

## BERKELEY COLLEGE

### Title IX Sexual Harassment and Sexual Misconduct Procedures

#### I. Introduction

Berkeley College (the "College") is committed to providing a prompt and equitable response to reports of Prohibited Conduct under the [Title IX \(and Non-Title IX\) Sexual Harassment and Sexual Misconduct Policy](#) (the "Policy"). These procedures apply to the conduct of students and associates for:

- Reports 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,
- Reports of Sexual Assault.<sup>1</sup>

All other allegations of Prohibited Conduct will be addressed through the following procedures:

- *Non-Title IX Sexual Harassment and Sexual Misconduct Procedures for Students*  
- for complaints where a student is either the Complainant or Respondent\_  
<http://berkeleycollege.edu/pdf/Non-Title-IX-Sexual-Harassment-and-Sexual-Misconduct-Procedures-for-Students.pdf>
- *Non-Title IX Sexual Harassment and Sexual Misconduct Procedures for Associates*  
- for complaints brought by an associate against an associate\_  
<http://berkeleycollege.edu/pdf/Non-Title-IX-Sex-Harass-and-Sex-Misconduct-Procedures-for-Associates.pdf>

The College encourages all individuals to report Prohibited Conduct or a potential violation of the Policy to the Title IX Coordinator, Deputy Title IX Coordinators, and/or to local law enforcement. A Complainant has the right to report, or decline to report, potential criminal conduct to law enforcement. Upon request, the College will assist a Complainant in contacting law enforcement at any time. Under limited circumstances posing a threat to health or safety of any individual or to comply with applicable law, the College may independently notify law enforcement.

The College will treat Complainants and Respondents equitably by offering Supportive Measures to a Complainant, and by following a formal resolution process that complies

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<sup>1</sup> These procedures will be followed for reports of Sexual Assault regardless of where the incident is alleged to have occurred.

with the Title IX regulations before the imposition of any disciplinary sanction against a Respondent.

Upon receipt of a report of Prohibited Conduct, the matter may be resolved through:

- Provision of Supportive Measures only;
- Pursuing a formal resolution process, which is initiated by the filing of a Formal Complaint, and involves an investigation, hearing, and appeal; or
- Dismissal of a Formal Complaint

All time frames mentioned throughout these processes are approximate, and may be extended for good cause with written notice to the parties. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; the need for language assistance or accommodation of disabilities; or other considerations that impact the timing of the investigation, hearing or appeal.

## **II. Reporting**

To make a report or file a Formal Complaint alleging conduct prohibited by the College's Policy, an individual may contact any of the following officials:

**Sherrille Shabazz, EdD.**

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

**LaTysha Gaines**

Campus Operating Officer for Woodland Park Deputy Title IX Coordinator for  
Students  
[LaTysha-Gaines@BerkeleyCollege.edu](mailto:LaTysha-Gaines@BerkeleyCollege.edu)  
973-368-9857

**Karen Carpentieri**

Vice President for Human Resources and Deputy Title IX Coordinator for  
Associates  
[kjc@BerkeleyCollege.edu](mailto:kjc@BerkeleyCollege.edu)  
646-948-1361

To file a criminal complaint, an individual should contact the Public Safety Department at (973) 200-1172, or contact the Police Department at 911 (in an emergency).

The College responds to reports of Prohibited Conduct with sensitivity and care and attempts to maintain privacy throughout the investigatory process, to the extent practicable and appropriate under the circumstances. However, in order to conduct an investigation, it is generally necessary to discuss the allegations with the person(s) responding to the allegations and other witnesses. Additionally, the College may have legal obligations to disclose information to law enforcement or in the context of legal proceedings.

### **III. Coordination with Law Enforcement**

The College's overarching goal is to ensure that all Formal Complaints are investigated and adjudicated in a prompt, fair, and impartial manner. Where a criminal investigation is initiated by law enforcement, the College will take reasonable steps to coordinate its investigation with law enforcement authorities and will endeavor to have the College's investigation/proceeding run concurrently with any criminal justice investigation and proceeding. In limited circumstances, the College may delay the start of its investigation in order to avoid interfering with an ongoing investigation by law enforcement officers. Temporary delays should not last more than ten days except unless law enforcement specifically requests and justifies a longer delay. The College will not, however, wait for the conclusion of a criminal proceeding to begin its own investigation and, as appropriate, will take immediate steps to provide Supportive Measures for the Complainant.

### **IV. Intake and Outreach**

Upon receipt of a report from a Complainant, Responsible Employee, or other individual, the Title IX Coordinator (or designee) will promptly – typically within 72 hours – contact the reporting individual to request a meeting to gather supplemental information (if any) and explain the College's processes. If the reporting individual is a potential Complainant (the individual who is reported to have experienced Prohibited Conduct), the outreach will also cover reasonably available Supportive Measures (available with or without filing a Formal Complaint), the process for filing a Formal Complaint, the Complainant's right to report the alleged conduct to law enforcement, the difference between Privacy and Confidentiality, and the right to be protected from Retaliation.

In addition to the initial conversation and any subsequent meeting with the Complainant, the College will provide the Complainant with written information about resources, procedural options, including local law enforcement resources as applicable and reasonably available Supportive Measures. As part of the Intake and Outreach, the Title IX Coordinator will:

- Promptly contact the Complainant to discuss the availability of Supportive Measures;
- Consider the Complainant's wishes with respect to Supportive Measures;

- Assess the nature and circumstances of the report;
- Address immediate physical safety and emotional well-being of the Complainant or other campus community members;
- Discuss the Complainant's expressed preference for manner of resolution and any barriers to proceeding;
- Discuss the differences between confidentiality and privacy;
- Notify the Complainant of the right to contact or decline to contact campus security, local law enforcement, and/or state police, and if requested, assist them with notifying law enforcement;
- Explain to the Complainant the differences between the campus process and law enforcement process;
- Notify the Complainant of the availability of counseling and medical services including free and fee-based services on and off-campus to address physical and mental health concerns and to preserve evidence, including the option to obtain a sexual assault forensic exam;
- Notify the Complainant of the importance of preserving evidence;
- Ensure that the report is routed to the appropriate person(s) so that it may be entered into the College's Daily Crime Log, if required by the Clery Act;
- Ensure that the report is routed to the appropriate person(s) who will assess the need for a Timely Warning under the Clery Act;
- Provide the Complainant with information about on- and off-campus resources;
- Provide the Complainant with a copy of the Policy and these procedures and an explanation of the procedural options, including seeking Supportive Measures and the process for filing a Formal Complaint;
- Inform the Complainant that they may seek an advisor of their choosing to assist them throughout the investigation and resolution of the report, that the advisor may accompany them to any meeting or proceeding under this process, and that the College will provide an advisor, without fee or charge, to conduct questioning on behalf of the party at the hearing if they do not have an advisor;
- Assess for evidence of a pattern or other similar conduct by the Respondent;
- Explain the College's prohibition against Retaliation; and
- Explain the Complainant's right to withdraw a complaint or cease involvement from Berkeley College's process at any time.

Complainants have the right to disclose to Berkeley College representatives, who may offer confidentiality pursuant to applicable laws. Even Berkeley College representatives who cannot guarantee confidentiality will maintain Complainants' privacy to the greatest extent possible. The information a Complainant provides to a nonconfidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution. If the Respondent is an employee, Complainants have the right to disclose the incident to Berkeley College Human Resources and may seek assistance from a confidential or private employee in reporting to Berkeley College Human Resources. Complainants also have the right to disclose confidentially and to obtain information from the state or local government. Complainants have the right to receive assistance from Berkeley College representatives in initiating legal proceedings in family court or civil court.

Complainants have the right to have emergency access to a Title IX Coordinator or other official trained in interviewing victims of sexual assault. The Title IX Coordinator or other official will be available at first disclosure to provide information about reporting options, resources including counseling and medical services, confidentiality, privacy, the differences between the campus and law enforcement processes, and – as applicable – obtaining a sexual assault forensic exam, STIs and related medical care, and resources through the New York State Office of Victim Services.

## **V. Supportive Measures**

Upon receipt of a report of Prohibited Conduct, regardless of whether a Complainant chooses to pursue a Formal Complaint, the Title IX Coordinator will provide Supportive Measures, as reasonable, available, and appropriate. Respondents are also eligible for Supportive Measures as reasonable, available, and appropriate.

Supportive Measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to a Complainant or Respondent, before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to Berkeley College's Education Program or Activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the campus community, or deter Prohibited Conduct. 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 (also known as no-contact orders), changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. Additional relief such as protective orders may be available through the criminal and/or family court process.

Individuals may contact the Title IX Coordinator at 973-278-5400 ext. 1391, or [TitleIXCoordinator@BerkeleyCollege.edu](mailto:TitleIXCoordinator@BerkeleyCollege.edu), to discuss or request Supportive Measures. The College will maintain as confidential any Supportive Measures provided to a Complainant or Respondent, to the extent that maintaining such confidentiality would not

impair the ability of the College to provide the Supportive Measures.

The Title IX Coordinator or Deputy Title IX Coordinators will document each report or request for assistance, including requests for Supportive Measures, as well as the response to any such report or request.

## **VI. Emergency Removal and Administrative Leave**

### **A. Emergency Removal**

Certain circumstances may warrant removing a student Respondent from a Berkeley College Educational Program or Activity. The College may remove a student 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 analysis of safety and risk for the campus community to determine whether the Respondent's presence in the program or activity poses an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Prohibited Conduct and justifies removal of the Respondent from the College program or activity.

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.

### **B. Administrative Leave**

Following a report of Prohibited Conduct, the College may place a non-student employee Respondent on administrative leave, with or without pay.

## **VII. Preliminary Inquiry**

Upon receipt of a report of Prohibited Conduct, the Title IX Coordinator (or a designee) will conduct a preliminary inquiry of the facts to determine whether the College must take any other action, beyond those described in the Intake and Outreach and Supportive Measures sections above, in response to the reported conduct, including whether the Title IX Coordinator must initiate a Formal Complaint and investigation. The Title IX Coordinator will first determine whether the reported conduct falls within the scope and jurisdiction of the Policy, and more specifically, within the jurisdiction of the Title IX regulations.

Based on reasonably available information at the time of intake, the Title IX Coordinator's inquiry will include assessing whether:

1. The reported conduct occurred within a Berkeley College Education Program or Activity, which requires:
  - a. The College to have substantial control over the Respondent; and
  - b. The College to have substantial control over the context in which the conduct is reported to have occurred; or
  - c. The conduct occurred in a building owned or controlled by a student organization that is officially recognized by the College;
2. The reported conduct occurred in the United States; and,
3. The facts set forth by the report, if substantiated, would constitute a violation of Title IX Sexual Harassment, Dating Violence, Domestic Violence, and/or Stalking, as defined in the Policy.

Based on the answers to these questions, the Title IX Coordinator will make a determination about the procedures to be followed. This is a threshold determination regarding scope and jurisdiction, which will determine appropriate next steps as follows:

Where the answer to the above three questions is yes, and a Formal Complaint is filed, the College will follow the formal resolution process required by the Title IX regulations (the investigation will be followed by a live hearing with cross-examination, and an opportunity to appeal the finding of the decisionmaker).

Where the facts set forth in the report would constitute Sexual Assault, regardless of where the incident is alleged to have occurred, the College will follow the formal resolution process required by the Title IX regulations (the investigation will be followed by a live hearing with cross-examination, and an opportunity to appeal the finding of the decision maker).

Where the answer to any of these three questions is no, the College will dismiss the allegations in the Formal Complaint related to Sexual Harassment as defined in the Title IX regulations. If there are additional allegations of Prohibited Conduct in the Formal Complaint and those remaining allegations do not include Sexual Assault, the College will proceed with a formal resolution process for any other allegations that, if true, may constitute Prohibited Conduct outside of the Title IX regulations:

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

- for complaints where a student is either the Complainant or Respondent\_  
<http://berkeleycollege.edu/pdf/Non-Title-IX-Sexual-Harassment-and-Sexual-Misconduct-Procedures-for-Students.pdf>

*Non-Title IX Sexual Harassment and Sexual Misconduct Procedures for Associates*

- for complaints brought by an associate against an associate\_  
<http://berkeleycollege.edu/pdf/Non-Title-IX-Sex-Harass-and-Sex-Misconduct-Procedures-for-Associates.pdf>

In some instances, the College may not have jurisdiction under Title IX or the Policy to pursue the report, either because the conduct did not occur in a Berkeley College Education Program or Activity, or because the conduct, even if substantiated, would not constitute a violation of any form of Prohibited Conduct under the Policy. As noted in the Policy, under limited circumstances, the College may still investigate and resolve reports of conduct that occurred outside of the Education Program or Activity which have continuing adverse effects on any College subject to the scope and jurisdiction considerations listed above.

### **VIII. Formal Complaint**

The formal resolution process (investigation, hearing and appeal process) is initiated by the filing of a Formal Complaint. A Formal Complaint is a document submitted to the Title IX Coordinator by the Complainant alleging that a Respondent engaged in Prohibited Conduct and requesting an investigation. The Formal Complaint may be submitted to the Title IX Coordinator in person, by mail, or by electronic mail. The Complainant may also contact the Title IX Coordinator directly for assistance. The Title IX Coordinator also has the discretion to file a Formal Complaint on behalf of the College.

The College endeavors to respect the wishes of a Complainant to not pursue a Formal Complaint, to not be identified and/or to not participate in the process. Where possible, the College attempts to address complaints in accordance with the Complainant's wishes. However, the College may not always be able to do so. The College may be limited in its ability to address incidents of Prohibited Conduct without full participation by a Complainant.

In evaluating the appropriate manner of resolution, including whether the Title IX Coordinator will file a Formal Complaint in the absence of a Formal Complaint by the Complainant, the Title IX Coordinator will consider the following factors:

- The nature of the reported conduct;
- Whether the Respondent has a history of violent behavior or there have been other complaints or reports of harassment, misconduct or prohibited conduct against the Respondent;
- Whether the incident represents potential escalating behavior on the part of the Respondent;
- Whether the circumstances suggest there is an increased risk of the Respondent committing additional acts of sexual violence or other violence, including but not limited to reported threats of sexual violence or other violence by the Respondent



against the Complainant or others;

- Whether the Respondent is reported to have used a weapon, force, threats or coercion;
- Whether the Respondent is reported to have intentionally drugged or caused the incapacitation of another as a means of committing the conduct;
- Whether the conduct was reportedly committed by multiple individuals;
- Whether the Complainant is a minor;
- Whether the Respondent is an associate; and
- Whether the College possesses other competent means to obtain relevant evidence.

In order to protect the community, the College may be obligated to investigate and adjudicate serious incidents even when the Complainant asks that the College not investigate or otherwise address the matter. A Complainant may withdraw a Formal Complaint at any time, but the College may be compelled to continue the associated investigation or conduct process. The College reserves the right to take action in response to any incident that comes to its attention. The assessment of whether a Formal Complaint must be initiated will typically be concluded within 15 business days.

The College may consolidate Formal Complaints against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of Prohibited Conduct arise out of the same facts or circumstances.

## **IX. Dismissal of Formal Complaint**

The Title IX Coordinator will determine whether the conduct alleged in the Formal Complaint falls within the scope of the Policy and the definitions of Prohibited Conduct. The Title IX regulations require the Title IX Coordinator to notify the parties in writing that the College is dismissing some or all of the allegations in the Formal Complaint related to Title IX Sexual Harassment as defined by the Title IX regulations if: 1) the conduct alleged, even if substantiated, would not constitute Title IX Sexual Harassment as defined in the Title IX regulations; 2) the conduct did not occur within a Berkeley College Education Program or Activity; or, 3) the conduct did not occur against a person in the United States. This means that the College may be required by law to dismiss some or all of the allegations in the Formal Complaint under Title IX and provide a Complainant the opportunity to appeal that dismissal.

However, where the allegations in the Formal Complaint include other forms of Prohibited Conduct, the conduct occurs outside of the United States, or the conduct is not within the Education Program or Activity (but still within the scope of conduct regulated by the College), the College may still investigate and resolve the remaining allegations under

one of the disciplinary processes described in Section I above.

In addition to mandatory dismissal, the Title IX Coordinator may dismiss the Formal Complaint or any allegations therein if: 1) the Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any allegation therein; 2) the Respondent is no longer enrolled or employed by the College; or 3) specific circumstances prevent the College from gathering sufficient evidence to reach a determination on the merits.

The decision about whether to dismiss a Formal Complaint, in whole or in part, may be made at any time in the process and will be communicated to all parties in writing. Either party may appeal the decision to dismiss the Formal Complaint.

## **X. Advisors**

Complainants and Respondents are entitled to be accompanied and assisted by an advisor of their choice throughout all phases of the process, including at interviews, other meetings, or hearings. There is no requirement that the advisor be an individual from Berkeley College. Advisors, including attorneys, may not participate in the process or speak on behalf of the Complainant or Respondent, although advisors are permitted to question the other party and witnesses at a live hearing under the process. In addition, advisors may ask to suspend any meetings, interviews, or hearings briefly to consult with the party they are advising. The College retains the discretion to deny advisors' requests to suspend meetings, interviews, or hearings if such requests are excessive, burdensome, or otherwise unreasonable. Complainants and Respondents may choose to have an attorney serve as their advisor, but adjustments to the process, including scheduling of interviews or hearings, will not be made for any advisors, including attorneys, if they unduly delay the process. If a Complainant or Respondent does not have an advisor present at a live hearing (*see Section XI.B.7 below for more information on live hearings*), the College will provide an advisor free of charge to the party for the sole purpose of facilitating questioning on the party's behalf of other parties and witnesses.

## **XI. Processes for Formal Resolution**

### **A. Standard of Evidence**

In all stages of the process, Berkeley College will apply the preponderance of the evidence standard (i.e., more likely than not) when determining whether the Policy has been violated.

### **B. Formal Resolution Process**

A formal resolution process will occur when (a) a report of a violation of the Policy is made and the Complainant files a Formal Complaint; or (b) the Title IX Coordinator files a Formal Complaint after making the determination that a formal resolution process is necessary.

## **1. Investigation**

### **a. Expectations for the Parties**

During the investigation and resolution process, both the Complainant and Respondent have equal rights, including:

- The opportunity to receive a written notice of the investigation;
- The right to a reasonably prompt response to any complaint, and to have the complaint investigated and adjudicated in an impartial, timely and through manner by individuals who have no conflicts of interest and who receive pertinent annual training;
- To present information and evidence, including fact and expert witnesses, and other inculpatory and exculpatory evidence, insuring that credibility determinations shall not be based on a person's status as a Complainant, Respondent, or witness;
- To be accompanied by an advisor of their choice to any meeting;
- To timely and equal access to all information gathered that is directly related to the allegations in the Formal Complaint, as well as the information contained in the investigation report that will be used in disciplinary proceedings;
- To notice of the hearing, and to question the other party and witnesses during the hearing, through the party's advisor; and,
- To simultaneous written notice of the outcome, sanction, and rationale; and to appeal the outcome.

### **b. Notice of Investigation**

The Title IX Coordinator (or designee) will provide written notice of the Formal Complaint to all known parties. The written notice will include, at a minimum, (a) a link to, or copy of, these procedures; (b) details regarding the identities of the parties, date, time and location, and nature of the reported conduct; (c) the potential policy violations; (d) the name of the investigator(s); (e) how to challenge participation by the investigator(s) on the basis of conflict of interest or bias; (f) a statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the Formal Complaint process; (g) the parties' rights to be accompanied by an advisor of their choice throughout the process (*see section X on Advisors above*); (h) the importance of preserving any potentially relevant evidence; (i) information about the parties' rights and responsibilities; and (j) prohibition against making false statements during the process.

If the investigation reveals the existence of additional potential policy violations, the College will issue a supplemental notice of investigation. This initial notice, and any

supplemental notices, will be provided to the intended recipient in advance of any interview or meeting with investigators to allow the party sufficient time to prepare a response.

**c. Overview of Investigation**

The Title IX Coordinator will assign an investigator(s) ("Title IX Investigator(s)") to complete a fact finding investigation of the Formal Complaint. The Title IX Investigator(s) may be a Berkeley College associate or an external professional. The Title IX Coordinator will ensure that the Title IX Investigator(s) has the appropriate training and experience and is free of a conflict of interest or bias for or against either party. The name of the Title IX Investigator(s) will be provided to the parties in the notice of investigation and the parties will be allowed to challenge the appointment of an investigator on the basis of conflict of interest or bias. The Title IX Coordinator will also ensure that the Title IX Investigator(s) has received training on the definition of Prohibited Conduct, including Sexual Harassment, the scope of the College's Education Program or Activity, how to conduct an investigation, how to serve impartially, conflicts of interest and bias, and issues of relevance to create an investigative report that fairly summarizes the relevant evidence.

**d. Gathering Information**

During an investigation, the investigator will seek to meet separately with the Complainant, Respondent, and relevant witnesses. The Title IX Investigator(s) will send written notice of the interview date, time, and location, name of participant(s) and purpose of the interview to the parties and witnesses, in sufficient time for the party to prepare and participate. The Title IX Investigator(s) will also gather other relevant information or evidence, including documents, photographs, communications between the parties, and medical records (subject to the consent of the applicable person), and other electronic records as appropriate. The Title IX Investigator(s) will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege. If a person voluntarily chooses to share medical or counseling records with the Title IX Investigator(s), they must sign a written consent that acknowledges that relevant information from the medical or counseling records must be shared with the other party to ensure the other party has notice of that information and an opportunity to respond. At the conclusion of the investigation, the Complainant and the Respondent will both have the opportunity to review and respond to all information gathered in the investigation that is directly related to the allegations, including information shared by the Complainant or the Respondent during their interviews or through evidence either provides.

The Title IX Investigator(s) may visit relevant sites or locations and record observations through written, photographic, or other means. In some cases, the Title IX Investigator(s) may consult medical, forensic, technological, or other experts when expertise on a topic is needed in order to achieve a fuller understanding of the issues under investigation.

The Title IX Investigator(s) may also consider information publicly available from social

media or other online sources that comes to the attention of the investigator. The Title IX Office does not actively monitor social media or online sources, however, and as with all potentially relevant information, the Complainant, Respondent, or witness should bring online information to the attention of the investigator.

The Title IX Investigator(s) will seek to complete the fact gathering stage of the investigation within 45 business days of the issuance of the notice of investigation. As detailed later in this process, The Title IX Coordinator and the Title IX Investigator(s) may grant temporary delays of the investigation or the limited extension of time frames for good cause with written notice to the Complainant and the Respondent of the delay or extension and the reasons for the action.

#### **e. Witnesses**

Both the Complainant and Respondent have the option to provide names of potential witnesses to the Title IX Investigator(s). Witnesses are individuals who may have information relevant to the incident, including individuals who may have observed the acts in question, may be able to provide contextual information, or may have other information related to the incident, the disclosure, or related matters.

Witnesses may also be offered to provide subject matter expert information. If either party wishes to provide expert testimony or evidence, they are solely responsible for securing attendance of any expert witness at a hearing, and for the costs or fees associated with any expert report or testimony. If the *College* (i.e. the Decision Maker) determines that expert witness testimony is necessary, then the College would secure attendance and be responsible for costs.

Where witnesses are interviewed as part of the investigation, the name of the witness and the information gathered in the interviews will be shared with the parties at the conclusion of the investigation. The Title IX Investigator(s) has the discretion to determine which of those potential witnesses, or other persons, may have information directly related to the alleged conduct.

#### **f. Additional Evidence**

Both the Complainant and the Respondent are permitted to provide other evidence directly related to the allegations to the Title IX Investigator(s). Evidence may be inculpatory or exculpatory. Evidence includes any facts or information presented in support of an assertion and may include text messages, email exchanges, timelines, receipts, photographs, etc. Any documentation shared by the Complainant or the Respondent with the Title IX Investigator(s) will be provided to the other party. The Title IX Investigator(s) may also consider additional documents, items or other relevant information.

During the course of the investigation, the parties should bring any new or evolving evidence, such as harassing or retaliatory conduct, to the attention of the Title IX Investigator(s). The Title IX Investigator(s) may consider such information in the

investigation and will also share any information about retaliation or violation of the terms of a Supportive Measure with the Title IX Coordinator for further action.

### **g. Relevance and Evidentiary Considerations**

The College will not restrict the ability of either party to gather and present relevant evidence. Evidence is relevant if it makes a material fact more or less probable than it would be without the evidence. In general, during the investigation phase, the Title IX Investigator(s) has the discretion to determine the relevance and probative value of information proffered or received. At the live hearing, as further described below, the Decision Maker has the discretion to determine whether questions posed by the party's advisor are relevant, and only relevant questions may be asked of parties or witnesses at the hearing.

In addition, the Title IX Investigator(s) and Decision Maker(s) will be guided by the following evidentiary considerations:

***Prior or Subsequent Conduct of the Respondent:*** Prior or subsequent conduct of the Respondent may be considered in determining pattern, knowledge, intent, motive, or absence of mistake. For example, evidence of a pattern of Prohibited Conduct by the Respondent, either before or after the incident in question, regardless of whether there has been a prior finding of a Policy violation, may be deemed relevant to the determination of responsibility for the Prohibited Conduct under investigation. The determination of relevance of pattern evidence will be based on an assessment of whether the previous or subsequent conduct was substantially similar to the conduct under investigation or indicates a pattern of similar Prohibited Conduct so distinctive and so closely resembling either party's account of the encounter as to tend to prove a material fact may be considered. The Title IX Investigator(s) will determine the relevance of this information and both parties will be informed if evidence of prior or subsequent conduct is deemed relevant.

***Prior Sexual History of the Complainant:*** Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are: 1) offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant; or, 2) the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent. As set forth in the College's definition of consent, however, previous relationships or prior consent cannot imply consent to future sexual acts. The Title IX Investigator(s), in consultation with the Title IX Coordinator, will assess whether information related to prior sexual history makes a material fact in the investigation more or less likely. Where a sufficient informational foundation exists for the inclusion of prior sexual history, the Title IX Investigator(s) will provide notice to both parties of the scope of any inclusion of such information in the investigative report. The

parties will have a full and fair opportunity to respond to the information included in the investigative report.

***Medical or Counseling Records:*** The Title IX Investigator(s) will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege. If a person voluntarily chooses to share medical or counseling records with the Title IX Investigator(s), they must sign a written consent that acknowledges that relevant information from the medical or counseling records must be shared with the other party to ensure the other party has notice of that information and an opportunity to respond. At the conclusion of the investigation, the Complainant and the Respondent will both have the opportunity to review and respond to all information gathered in the investigation that is directly related to the allegations, including information shared by the Complainant or the Respondent during their interviews or through evidence either provides.

#### **h. Acceptance of Responsibility**

At any point during the investigation, the Respondent may elect to accept responsibility for some or all of the Policy violations at issue. Where there is an acceptance of responsibility as to some but not all of the charges, the investigation will continue to conclusion. Where there is an acceptance of responsibility as to all of the potential Policy violations, the Title IX Investigator(s) will complete an investigation report of all information gathered to date and refer the matter to the Decision Maker for sanctioning as described below.

### **2. Review of Information Gathered**

Prior to completion of the investigative report, the College shall make information gathered in the investigation available for review by the parties and their advisors. The parties will have an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a Formal Complaint, including the evidence upon which the College does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence, whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. The College will send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have 10 business days to submit a written response, which the Title IX Investigator(s) will consider prior to completion of the investigative report.

In the written submission, the parties may offer additional comment or feedback on the facts as gathered, clarify information previously shared, suggest additional witnesses, suggest additional lines of questioning or inquiry, or identify any other relevant information or evidence to assure the thoroughness, sufficiency and reliability of the investigation.

The College shall make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

### **3. Investigation Report**

The Title IX Investigator(s) will produce a written investigation report that fairly summarizes the relevant information and facts gathered during the investigation and may include direct observations and reasonable inferences drawn from the facts and discussion of any consistencies or inconsistencies between the various sources of information.

As stated above, the Title IX Investigator(s) has the discretion to determine the relevance of any witness or other evidence and shall exclude information in preparing the investigation report if the information is irrelevant, immaterial, or more prejudicial than informative. Evidence pertaining to the mental health of either party is not relevant to the determination of responsibility.

The investigation report will be a fair and thorough summary of all relevant information gathered that is inculpatory or exculpatory the accounts of the Complainant, the Respondent or other witnesses. The investigation report will be sent to each party and their advisors in an electronic format or a hard copy, for their review and written response. If a party disagrees with the Title IX Investigator(s)'s determinations about relevance, the party can make that argument in the party's written response to the investigative report and to the decision-maker at any hearing held.

### **4. Jurisdictional Assessment**

At the conclusion of the investigation, the Title IX Investigator(s) will determine whether the matter qualifies for a live hearing. This determination will be included in the investigation report. The matter will proceed to a live hearing if the Title IX Investigator(s) determines either:

- The conduct alleged in the Formal Complaint, taken as true, constitutes Title IX Sexual Harassment, Dating Violence, Domestic Violence, and/or Stalking, is alleged to have been committed against a person in the United States **and** within the Berkeley College Education Program or Activity; or,
- The conduct alleged in the Formal Complaint, taken as true, constitutes Sexual Assault.

The Title IX Investigator(s) determination following the investigation is not a determination of responsibility, nor does it involve a determination about the credibility of the information gathered; those decisions are reserved for the Decision Maker. Rather, this evaluation accepts all facts as presented by the Complainant as true in order to determine the procedures for adjudication and, if appropriate, the potential Policy violations that will be the subject of the hearing.



Based on the determination by the Title IX Investigator(s) in the investigative report, the Title IX Coordinator must dismiss some or all of the allegations in the Formal Complaint if: 1) the conduct alleged, even if substantiated, would not constitute Title IX Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence, or Stalking, as defined in the Policy; 2) the conduct did not occur within a Berkeley College Education Program or Activity; or, 3) the conduct did not occur against a person in the United States.

If the Title IX Coordinator dismisses the Formal Complaint with respect to Title IX Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence, or Stalking, the Title IX Coordinator may determine that sufficient cause exists to move forward with the resolution of the remaining allegations if those allegations, if true, would constitute Prohibited Conduct outside the jurisdiction and scope described in the Title IX regulations. The Title IX Coordinator will provide the investigative report, along with a written notice of hearing, to the parties, their advisors, and the Decision Maker, in an electronic format or a hard copy ten days prior to the scheduled hearing. The Complainant and Respondent are provided the opportunity, in writing, to offer any additional comment or feedback with respect to the facts or the Title IX Investigator(s)' determinations about scope or jurisdiction.

## **5. Notice of Hearing**

The Title IX Coordinator or designee will provide the Complainant and Respondent with a written notice of hearing. The notice of hearing will include: the specific Policy violations that will be the subject of the hearing; the date, time, and location of the hearing; the name of the Decision Maker; how to challenge participation by the Decision Maker on the basis of conflict of interest or bias; the right to have an advisor present at the hearing to conduct cross-examination on the party's behalf; that the College will provide an advisor, without fee or charge, to conduct cross-examination on behalf of the party at the hearing if the party does not have an advisor present for the hearing; and how to request that witnesses be present at the hearing.

If some or all of the allegations in the Formal Complaint have been dismissed, the parties will receive written information about how to appeal the dismissal of the Formal Complaint.

## **6. Impact and Mitigation Statements**

The Complainant may submit a written statement describing the impact of the Prohibited Conduct on the Complainant and expressing a preference about the sanction(s) to be imposed. The Respondent may submit a written statement explaining any factors that the Respondent believes should mitigate or otherwise be considered in determining the sanctions(s) imposed. The Title IX Coordinator will provide any statement(s) to the Decision Maker, which will only be considered if there is a finding of responsibility. Each party has the opportunity to view the other party's statement.

## **7. Hearing**

Hearings will be conducted either in-person or virtually with technology that enables the Decision Maker and parties to simultaneously see and hear the party and witnesses

speaking. The College will provide for the live hearing to occur with the parties located in separate rooms with technology enabling the Decision Maker and the parties and their advisors to simultaneously see and hear the party or the witness answering questions.

The Decision Maker may be a Berkeley College associate or an external professional, as determined at the sole discretion of the Title IX Coordinator. Any Decision Maker will be free from conflicts of interest and bias for or against either party, and trained on the definition of Prohibited Conduct, including Sexual Harassment, the scope of the College's Education Program or Activity, how to conduct a hearing, how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. Decision Makers will also be trained on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant.

Hearings will generally consist of the following steps, allowing the parties equal opportunities at each stage: (a) introductions; (b) review of procedural rules; (c) presentation of information and witnesses by parties; (d) the advisor for each party will ask the other party and any witnesses all relevant questions and follow-up questions, including those assessing credibility; and (e) closing remarks.

All parties and witnesses will be invited to speak at the hearing, but no party or witness is required to attend the hearing. If a party or witness declines to attend a hearing, or attends but declines to submit to questioning by the other party's advisor, the Decision Maker may rely on any other statements of that party or witness in reaching a determination regarding responsibility. The Decision Maker will not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or declination to answer cross-examination or other questions.

Traditional civil or criminal court rules of evidence do not apply. The Decision Maker will determine the relevance of questions asked by the parties, and preclude questions that seek irrelevant information. As noted above in Section XI.B.1.g. related to Investigations, questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

At their sole discretion, the Decision Maker may rely upon the investigative report, the parties' responses to the report, and any supplemental reports, for their understanding of the relevant facts, or they may conduct additional witness interviews and/or gather additional information. The Decision Maker may also invite the investigator to participate as a witness at the hearing.

Each party's advisor may ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally. Only relevant cross-examination and other

questions may be asked of a party or witness. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the Decision Maker must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. If a party does not have an advisor present at the live hearing, the College will provide without fee or charge to that party, an advisor of the College's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.

The hearing will be recorded. Recordings will not include deliberations.

## **8. Written Decision Letter**

The Title IX Coordinator shall provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the College provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. The written determination must include:

- Identification of the allegations potentially constituting sexual harassment as defined in this Policy;
- A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the College's Policy to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the College imposes on the respondent, and whether remedies designed to restore or preserve equal access to the College's education program or activity will be provided by the College to the complainant; and,
- The College's appeal procedures and permissible bases for the complainant and respondent to appeal.

## **9. Sanctions**

Sanctions imposed by the institution following a Title IX sexual harassment hearing 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.

## **10. Appeal**

Any party may appeal the determination of the Decision Maker, or the dismissal of a Formal Complaint or any allegations therein (as stated in Sections XI.B.8. and VII above), 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 their 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 will only be overturned or modified on appeal on the following bases (i) a procedural irregularity that affected the outcome of the matter; (ii) new evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; or (iii) The Title IX Coordinator, Title IX Investigator(s), or Decision-Maker had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent that affected the outcome of the matter

In each instance, the College will convene a panel of not less than three (3) appropriately trained 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, and the rationale for the result, simultaneously in writing.

## **XII. Record Keeping and Transcript Notations**

The College will maintain records related to reports or complaints of Prohibited Conduct for a period of seven years. Such records may include, without limitation, investigation reports and evidence, hearing records, disciplinary decisions or communications, appeals, requests for and provision of Supportive Measures, and other records demonstrating actions the College took to respond to the reported conduct. The College will also maintain training records for the same period of time. The records will be kept private to the extent required or permitted by law.

If a student Respondent is found responsible for violence-related conduct as defined by the Clery Act (including Sexual Assault, Dating or Domestic Violence, or Stalking) and they are suspended or dismissed as a result, the College will place the following notations on their academic transcripts:

- In cases of suspension – “suspended after a finding of responsibility for a code of conduct violation.”

- In cases of dismissal – “dismissed after a finding of responsibility for code of conduct violation.”

If a student who has alleged to have been involved in an incident involving violence-related violations withdraws from the College with an investigation or conduct case pending, the following notation will be listed on their College transcript: “withdrew with conduct charges pending.”

Students found responsible for other forms of Prohibited Conduct, and who are suspended or dismissed as a result, will have the following notation listed on their transcript: “Administrative Withdrawal – College Initiated”.

Students who have been suspended who would like to appeal the suspension notation on their transcript may do so one year after the conclusion of the suspension by contacting the Title IX Coordinator. If their appeal is successful, the notation will be revised to read “Administrative Withdrawal – College Initiated.” Notations for dismissal will not be revised or removed.

### **XIII. Training and Conflict/Bias Prevention**

The Title IX Coordinator, Title IX Investigators and Decision Makers, will receive annual training on: (a) the definition of Prohibited Conduct, including Sexual Harassment; (b) the scope of the College’s Education Program or Activity; (c) how to conduct an investigation and grievance process including hearings, and appeals; (d) how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias; (e) the presumption of “not responsible” until any appropriate process concludes; and, (f) how to conduct an investigation and hearing process that protects the safety of complainants and promotes accountability.

Decision Makers will receive additional training on: (a) any technology to be used at a live hearing; (b) how to determine relevance for cross-examination questions and other evidence, including when questions and evidence about the parties’ sexual predisposition or prior sexual behavior are not relevant.

Title IX Investigators will receive additional training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

Any materials used to train the Title IX Coordinator, Title IX Investigators, and Decision Makers, will not rely on sex stereotypes and will promote impartial investigations and adjudications of Formal Complaints of Prohibited Conduct. The College will publish on its website training materials used for seven years.

The College also provides prevention and awareness programs for students, faculty, and staff to prevent Prohibited Conduct and promote a learning and working environment free from discrimination or harassment.

Throughout any Formal Resolution process described above, the College will take steps

to reasonably ensure the Title IX Coordinator, Title IX Investigator(s), and Decision Makers, do not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.