

BARD

A College of Liberal Arts and Sciences

2022-2023 GENDER-BASED MISCONDUCT POLICY

XVII. RESOLUTION PROCESSES

I. NOTICE OF NONDISCRIMINATION

Bard College is committed to ensuring equal access to its educational programs and equal employment without regard to an individual's sex, gender, race, color, national origin, religion, age, disability, gender identity, sexual orientation, predisposing genetic characteristics, marital status, veteran status, military status, domestic violence victim status, ex-offender status, or any

III. SCOPE OF POLICY

This policy applies to the education program and activities of the College, to conduct that takes place on the campus or on property owned or controlled by the College, at College-sponsored events, or in building

Non-community members (e.g., family or friends of students, vendors, visiting athletes, etc.) visiting campus, participating in a Bard College program or activity, or interacting with Bard College community members are expected to abide by the behavioral expectations in this policy.

This policy applies campus-wide and sets forth the behavioral expectations for all. However, the applicable formal disciplinary procedure that will be applied in a particular case depends on whether the accused is a student, employee, or a non-community member. A report by anyone against a non-community member (e.g., a visitor, vendor, etc.) will be investigated, but no formal policy or procedure applies. The College may opt to ban the non-community member from College property or take other appropriate responsive measures.

All vendors serving the College through third-party contracts are subject to the policies and procedures of their employers (or to these policies and procedures to which their employer has agreed to be bound by their contracts).

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the Complainant in liaising with the appropriate individual at that instit (e) 0.20.20.29(0 1.2 (s) .2 (

incident to the Title IX Coordinator. The Title IX Coordinator will then contact the reporting party to discuss options. The Title IX Coordinator can facilitate the following assistance:

- **Supportive Measures:** Supportive measures are intended to support the individual who experienced gender-based misconduct to continue in their involvement in the College's program and activities. Supportive measures may include: no contact orders; academic accommodations; changes in housing assignment; and/or other academic, residential, or work accommodations.
- **Informal Resolution:** An informal resolution is a resolution that the parties (i.e., the Complainant(s) and Respondent(s)) agree upon to address the situation. Not all incidents are appropriate for informal resolution, and no party may be forced to accept an informal resolution. This is a voluntary process.
- **Formal Grievance Process:** A Formal Grievance P

- **Gender-Based Misconduct:** An umbrella term used in this policy to more conveniently refer to any form of misconduct prohibited by this policy, including, but not limited to, the offenses of sexual harassment, sexual assault, stalking, dating violence, and domestic violence.
- **Grievance Process Pool:** Any hearing officers, appeal officers, informal resolution facilitators, and advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).
- **Institution Advisor:** An advisor appointed by the College to accompany a party to a hearing, at no charge to the party, when that party does not opt for an advisor of choice at the hearing.

- **Student:** An individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and who maintains an ongoing relationship with the College.

VI. DEFINITIONS OF GENDER-BASED MISCONDUCT

This policy applies to alleged conduct violative of Title IX of the Education Amendments of 1972 (i.e., “Title IX Category” violations), and also applies to a broader range of contexts and behaviors inconsistent with the College’s commitment to equal opportunity (i.e., “College Category” violations).

- **Fondling:** The touching of the private body parts (including genital area, anus, groin, buttocks,

- **Sexual H**

- Invasion of sexual privacy;
- Causing the prostitution of another person;
- Nonconsensual observing or recording of private (such as undressing or showering) or sexual activity;
- Nonconsensual posting, sharing, or publicizing of compromising images and/or videos;
- Going beyond the boundaries of consent (such as letting a friend hide in the closet to watch otherwise consensual sexual activity);
- Exposing one's genitals or inducing another to expose their genitals in nonconsensual circumstances;
- Sexually based hazing and/or bullying; and

contacting the Title IX Coordinator, Security, other College administrators, or BRAVE. In New York, individuals may undergo a SAFE Exam without making a report to law enforcement.

It is important to not bathe, wash, douche, smoke, change clothing, or brush one's teeth prior to the examination. If possible, it is also best to not take fluids or use the bathroom before the examination. For purposes of evidence collection, the SAFE Exam should be conducted within 96 hours of an incident. If individuals do not opt for forensic evidence collection, health care

B. REPORTING TO THE COLLEGE (PRIVATE, NON-CONFIDENTIAL)

1. Institutional Report

Any member of the community who wishes to file a report of gender-based misconduct with the College may do so by following the procedures outlined below. Bard College offices and employees who cannot guarantee confidentiality will maintain your privacy to the greatest extent possible.² Information you provide to a non-confidential resource at the College will be relayed to the Title IX Coordinator and the Title IX Coordinator will follow up with you regarding your options on how to proceed.

Any Mandated Reporter with knowledge of gender-based misconduct involving members of the Bard community must notify the Title IX Coordinator of any and all reports of potential gender-based misconduct that they receive. Climate surveys, classroom writing assignments, human-subjects research, and events such as Take Back the Night or similar speak-outs do not constitute notice to the College.

The College has determined that the following administrators are Officials with Authority (“OWA”) to address and correct harassment, discrimination and/or retaliation so that reports received by any of the following administrators constitute notice to the College: President; Vice President for Administration; Chief of Staff; Director of Security; Vice President for Student Affairs; Dean of Students; Dean of Inclusive Excellence; Dean of the College; Dean of Studies; Title IX Coordinator; Deputy Title IX Coordinator; and Director of Accessibility and Disability Resources.

Upon receiving a report of potential gender-based misconduct, Mandated Reporters must inform a reporting individual of their own reporting responsibilities (i.e., that they can provide privacy, not confidentiality) and the option of seeking assistance from confidential resources and other support services. In addition, Mandated Reporters must provide the following information to the reporting individual at the first instance of disclosure of sexual assault, intimate partner violence, and/or stalking:

- You have the right to make a report to Bard College security, local law enforcement, and/or state police, or choose not to report.

² For the purpose of this policy, “privacy” and “confidentiality” have distinct meanings. **Privacy** means that information related to a complaint will be shared with a limited number of Bard College employees who “need to know” in order to assist in the assessment, investigation, and resolution of the report. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act (“FERPA”) and the privacy of employee records will be protected in accordance with Human Resources policies. **Confidentiality** exists in the context of laws that create a privilege and protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. The College has designated individuals who have the ability to have privileged communications as Confidential Resources. Confidential Resources may share non-identifiable information for statistical tracking purposes as required by the federal Clergy Act. Other information may be shared as required by law.

Complainant is aware of the right to have an Advisor of Choice. A Complainant may request confidentiality, that their name or other identifying information not be disclosed to the Respondent, that a formal complaint not be filed, and/or that an investigation not be undertaken. Supportive measures will be available even if the Complainant does not wish to file a formal complaint.

When a formal complaint is made, the Title IX Coordinator works with the Complainant to determine whether the Complainant prefers to pursue an Informal Resolution option or a Formal Grievance Process. If an Informal Resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for Informal Resolution and may seek to determine if the Respondent is also willing to engage in Informal Resolution.

B. When A Complainant Does Not Wish To Proceed

If a Complainant's identity is unknown or

The Title IX Coordinator may determine, with

educational programs. Supportive measures are non-disciplinary, non-punitive individualized services that are implemented in a way that does not unreasonably burden the other party.

The Title IX Coordinator will provide information regarding supportive measures and accommodations, and will implement and/or coordinate their issuance. Supportive measures and accommodations are offered regardless of whether a Formal Grievance Process is commenced.
Supportive

When there is a substantial risk of emotional harm from continued contact between individuals;

When continued contact between individuals may have a material impact on campus disciplinary proceedings; and

When an NCO is requested or agreed to in good faith by all individuals involved.

Individuals receiving NCOs are to have no contact, direct or indirect, with each other. Contact includes all forms of written communication (texting, social media, email, etc.) as well as personal contact (face-to-face, telephonic, etc.), both on and off campus. This includes indirect contact through other persons or through asynchronous modes of electronic communication. Any additional terms specific to the safety, wellbeing, or other needs of either or both individuals shall be expressly stated in the NCO.

If the individuals observe each other in a public place, the parties shall act to minimize contact with each other.

an immediate threat to the physical health or safety of any student, including the student Respondent, or other individual justifies removal, then the student Respondent will be removed.

Emergency removal is not a substitute for reaching a determination as to a Respondent's responsibility for the sexual harassment allegations; rather, emergency removal is for the purpose of addressing imminent threats posed to any person's physical health or safety, which may arise out of the sexual harassment allegations

After determining a student Respondent is an immediate threat to the physical health or safety of an individual, the Title IX Coordinator will provide written notice of the emergency removal to both the Complainant and Respondent. This notice will contain: (1) the date the removal is set to begin; (2) the reason for the emergency removal; (3) the consequences of non-compliance; and (4) how to appeal the decision. If a student Respondent disagrees with the decision to be removed from campus, the Respondent may appeal the decision.

The Respondent must provide written notice of the intent to appeal, which shall include the substance of the appeal, to the Title IX Coordinator within 10 days of receiving the notice of removal. The burden of proof is on the student Respondent to show that the removal decision was inappropriate.

The Title IX Coordinator will, upon request of the Respondent, meet with the Respondent concerning the appeal to provide an opportunity to show cause why the action/removal should not be implemented or should be modified. This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When an appeal is not requested in a timely manner, objections to the emergency removal will be deemed waived. A Complainant and their advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so. This section also applies to any restrictions that a coach or athletic administrator may place on a student-athlete arising from allegations related to Title IX. A Respondent may be accompanied by an Advisor of Choice when meeting with the Title IX Coordinator for the meeting.

The Title IX Coordinator has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline.

The College will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions could include, but are not limited to: removing a student from a residence hall; temporarily re-assigning an employee; restricting a student's or employee's access to or use of facilities or equipment; allowing a student to withdraw or take grades of incomplete without financial penalty; authorizing an administrative leave; and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics.

At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to

student.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process.

Prior to implementing Informal Resolution, the College will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by the College.

The College will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

B.

C. Respondent Accepts Responsibility for Alleged Violations

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent indicates intent to accept responsibility for all of the alleged misconduct, the Formal Grievance Process will be paused, and the Title IX Coordinator will determine whether an Informal Resolution can be used.

B. Notice of Investigation and Allegations

The Title IX Coordinator will provide written notice of the investigation and allegations (the “NOIA”) to the Respondent upon commencement of the Formal Grievance Process. This

C. Investigation Timeframe

The College will endeavor to complete each investigation within thirty (30) days. An investigation may be extended for good cause, such as witness unavailability, breaks in the academic schedule, or other similar circumstances.

D. Investigation Procedures

Once the decision to commence a formal investigation is made, the Title IX Coordinator

allow remote testimony that will not compromise the fairness of the hearing.

- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the hearing panel members and parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator at least five (5) days prior to the hearing.
- A list of all those who will attend the hearing, including the names of the hearing panel members. The notice will inform the parties that they may challenge the participation of any hearing panel member on the basis of conflict or bias, provided such challenge is submitted to the Title IX Coordinator in writing, detailing the rationale for the objection, at least two (2) business days prior to the hearing. Bias or conflict of interest will be judged by an objective standard (whether a reasonable person would conclude the Decision-maker is biased).
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the party's or witness's testimony and any statements given prior to the hearing by that party or witness will not be considered by the hearing panel for purposes of reaching a decision on responsibility.
- Notification that the parties may have the assistance of an Advisor of Choice at the hearing and will be required to have one present (or be assigned an Institution Advisor) for any questions they may desire to ask of the other party and/or witnesses. The party must notify the Title IX Coordinator at least two (2) days prior to the hearing if they have an Advisor of Choice that will attend the hearing.
- An invitation to each party to submit to the Title IX Coordinator an impact statement prior to the hearing that will b

with their advisee, and the advisor may not present evidence, address the hearing panel during the hearing, object to any aspect of the proceeding, or disrupt the hearing in any way, and any consultation with the advisee while the hearing is in progress must be done in a quiet, nondisruptive manner or in writing. An advisor's questioning of the other party and any witnesses must be conducted in a respectful, nonintimidating, and non-abusive manner.

If a party's Advisor of Choice refuses to comply with the College's established rules of decorum during the hearing, the College may require the advisor to leave the hearing and the hearing will proceed without an opportunity for the party to obtain a replacement advisor; provided, however, that the College will assign an Institution Advisor of the College's choosing, without charge, for the purpose of conducting questioning on behalf of the party as provided below. If an Institutional Advisor refuses to comply with the rules of decorum, the College may provide that party with a different Institution Advisor to conduct cross-examination on behalf of that party.

N. Pre-Hearing Preparation

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator. Absent extraordinary circumstances as determined by the Chair of the hearing panel, no party may seek to introduce at the hearing any evidence not previously made available during the investigation and/or in response to the investigation report.

During the ten (10) business day period prior to the hearing, the parties have the opportunity for continued review and comment on the final investigation report and available evidence. That review and comment can be shared with the Chair at the pre-hearing meeting or at the hearing and will be exchanged between each party by the Chair.

O. Pre-Hearing Meetings

The Chair may convene a pre-hearing meeting(s) with the parties and/or their advisors to invite them to submit the questions or topics they (the parties and/or their advisors) wish to ask or discuss at the hearing, so that the Chair can

The pre-hearing meeting(s) will not be recorded.

P. Consolidation of Cases and Joint Hearings

The Title IX Coordinator may determine that where the allegations arise out of the same set of facts should be consolidated for the purposes of the investigation and/or adjudication. Instances where consolidation of complaints may occur include but are not limited to cross-complaint filed by the parties against each other, multiple complaints filed by a single Complainant against a Respondent, or multiple complaints by a single Complainant against multiple Respondents. In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged policy violation.

present at the hearing, the Title IX Coordinator will arrange for the College to provide, without fee or charge to that party, an Institution Advisor of the College's choice to conduct cross-examination on behalf of that party.

Only relevant questions may be asked by a party's advisor to a party or witness. Questions that

heard or evidence obtained in the hearing or use such testimony or evidence for any purpose unrelated to the grievance process. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

T. Hearing Determinations

The hearing panel will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the alleged policy violation(s). A simple majority vote is required to determine the finding. The hearing panel will use the “preponderance of the evidence” standard of proof. The “preponderance of the evidence” standard requires a

regarding responsibility, any disciplinary sanctions to be imposed on the Respondent, and whether remedies designed to restore or preserve equal access to the College's educational programs or activities will be provided to the Complainant; and

- The procedures and permissible bases for the Complainant and Respondent to appeal.

The Title IX Coordinator will provide the written determination to the parties simultaneously by email or in person.

XIX. SANCTIONS

regarding responsibility or dismissal, the Investigator(s), or the Title IX Coordinator. In any case where a Respondent is a College employee, the Title IX Coordinator will have discretion to appoint a single Appeal Officer to decide th

Sanctions Status During the Appeal

