct; and facilitating individual and community remedies. The Title IX Coordinator also maintains records of all reports, investigations, and resolutions to track and monitor patterns, trends and issues of concern. Additionally, the Title IX Coordinator shall monitor the College's Education Program or Activity for barriers to reporting Sex Discrimination and take steps reasonably calculated to address such barriers, should she discover any.

The College's Title IX Coordinator is:

Sherrille Shabazz, EdD.

Vice President, Student Development and Campus Life
Berkeley College
3 East 43rd Street
New York, NY 10017
TitleIXCoordinator@BerkeleyCollege.edu
646-948-1361

¹² Available before and after normal business hours at 646-948-1361.

Training: The Title IX Coordinator, as well as the Title IX Team (Deputy Title IX Coordinators, Investigators and Decision Makers), are trained on this Policy and the Title IX procedures, and, in particular, the definition of Prohibited Conduct, the meaning and application of the term “relevant” and the types of evidence that are impermissible regardless of relevance, the scope of the College’s Education Program or Activity, how to conduct an investigation and resolution process, including investigations, adjudications/hearings, and appeals, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

D. Time Frame for Reporting

Complainants and witnesses are encouraged to report Prohibited Conduct as soon as possible in order to maximize the College’s ability to respond promptly and effectively. There is no time limitation on sharing allegations with the Title IX Coordinator. However, the passage of time may impact or limit the College’s jurisdiction and/or the ability to investigate, respond, and impose disciplinary sanctions or provide remedies.

Depending on the relationship of the Respondent to the College, the College may not have the authority to impose disciplinary action; this may occur when a student Respondent has graduated or an associate Respondent is no longer employed by the College. If the Respondent is no longer affiliated with the College (for example, a report is made after a student has left or graduated or an associate no longer works for Berkeley College), the College will still provide reasonably available Supportive Measures to the Complainant, assist the Complainant in identifying external reporting options, and may take other appropriate action to address the reported conduct.

E. 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.

F. Obligation to Provide Truthful Information

All community members are expected to provide truthful information in any proceeding under this policy. Submitting or providing deliberately false or misleading information in bad faith or with a view to personal gain or intentional harm to another in connection with an incident of

Prohibited Conduct is prohibited and subject to disciplinary sanctions. This provision does not apply to reports made or information provided in good faith, even if the facts alleged in the report are erroneous or are not later substantiated.

IX. Supportive Measures, Interim Assistance, Emergency Removal, and Administrative Leave

A. Supportive Measures

Supportive Measures are individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a Complainant or Respondent, not for punitive or disciplinary reasons, and without fee or charge to the Complainant or Respondent to:

- (1) Restore or preserve that party's access to the College's education program or activity, including measures that are designed to protect the safety of the parties or the College's educational environment; or
- (2) Provide support during the College's grievance procedures.

Supportive Measures are available before or after the making of a Complaint or where no Complaint has been made.

Supportive Measures may include 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 locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures.

The College will consider a number of factors in determining which Supportive Measures to implement, including the needs of the student or associate seeking Supportive Measures; the severity or pervasiveness of the alleged conduct; any continuing effects on the Complainant; whether the Complainant and the Respondent share the same 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 Coordinators are responsible for ensuring the implementation of Supportive Measures and coordinating the College's response with the appropriate offices on campus. The College will maintain the privacy of any Supportive Measures provided under this Policy to the extent practicable and will promptly address any violation of the protective measures. If a Supportive Measure is implemented, including a no-contact order, both the Complainant and Respondent may request a review of the need for, and terms of, such measures, with the Title IX Coordinator or Deputy Title IX Coordinators and shall be allowed to submit evidence in support of their request.

Berkeley College will also provide reasonably available Supportive Measures for third parties, provided that the Supportive Measures are within the scope of that individual's relationship to the College.

B. 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 Title IX Coordinator, Deputy Title IX Coordinators, 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 and associates 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 emergency removal/interim suspension.

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

C. Emergency Removal

Certain circumstances may warrant removing a Respondent from a Berkeley College Educational Program or Activity. The College may remove a Respondent on an emergency basis from College property or employment, education or research programs or activities. Before imposing an emergency removal, the College will undertake an individualized safety and risk analysis and, if it determines that an immediate threat to the physical health or safety of a Complainant or any students, employees, or other persons arising from the allegations of sex discrimination justifies removal, the Respondent may be removed.

The Title IX Coordinator will promptly provide the Respondent with written notice of any removal and an opportunity to challenge the removal. During any challenge, the Respondent will remain off-campus and must comply with the notice of removal. That notice shall include a statement that the use of any information the Respondent chooses to provide may subsequently be used in implementing any aspect of this Policy, including the investigation and adjudication. The Respondent will have 72 hours to submit a written challenge to the safety and risk analysis to the Title IX Coordinator.

D. Administrative Leave

Following a report of Prohibited Conduct, the College may place an associate Respondent on administrative leave from employment responsibilities during the pendency of the grievance process, with or without pay.

X. Procedures

Upon receipt of a report of Prohibited Conduct, the Title IX Coordinator or Deputy Title IX Coordinators will engage in a preliminary inquiry to assess and understand the nature of the report, provide outreach to a Complainant, offer Supportive Measures, and determine whether this Policy applies to the report, and if so, what form of resolution is reasonably available and appropriate. Centralized outreach through the Title IX Coordinator ensures that all College community members have access to information about the College's resources, policies and procedural options for resolving the report.

For reports of Prohibited Conduct, a Complainant may elect to make a Complaint. In the absence of a Complaint, or the withdrawal of any or all of the allegations in a Complaint, the Title IX Coordinator may undertake a fact-specific determination to determine whether to initiate a Complaint. Supportive Measures are available to a Complainant regardless of whether a Complaint is made. This fact-specific determination is described above on page 11, in footnote 9.

Formal resolution includes an investigation, by a neutral and trained investigator, and an opportunity to appeal the investigator's finding(s). For complaints alleging Prohibited Conduct under this Policy, the College shall follow the Title IX Sex Discrimination, Sex-Based Harassment and Sexual Misconduct Procedures to investigate and adjudicate the matter.

XI. Student Bill of Rights

In addition to rights described elsewhere in this Policy and related procedures, all students who report incidents of Prohibited Conduct have the right to:

- Make a report to local law enforcement and/or state police;
- Have disclosures of Dating or Domestic Violence, Stalking, Sexual Assault, and other forms of Sexual Harassment treated seriously;
- Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure by the institution;
- Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
- Be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services, where available;

- Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
- Describe the incident to as few institution representatives as practicable and not be required to unnecessarily repeat a description of the incident;
- Be protected from retaliation by the institution, any student, the Complainant and/or the Respondent, and/or their friends, family and acquaintances within the jurisdiction of the institution;
- Access to at least one level of appeal of a determination;
- Be accompanied by an advisor of choice, for certain types of allegations, who may assist and advise a reporting individual, accused, or Respondent throughout the judicial or conduct process including during all meetings and hearings related to such process; and
- Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the institution.

XII. Sanctions

A person who commits a violation of this Policy will be subject to disciplinary action, up to and including dismissal or termination. The list of potential sanctions that may be imposed against a student or associate are included in the Title IX Sex Discrimination, Sex-Based Harassment and Sexual Misconduct Procedures.

XIII. Prevention and Education Programs

The College is committed to the prevention of Prohibited Conduct through regular and ongoing training and awareness programs covering the materials and definitions contained in this Policy and the processes and practices contained in the Title IX Sex Discrimination, Sex-Based Harassment and Sexual Misconduct Procedures. Incoming students and new associates receive primary training and awareness programming, and returning students and current associates receive ongoing training and related programs.

Individuals involved in the implementation of this Policy and the Title IX Procedures receive training as required by the Clery Act, Title IX and applicable state and local laws. (See “Training” on page 17 herein).

XIV. Review of Policy

The College will review this Policy on at least an annual basis. The review will capture evolving legal requirements, evaluate the supports and resources available to the parties,

If you are a victim of a Sexual Assault, Domestic Violence, Dating 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.

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and assess the effectiveness of the resolution process (including as to the fairness of the process, the time needed to complete the process, and the sanctions and remedies imposed).