

BERKELEY COLLEGE

Equal Opportunity Policy and Procedures

Purpose

Recognizing that its diversity greatly enhances the workplace and opportunities for learning, Berkeley College is firmly committed to providing a working, learning and living environment that is free from unlawful discrimination, harassment and retaliation, and strives to afford fair and equitable treatment and equal access to all members of the College community, regardless of their membership in any legally protected class. The purpose of this Policy is to prohibit discrimination and harassment based on a person's protected class and to prohibit retaliation for reporting or participating in the investigation of alleged violations of this Policy or in any related proceeding, including a criminal proceeding or a proceeding with a government agency.

Scope

This Policy applies to all Berkeley College students, trustees, associates and third parties.¹ For purposes of this Policy, and any procedures promulgated in connection with it, the term "College" shall include Berkeley College and BES Inc., the associates of which shall be collectively referred to as "associates."

A. Prohibited Conduct

Berkeley College prohibits under this Policy (a) discrimination on the basis of sex², gender, gender identity or expression, sexual orientation, pregnancy and the status of being transgender; (b) discrimination or harassment on the basis of race, color, creed, religion, national origin, nationality, age, genetic characteristics, ancestry, mental or physical disability, veteran status, marital status, civil union or partnership status, alienage or citizenship status, atypical hereditary cellular or blood trait and any other classes protected by applicable state or local law; and (c) bullying among students, including but not limited to cyber-bullying, when a student directs the bullying at a specific group or individual based³ upon that group or individual's inclusion in one of the protected classes outlined above.

Such discrimination, harassment and bullying are also prohibited by various federal, state and local laws including, but not limited to: Title VI and VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Americans with Disabilities Amendments Act of 2008, the Age Discrimination Acts of 1967 and 1975, Title IX of the

¹ Third parties can include, for example, paid or unpaid interns, independent contractors, vendors, guests, applicants for admission and employment and other non-employees.

² Sex or gender-based harassment is also prohibited by the College and is addressed in the College Title IX (and Non-Title IX) Sexual Harassment and Sexual Misconduct Policy and related Procedures. <http://berkeleycollege.edu/pdf/Title-IX-Non-Title-IX-Sexual-Harassment-and-Sexual-Misconduct-Policy.pdf>

³ If a student bullies another student NOT based on that student's inclusion in a protected class, such "generic" bullying is a violation of the Student Conduct Policy located in the Student Handbook and will subject that student to discipline.

Education Amendments of 1972 ("Title IX"), the New York State Human Rights Law, the New York City Human Rights Law and the New Jersey Law against Discrimination.

Retaliation is also prohibited under this Policy. No person covered by this Policy shall be subject to an adverse action (employment or educational) because that person, in good faith, reports an incident, complains, provides information or testimony, or otherwise assists in any investigation connected with this Equal Opportunity Policy or with a complaint or investigation/adjudication in an external administrative or judicial forum.

This Policy governs prohibited conduct that occurs:

- on campus/at the physical workplace/from virtual employees, regardless of location;
- off campus/away from the physical workplace if in the context of any College or business related or sponsored program, activity or event, including travel for same;
- off campus/away from the physical workplace when the conduct has continuing adverse effects or creates or continues a hostile environment on campus/at the physical workplace;
- off campus when the conduct has a significant impact on the educational mission and well-being of the College community;
- through the use of College-owned or provided technology resources, regardless of location; or
- through the use of social media, regardless of location.

Violations of this Policy, including the violation of retaliation, are considered misconduct (associate or student, respectively) and may result in disciplinary action, including, but not limited to, termination of employment (associates) or dismissal from the College (students).

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

Bad Faith Complaints: This Policy shall not be used to bring frivolous or malicious complaints against members of the Berkeley College community. If the College's investigation reveals that a complaint is made in bad faith or is knowingly false, such complaint shall be dismissed and the person who filed the bad faith complaint may be subject to disciplinary action. A complaint, however, will not be considered false, frivolous or in bad faith solely because it cannot be corroborated.

B. Definitions

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

1. Discrimination

Discrimination involves the unequal treatment of an individual - for example, granting, limiting or denying admission, opportunities, benefits, or services in or to the College, the workplace,

educational programs of study or academic pursuits, or College-sponsored activities - because of that individual's protected class status. 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 benefits, or removal and exclusion from Berkeley College property.

2. Harassment

Harassment is a form of discrimination that occurs when verbal, physical, written, electronic, or other conduct based on an individual's protected characteristics is sufficiently severe, persistent or pervasive⁴, and objectively offensive that it unreasonably interferes with, limits or denies that individual's ability to participate in or benefit from the College's educational program or activity, or employment access, benefits, or opportunities (*hostile environment*). The College will act to remedy all forms of discriminatory harassment when reported, whether or not the harassment rises to the level of creating a hostile environment.

3. Bullying

Bullying generally includes any gesture, any oral, written, or electronic communications (which includes emails, text messages, and internet postings on websites or other social media), or any physical act by a student of the College against another student or group of students of the College, based on protected class status, whether it be a single incident or a series of incidents, that is

- a) reasonably perceived as being intended to maliciously harass, insult, defame, intimidate, or embarrass such student or group of students in a way that could disrupt or interfere with the orderly operation of the College, or the rights of any student or other member of the College community; or which
- b) a reasonable person should know, under the circumstances, will have the effect of physically or emotionally harming a student or group of students, or damaging a person's property or placing him or her in reasonable fear of physical or emotional harm to his or her person, or to any member of that person's family or household, or of damage to his or her property.

⁴ 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 membership in one or more of the protected categories. Harassment in New York, however, does not include behaviors that a reasonable person would consider petty slights or trivial inconveniences.

4. Disability⁵

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

5. Retaliation

Retaliation occurs when an adverse action is taken against an individual (student or associate) for engaging in legally protected activity, such as making a good faith complaint or participating in an investigation under this Policy or in other forums (administrative or judicial). An adverse action can include any negative job action, such as demotion, discipline, firing, salary reduction, or job or shift reassignment or any negative school/education related action affecting a student's academic standing or ability to participate in, or benefit from, an educational program, activity or opportunity. If the adverse action would deter a reasonable person in the situation from making a complaint or participating in the investigation process, it can constitute prohibited retaliation.

C. Supervisory Responsibilities

All supervisors and managers who **receive** a complaint or information about suspected prohibited conduct under this Policy, **observe** what may be prohibited behavior under this Policy or **reasonably suspect** that prohibited conduct is occurring, **are required** to report such suspected activity pursuant to the Procedures promulgated in connection with this Policy (See Section "D" herein.)

In addition to being subject to discipline if they engage in prohibited conduct under this Policy themselves (including retaliation), supervisors and managers may be subject to discipline for **failing to report** prohibited conduct under this Policy or otherwise knowingly **allowing the prohibited conduct to continue**.

D. Equal Opportunity Procedures

1. Reporting Violations

⁵ See also the College *Disability Services Accommodations Policy for Students* and the *Disability Services Accommodations Policy for Associates*, and related policies and documents referenced therein, regarding College policy and procedures for reasonably accommodating disabilities.

Associates should direct equal opportunity complaints promptly to the **Equal Opportunity Officer for Associates**, as follows: Karen Carpentieri, Vice President of Human Resources, Deputy Title IX Coordinator for Associates, KJC@BerkeleyCollege.edu, 201-291-1111 x5162.

Students should direct equal opportunity complaints promptly to the **Equal Opportunity Officer for Students**, as follows: Heather Eaton-Dwyer, Dean of Students, Student Development and Campus Life, hed@berkeleycollege.edu, 973-278-5400 x1309.

2. Investigation of Equal Opportunity Matters

Where a violation of the Equal Opportunity Policy is reported (orally or in writing), the Equal Opportunity Officer for Students or Associates, as appropriate, (or a designee) shall promptly commence an investigation. Investigations shall be conducted in a fair, impartial, thorough and timely manner and shall be private, to the extent possible. If a request for confidentiality⁶ is made, the College shall weigh the confidentiality request against the College's obligation to provide a safe, non-discriminatory environment for all members of its community. Assuming the College determines that an investigation is necessary, it will discuss the matter with the reporting individual and take immediate action as necessary to protect and assist him/her. Berkeley College associates who cannot guarantee confidentiality shall maintain a complainant's/respondent's privacy to the greatest extent possible.

The investigation shall consist of the College investigator taking the following steps:

- Upon receipt of a complaint, conduct an immediate review of the allegations, and take any interim or supportive measures, as appropriate.
- If documents, emails, etc., are relevant to the allegations, take steps to obtain and preserve them.
- Alert the respondent as to the nature of the complaint and potential policy violations.
- Request and review all relevant documents, including all electronic communications, etc.
- Interview all parties involved, including any relevant witnesses.
- Create and preserve written documentation of the investigation, which a) details all

⁶ **Associates seeking confidential assistance** with such matters may obtain confidential assistance through the Employee Assistance Plan ("EAP"). Reports to the EAP, however, will not be provided to the College and will not result in investigation or disciplinary action by the College.

Students seeking confidential assistance may obtain such assistance through the College Personal Counselors, located at each campus. Personal Counselors shall not report these matters to the College, unless a student consents to the sharing.

investigative steps taken; b) contains a summary of all party and witness statements, documents and all evidence gathered; and c) contains the final resolution of the complaint, together with any recommended corrective action(s).

3. Disposition of Equal Opportunity Matters

At the conclusion of the investigation, the Equal Opportunity Officer shall issue, and simultaneously provide both parties with, a written determination, which shall explain the basis for the determination, any penalty levied and appeal procedures. If no appeal is processed during the Appeal Period (see below), the College shall promptly implement any corrective action identified and take any other action it deems appropriate in response to the complaint.

4. Appeals

Any party may appeal the decision of the Equal Opportunity Officer within ten (10) business days of its issuance (the "Appeal Period").

Parties wishing to appeal may do so only by (1) notifying the Equal Opportunity Officer in writing of the party's intent to appeal, and (2) submitting a written statement prior to the expiration of the Appeal Period.

In her sole discretion, the Equal Opportunity Officer 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 Equal Opportunity Officer shall advise all parties of any party's intention to appeal and furnish each party copies of any appeal statements and related communications simultaneously. If one party submits a written statement during the Appeal Period, the other party will be given an opportunity to submit a written statement in response within a designated time period.

Determinations by the Equal Opportunity Officer will only be overturned or modified on appeal to the extent that (i) the determination is arbitrary, based upon a misunderstanding or misstatement of material facts, or not reasonably supported by the evidence; (ii) serious procedural errors undermined the integrity of the process; or (iii) the interests of justice require that the determination be modified or overturned.

The College will appoint a senior College official with no conflict of interest to decide an appeal based upon the appeal statement(s) and the original record; and the decision of the reviewing official will be final. Whenever practicable, such review will be completed within thirty (30) business days, and both parties will be informed of the result simultaneously in writing.