
Title IX Policy Covering Discrimination, Harassment, and Sexual Misconduct

Reason for Policy:

All members of the Bergen Community College campus community, including students, faculty, staff, guests, and visitors have the right to be free from sexual discrimination, harassment and misconduct. All members of the campus community are expected to conduct themselves in a manner that does not infringe upon the rights of others. When an allegation of misconduct is brought to an appropriate administrator's attention, and a respondent is found to have violated this policy, sanctions will be used to reasonably ensure that such actions are not repeated. This policy has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated. This policy is intended to define community expectations and to establish a mechanism for determining when those expectations have been violated.

Entities Affected by this Policy:

Faculty, staff, students, vendors, visitors, and guests.

Policy Statement:

Bergen Community College is committed to providing a learning and working environment that promotes personal integrity, civility, and mutual respect in a place free of discrimination on the basis of sex; which includes all forms of sexual misconduct. Sex discrimination violates an individual's fundamental rights and personal dignity. Bergen Community College considers sex discrimination in all its forms to be a serious offense. This policy refers to all forms of sexual misconduct, including but not limited to: sexual harassment, sexual assault, sexual and gender discrimination, sexual violence, domestic violence, dating violence and stalking by employees, students, or third parties.

Title IX of the Education Amendments of 1972 prohibits discrimination based on sex in educational programs and activities that receive federal financial assistance. To ensure compliance with Title IX and

other federal and state civil rights laws, the College has developed policies and procedures that prohibit sex discrimination in all of its forms.

Bergen Community College does not discriminate on the basis of race, color, age, gender, gender identity, sexual orientation, religion, national origin, veteran status, disability, genetic information or any other basis of prohibited discrimination in its programs and activities. This policy extends to employment, programs, and admission to the College.

This policy applies to all faculty, staff, students, and visitors. It also governs student-on-student sexual discrimination, including sexual assault, both on campus and college sponsored and/or sanctioned off-campus activities.

Persons who experience discrimination, harassment, or sexual misconduct may respond to the experience in many different ways, including feeling confused, vulnerable, out of control, embarrassed, angry, or depressed. The College provides a variety of resources to assist individuals who have experienced discrimination, harassment, or sexual misconduct to address the effects of the incident and to help them determine whether and how to make a formal complaint about the incident.

All reports of discrimination, harassment, and/or retaliation shall be promptly made to the Title IX Officer (or one of the designated Deputy Coordinators), which are listed in full below. The Director of Human Resources serves as the Title IX Officer. The Deputy Coordinators consist of the Assistant Director of Human Resources, Managing Director of Off-site Campus, Assistant Director of Public Safety, and the Executive Assistant to the VP Student Affairs. The College Investigators consists of the Sr. HR Generalist, Coordinator of Student Conduct and Director of Athletics.

Notice to the Title IX Coordinator or Deputy Coordinators constitutes ***“actual knowledge”*** to the College and will trigger an investigation and response to the victim on behalf of the College. In accordance with the Department of Education’s (the “Department”) Title IX Regulations,

- ***“Actual knowledge”*** means notice of sexual harassment or allegations of sexual harassment to a Title IX Coordinator or any official of the College who has authority to institute corrective measures on behalf of the College.
- Imputation of knowledge based solely on vicarious liability or constructive notice is sufficient to constitute actual knowledge.
- Notice includes, but is not limited to, a report of sexual harassment to the Title IX Coordinator.

Reporting responsibilities are stated in Section III below for those individuals who become aware of incidents involving discrimination, harassment, or sexual misconduct.

I. Prohibited Conduct

A. Discrimination

Bergen Community College adheres to all federal and state civil rights laws banning discrimination in public institutions of higher education. The College prohibits discrimination against any employee, applicant for employment, student, or applicant for admission on the basis of any protected class. Protected classes include: age, color, creed, disability, ethnicity, gender identity, genetic information, marital status, national origin, political affiliation, pregnancy, race, religion, sex, sexual orientation, veteran or military status, or any other protected category under applicable federal, state, or local law,

including protections for those opposing discrimination or participating in any complaint process on campus or with other human rights agencies.

This policy covers discrimination in employment and in access to educational opportunities. Discrimination is defined as adverse treatment of an individual based on that individual's membership in one (1) or more of the protected groups listed above. Therefore, any member of the campus community, guest, or visitor who acts to deny, deprive, or limit the educational, employment, and/or social access, benefits, and/or opportunities of any member of the campus community on the basis of their actual or perceived membership in the protected classes listed above is in violation of the College policy on discrimination.

B. Harassment

Bergen Community College prohibits harassment against any employee, student, applicant, visitor, or guest on the basis of any class protected by College policy or law as identified in Section I.A. above. This policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane but controversial or sensitive subject matters. The sections below describe the specific forms of prohibited harassment under the Title IX policy.

1. Sexual Harassment

This policy prohibits any form of sexual harassment. Sexual harassment is defined as any conduct on the basis of sex that satisfies one (1) or more of the following:

- (1) An employee of the College conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct, otherwise known as quid pro quo harassment by a College employee;
- (2) Any unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's education program or activity; or
- (3) Any instance of sexual assault, dating violence, domestic violence, or stalking.

a. **Sexual assault** is defined as an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation (FBI).

b. **Dating violence** is defined as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim, and where the existence of such a relationship shall be determined based on a consideration of the following factors: (1) the length of the relationship; (2) the type of relationship; and (3) the frequency of interaction between the persons involved in the relationship.

c. **Domestic Violence** is defined as felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the state of New Jersey, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of New Jersey.

d. **Stalking** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or cause a reasonable person to suffer substantial emotional distress.

Anyone experiencing sexual harassment or sex discrimination (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment) in any College program is encouraged to report it online (www.bergen.edu/report), to Bergen's Title IX Coordinator or a Deputy Coordinator, or in person, by mail, by telephone or by email, using the contact information provided for the Title IX Coordinator. Such report may be made at any time (including non-business hours) by using the telephone number or email address provided, or by mail to the office address, as listed for the Title IX Coordinator.

Sexual harassment creates a hostile environment and offenders may be disciplined when it is sufficiently severe, pervasive, and objectively offensive, and indifferent that:

- Such conduct has the purpose or effect of unreasonably interfering with an individual's academic or work performance or creating an intimidating, hostile, or offensive environment for that individual's employment, education, or participation in a College activity; or social, and/or community programs, or
- Is based on power differentials (*quid pro quo*), the creation of a hostile environment, or retaliation.
- Some examples of possible sexual harassment include:
- A professor insists that a student have sex with him/her in exchange for a good grade. This is harassment regardless of whether the student complies with the request.
- A student repeatedly sends sexually oriented jokes on an e-mail list that he/she created, even when asked to stop, causing one recipient to avoid the sender on campus and stop attending a class in which they are both registered.
- Two supervisors frequently rate several employees' bodies and sex appeal, commenting suggestively about their clothing and appearance.

2. Consensual Relationships.

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as faculty and student, supervisor and employee). These relationships may be less consensual than perceived by the individual whose position confers power. The relationship may also be viewed in different ways by each of the parties, particularly in retrospect. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to a romantic or sexual involvement, this past consent may not remove grounds for a later charge of a violation of applicable sections of the Employee Code of Conduct. For the personal protection of members of this community, relationships in which power differentials are inherent (faculty-student, staff-student, administrator-student) are **strongly discouraged**.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or evaluative role over the other party are unethical. Therefore, persons with direct supervisory or evaluative responsibilities who are involved in such relationships must bring those relationships to the timely attention of their supervisor, and will likely result in the necessity to remove the employee from the supervisory or evaluative responsibilities, or shift the student out of being supervised or evaluated by someone with whom they have established a consensual relationship.

3. Sexual Misconduct

This policy prohibits any form of sexual misconduct. Acts of sexual misconduct may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved. The definition of consent below will be used in the interpretation and application of this policy:

Consent. Consent is knowing, voluntary, and clear permission by word or action to engage in mutually agreed upon sexual activity. Since individuals may experience the same interaction in different ways, it is the responsibility of each party to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Consent to a specific sexual contact (such as kissing or fondling) cannot be presumed to be consent for another specific sexual activity (such as intercourse). A current or previous dating relationship is not sufficient to constitute consent. Silence or the absence of resistance alone is not consent. The existence of consent is based on the totality of the circumstances, including the context in which the alleged incident occurred. Individuals can withdraw consent at any time during sexual activity by expressing in words or actions that they no longer want the act to continue, and, if that happens, the other person must stop immediately.

A person cannot consent if he or she is incapacitated. Under this policy, a person is incapacitated if he or she is disabled or deprived of ability to act or reason for one's self, is unable to understand what is happening, or is disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or other drugs. Incapacitation is defined as a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the "who, what, when, where, why, or how" of their sexual interaction). This policy also covers a person whose incapacity results from mental disability, involuntary physical restraint, and/or from taking an incapacitating substance. A person is incapacitated if the person is temporarily incapable of apprising or controlling the person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance; if a person is unable to communicate an unwillingness to act because the person is unconscious, asleep, or is otherwise physically limited; or if the person has a bodily impairment or handicap that substantially limits the person's ability to resist or flee. An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has violated this policy. It is not an excuse that the respondent to a claim of sexual misconduct was intoxicated and, therefore, did not realize the other person's incapacity.

The following are types of prohibited sexual misconduct under this policy:

A. Sexual Harassment

Sexual harassment is any unwelcome sexual advances, requests for sexual favors, or other unwelcome written, verbal, or physical conduct of a sexual nature when:

- Such conduct has the purpose or effect of unreasonably interfering with an individual's academic or work performance or creating an intimidating, hostile, or offensive environment for that individual's employment, education, or participation in a College activity; or
- Submission to, or rejection of, such conduct by an individual is used as the basis for decisions affecting the individual's academic standing, employment status, or participation in a College activity; or
- Submission to such conduct is made, explicitly or implicitly, a term or condition of an individual's education, employment, or participation in a College activity.

B. Sexual Assault

Sexual assault consists of non-consensual sexual contact which includes the following:

- Sexual penetration or intercourse (anal, oral, or vaginal) however slight with any object by a person upon another person that is without consent and/or by force.
- Sexual penetration includes vaginal or anal penetration by a penis, tongue, finger, or object, or oral copulation by mouth-to-genital contact or genital -to-mouth contact, finger, or object, or oral copulation by mouth-to-genital contact or genital-to-mouth contact.
- Any intentional sexual touching however slight with any object by a person upon another person that is without consent and/or by force.
- Sexual touching includes any bodily contact with the breasts, groin, genitals, mouth, or other bodily orifice of another individual or any other bodily contact in a sexual manner.

C. Domestic and Dating Violence

- Dating Violence – Committed by a person who is or has been in a sexual relationship of a romantic or intimate nature with the complainant. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of Domestic Violence.
- Domestic Violence – A felony or misdemeanor crime of violence committed by the following:
 - By a current or former spouse or intimate partner of the Complainant.
 - By a person with whom the Complainant shares a child in common.
 - By a person who cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner.
 - By a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of NJ
 - By any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of NJ.
- D. Stalking** - Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of other's and suffer substantial emotional distress.
- E. Course of conduct** – Means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- F. Reasonable Person** – Means a reasonable person under similar circumstances and with similar identities to the Complainant.
- G. Substantial Emotional Distress** – Means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

C. Bias-Related Harassment

This policy prohibits any form of harassment on the basis of actual or perceived membership in a protected class, by any member or group of the campus community, which unreasonably interferes with an individual's work or academic environment.

This environment may be created by verbal, written, graphic, threatening and/or physical conduct that is sufficiently severe, pervasive, and objectively offensive so as to interfere with, limit, or deny the ability of an individual to participate in or benefit from educational programs or activities or employment access, benefits, or opportunities. Merely offensive conduct and/or harassment of a generic nature not on the basis of membership in a protected class may not result in a violation of this policy but may be addressed through education and/or other resolution methods.

II. Retaliation

The College seeks to create an environment where its students and employees are free, without fear of reprisal, to use its policies and procedures to determine if a violation of an individual's civil rights has occurred. Any act of retaliation will result in appropriate disciplinary action.

Retaliation is defined as any adverse action taken against a person participating in a protected activity because of their participation in that protected activity. This includes any individual's right to participate or refuse to participate in a Title IX grievance process. Examples include retaliation against the complainant by the respondent, the respondent's friends or co-workers, or a representative of the College. Retaliation against an individual for alleging a violation of their civil rights, supporting a complainant, or for assisting in providing information relevant to a claim, is a serious violation of this policy.

No employee of the College, student, applicant, third party or other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing relating to any Title IX claim.

Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purposes of interfering with any right or privilege secured by Title IX, constitutes retaliation.

The College will keep confidential the identity of any individual who has made a report or filed a complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as required by law, or to carry out the purposes of the Department's Title IX Regulations, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator or Deputy Coordinators. Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination as provided herein.

III. Other Offenses

This policy prohibits other offenses of a discriminatory, harassing, and/or retaliatory nature not included in the previous sections as follows:

- Intimidation is defined under this policy as implied threats or acts that cause a reasonable fear of harm in another on the basis of actual or perceived membership in a protected class;
- Hazing is defined under this policy as acts likely to cause physical or psychological harm or social ostracism to any person within the College community when related to the admission, initiation, joining, or any other group-affiliation activity on the basis of actual or perceived membership in a protected class;
- Bullying/Cyberbullying is defined under this policy as repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally on the basis of actual or perceived membership in a protected class;
- Discrimination (as previously defined); and
- Violation of any other College rule, when it is motivated by sex or gender or the actual or perceived membership of the victim in a protected class, which may be pursued using this policy and process.

A. Sexual Exploitation

Defined as taking non-consensual or abusive sexual advantage of another for their own advantage or benefits, or to benefit or advantage anyone other than the one being exploited. As per the Department's Title IX regulations and in compliance with such rules, the College finds that sexual exploitation constitutes sexual harassment as previously defined. Such misconduct may be reported as a form of sexual harassment in the grievance process as provided herein. Examples of sexual exploitation include, but are not limited to:

- Sexual voyeurism (such as watching a person undressing, using the bathroom, or engaging in sexual acts without the consent of the person observed);
- Taking photographs, video recording, or audio recording of another in a sexual act or in any other private activity without the consent of all persons involved in the activity;
- Exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity or disseminating sexual pictures without the photographed person's consent);
- Unauthorized sharing or distribution of digital, video, or audio recording of nudity or sexual activity;
- Sexually-based stalking and/or bullying
- Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or other sexually transmitted disease (STD) without informing the other person of the infection; and/or
- Administering alcohol or drugs (such as "date rape" drugs) to another person without the person's knowledge or consent.

IV. Scope/Jurisdiction/Application

This policy applies to allegations of discrimination, harassment, and retaliation that take place on Bergen Community College property or at College-sponsored events, within the United States. This policy may

also apply to allegations of discrimination, harassment, and retaliation to actions online when the Title IX Coordinator or Deputy Coordinator determines that the online conduct could have an on-campus impact or general impact on the educational mission of the College. Such impact includes:

- An action that constitutes a criminal offense as defined by federal, state, or local law;
- Any situation where it appears that the respondent may present a danger or threat to the health or safety of him/herself or others;
- Any situation that significantly impinges upon the rights, property, or achievements of others or significantly breaches the peace and/or causes social disorder; and/or
- Any situation that is detrimental to the educational interests of the College.

V. Reporting Responsibilities

All College employees who are aware of or witness discrimination, harassment, sexual misconduct, or retaliation are required to promptly report to the Title IX Coordinator, Title IX Deputy Coordinator, or online at www.bergen.edu/report.

Any student who is aware of, or who witnesses discrimination, harassment, sexual misconduct, or retaliation is encouraged to promptly report to the Title IX Coordinator or a Title IX Deputy Coordinator. All initial contacts will be treated with the maximum possible privacy and confidentiality; specific information on any complaint received by any party will be reported to the Title IX Coordinator, but, subject to the College's obligation to investigate and redress violations, every reasonable effort will be made to maintain the privacy of those initiating a report of a complaint. In all cases, the College will give consideration to the complainant with respect to how the complaint is pursued but reserves the right, when necessary to protect the community, to investigate and pursue a resolution when an alleged victim chooses not to initiate or participate in a formal complaint.

Please note: This section addresses reporting obligations for members of the campus community who are made aware of potential violations of this policy. Methods for filing a complaint and the Complaint Resolution Process are detailed in **Procedures Section A**.

A. Title IX Officer and Deputy Coordinators

Title IX Coordinator

Gwendolyn Harewood
Director of Human Resources
A-316, Pitkin Education Center
201.447-7442

In addition, the following individuals have been designated as Deputy Coordinators to handle inquiries regarding these policies:

Title IX Deputy Coordinator (for Off Campus Sites)

Magali Muniz
Managing Director, Off Campus Sites
Lyndhurst and Hackensack Sites
mmuniz@bergen.edu
201.689.7006

Title IX Deputy Coordinator (for faculty & staff)

Yvette Aviles

Assistant Director of Human Resources

A-316, Pitkin Education Center

yaviles@bergen.edu

201.879.1259

Title IX Deputy Coordinator (for students)

Dr. Ralph Choonoo

Executive Assistant to the Vice President of Student Affairs

L-123, Pitkin Education Center

rchoonoo@bergen.edu

201.879.7991

B. Role of the Title IX Officer and Deputy Coordinators

The Title IX Coordinator and Deputy Coordinators are charged with coordinating the College response to reports of misconduct under this policy. The Title IX Coordinator and Deputy Coordinators do not serve as advocates for either the complainant or the respondent. The Title IX Coordinator or Deputy Coordinators will explain to both parties the informal and formal processes outlined below and the provisions for confidentiality. Where appropriate, the Title IX Coordinator or Deputy Coordinators will provide to both parties' supportive measures on options for obtaining advocacy, medical and counseling services, and making criminal reports, and will assist with providing information on other resources. The Title IX Coordinator and Deputy Coordinators will coordinate with other campus officials to take appropriate interim actions such as no contact orders, academic accommodations, and rearrangement of academic and work assignments.

Supportive measures mean non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The College will maintain all supportive measures provided to a complainant or respondent as confidential, to the extent such confidentiality would not impair the ability of the College to provide the supportive measures. The College will ensure that the Title IX Coordinator and Deputy Coordinators will not have a conflict of interest or bias for or against complainants or respondents generally or against an individual complainant or respondent. The Title IX Coordinator and Deputy Coordinators have received proper training on the definition of sexual harassment and how to properly conduct an investigation and grievance process regarding Title IX claims, which may include hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including the avoidance of prejudgment of the facts at issue, conflicts of interest, and bias.

C. Officials with Authority

An **“official with authority”** is a College employee who is explicitly vested with the responsibility to implement corrective measures for harassment, discrimination, and/or retaliatory conduct. When a victim/survivor tells an “Official with Authority” employee about an incident of sexual misconduct, the victim/survivor has the right to expect the College to take immediate and appropriate steps to investigate what happened and to resolve the matter promptly and equitably. Notice to a Title IX Coordinator or any “Official with Authority” conveys actual knowledge to the College. An “Official with Authority” employee must report to the Title IX Coordinator and/or Deputy Coordinator all relevant details about the alleged sexual misconduct shared by the victim/survivor. The Title IX Coordinator and/or Deputy Coordinator will need to determine what happened – including the names of the victim/survivor and alleged perpetrator(s) if known, any witnesses, and any other relevant facts, including the date, time and location.

To the extent possible, information reported to an Official with Authority employee will be shared only with people responsible for handling the College’s response to the report. A responsible employee should not share information with law enforcement:

- A. Without the victim/survivor’s consent.
- B. Unless the victim/survivor has also reported the incident to law enforcement.
- C. Unless otherwise required by the law.
- D. Clery Act requires certain information to be provided to campus public safety.

The following employees are the College’s “official with authority”:

- A. Executive Team Members
- B. Title IX Coordinator and Deputy Coordinators
- C. All Human Resources staff – excluding student assistants
- D. All Student Life professional staff
- E. Health and Wellness Personal Counselors
- F. All Public Safety Staff – excluding interns and student assistants
- G. Student Affairs Managerial Staff

Before a victim/survivor reveals any information to a “responsible employee,” the employee should ensure that the victim/survivor understands the employee’s reporting obligations – and, if the victim/survivor does not want to report the matter to the College for investigation, the responsible employee should direct the victim/survivor to confidential resources.

Mandatory Reporting

A **“mandatory reporter”** is an employee of the College who is obligated by policy to share knowledge, notice, and/or reports of harassment, discrimination, and/or retaliation with the Title IX Coordinator and/or their supervisor.

The following employees are considered Mandatory Reporters:

- A. Administrative, Professional Staff and Support Staff
- B. Academic Counselors and Academic Advisors (both Faculty and Staff)
- C. Athletics professional staff and coaches - – excluding student assistants

- D. Faculty
- E. Student Organization Advisors excluding interns and student assistants

D. Police Reporting

In addition to required campus reporting, reports may also be made to the police and/or campus security, especially if a crime is or may be involved, by calling the following numbers:

- a. Emergency - 911
- b. Office of Public Safety
 - i. Paramus Campus (24hrs): Dial "6" or 201.447.7200
 - ii. Meadowlands Campus, Lyndhurst: 201.301.1267 – In house, ext. 9600
 - iii. Ciarco Learning Center, Hackensack: 201.301.9700
- c. Bergen County Sherriff's Office (non-emergency number): 201.336.3500
 - i. 10 Main Street, Hackensack, NJ 07601

E. Federal Timely Warning Obligations

Victims of sexual misconduct should be aware that College administrators must issue crime alerts for incidents reported to them that represent a serious or continuing threat to students or employees. The College will withhold a victim's name and other identifying information while providing enough information for community members to make safety decisions in light of the potential danger.

VI. Statement of Rights for Complainants and Respondents

Both complainants and respondents will be afforded the following rights under this policy:

- A. To be treated with respect by College officials;
- B. To take advantage of campus support resources (such as Counseling Services and College Health Services for students, or EAP services for employees);
- C. To experience a safe educational and work environment;
- D. To have an advisor (students) or representative (employees) during this process;
- E. To refuse to have an allegation resolved through informal procedures;
- F. To be free from retaliation;
- G. To have complaints heard in substantial accordance with these procedures; and
- H. To participate in the process.

Please also refer to the **NEW JERSEY CAMPUS SEXUAL ASSAULT VICTIM'S BILL OF RIGHTS (Appendix B)**

VII. Records

In implementing this policy, records of all complaints, resolutions, and hearings will be kept by the Title IX Coordinator for a maximum of **seven (7) years**.

The College will maintain the following records:

- (1) Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript;

- (2) Any disciplinary sanctions imposed on the respondent,
- (3) Any remedies provided to the complainant designed to restore or preserve equal access to the College's education program or activity;
- (4) Any appeal and the result therefrom;
- (5) Any informal resolution and the result therefrom;
- (6) And all materials used to train the Title IX Coordinator and Deputy Coordinators.
 - a. The College will make such training materials publicly available on the College website.

Procedures:

Complaint Resolution Process

The College will respond to any alleged violation of this policy received by the Title IX Coordinator and/or Deputy Coordinators. This section outlines ways in which offenses can be reported by individuals choosing to pursue complaint options.

A. Confidentiality and Reporting of Offenses

Bergen Community College will make every effort to safeguard the identities of individuals who seek help and/or report discrimination, harassment, and/or retaliation. While steps are taken to protect the privacy of victims, the College's ability to respond may be limited in the event of a request for confidentiality. The College may need to investigate an incident and take action once an allegation is known, whether or not the reporting individual chooses to pursue a complaint.

When a report is made, personally identifiable information (name of victim, name of respondent, etc.) may be initially withheld in cases where the victim is hesitant to come forward. Subsequently, campus officials may need additional information. The College Title IX Coordinator or Deputy Coordinator will conduct an initial inquiry, looking for any sign of pattern, predation, violence, or threat. When such exists, institutional action may be required in an effort to ensure campus safety.

No employee should ever promise absolute confidentiality except those designated as confidential personal counselors, health service providers, victim services advocates, domestic violence resources, local or state assistance agencies, or members of the clergy who are permitted by law to maintain confidentiality. Reports may be private, but not confidential.

Reports to police and/or Title IX officials do not obligate the complainant to file any criminal or College conduct charges.

The College will not pursue disciplinary action for improper use of alcohol or other drugs against an alleged victim of sexual misconduct or against another student who shares information as either a witness to or as a reporter of sexual misconduct as long as the report is made in good faith. See "Good Samaritan Provision," Appendix A.

Deliberately false and/or malicious accusations of discrimination, harassment, or retaliation, as opposed to complaints which, even if erroneous, are made in good faith, are just as serious an offense as discrimination, harassment, or retaliation and will be subject to appropriate disciplinary action.

- **Complaints and reports should be made as soon as possible after an incident.**

There is no time limit for filing a complaint with the College. However, complainants should report possible violations of this policy as soon as possible to maximize the College's ability to respond effectively. Failure to report promptly could result in the loss of relevant evidence and impair the College's ability to adequately respond to the allegations.

If the incident is an assault **immediately report the incident:**

- **Emergency – 911 [Call 911 if you are not safe and in need of immediately medical attention.]**
- **Office of Public Safety**

All policies are subject to amendment. Please refer to the College Policy website (<https://bergen.edu/about-us/college-policies/>) for the official, most recent version.

- Paramus Campus (24hrs): 201.447.7200 or Dial 6 on Paramus campus
- Meadowlands Campus, Lyndhurst: 201.301.9600
- Ciarco Learning Center, Hackensack: 201.301.9700
- Bergen County Sherriff's Office (non-emergency number): 201.336.3500
 - 10 Main Street, Hackensack, NJ 07601

Seek immediate **medical attention**:

Do not change clothing, shower, bathe, brush teeth or douche. Delay the foregoing and try not to use the bathroom (if possible) until you are examined, as this preserves evidence of the assault. Medical attention should be assessed at a local hospital.

On-campus resources:

Center for Health, Wellness and Personal Counseling. *The RN staff of Health Services provides free First-Aid, emergency medical response, and healthcare maintenance to all members of the campus community.*

- HS-100, Pitkin Education Center, 201.447.9257 Off-campus resources:

Valley Hospital

- 223 N. Van Dien Avenue, Ridgewood, NJ, 07450, 201.447.8000

Hackensack University Medical Center

- 30 Prospect Avenue, Hackensack, NJ 07601, 551.996.2000

Seek emotional support.

Bergen Community College counselors for students and/or the **Employee Assistance Program (EAP)** for employees are available to help free of charge and can be seen on an emergency basis.

On-campus resources:

Center for Health, Wellness and Personal Counseling

- HS-100, Pitkin Education Center, 201.447.9257 Off-campus resources:

HealingSpace of YWCA 24-hour hotline – 201.487.2227

The **Sexual Assault Response Team (SART)** is a free, coordinated community response to assist a survivor in the aftermath of a recent sexual assault. SART offers a compassionate, survivor-centered approach while collecting evidence that can be vital to the investigation and prosecution of the crime.

SART is available 24 hours a day, 7 days a week. You can activate SART if:

- Sexual assault occurred within 5 days
- You are at least 13 years old

- You are safe and not in need of immediate medical attention*
- You want to activate one or more SART professionals
- ****Call 911 if you are not safe or need immediate medical attention.***

To activate SART:

Call the 24/7 hotline 201-487-2227 to speak with a Confidential Sexual Violence Advocate who will discuss all of your options with you.

- Note that you may choose to receive an exam with an advocate and nurse, and then choose to report with law enforcement at a later date.

Magellan Employee Assistance Program (employees):

Magellan is contracted by Bergen Community College to provide professional consultation to Bergen Community College employees and their eligible dependents in the areas of stress management, family issues, child/elder care, dependency and other matters. Contact www.magellanassist.com.

Options for filing a report include:

1. Anonymous and Third-Party Reporting

The Title IX Coordinator and Deputy Coordinators accept anonymous and third-party reports of conduct alleged to violate this policy and will follow up on such reports. The individual making the report is encouraged to provide as much detailed information as possible to allow the Title IX Officer or Deputy Coordinators to investigate and respond as appropriate. The College may be limited in its ability to investigate or respond to an anonymous or third-party report unless sufficient information is provided. (See www.bergen.edu/reportanincident).

2. Confidential Reporting

If a reporting party would like the details of an incident to be kept confidential, the reporting party may speak with counselors, health service providers, victim services advocates, domestic violence resources, local or state assistance agencies, or members of the clergy who are permitted by law to maintain confidentiality (except in extreme cases of immediacy of threat or danger or abuse of a minor). These sources may submit anonymous statistical information for timely warning and Clery Act purposes. If a reporting party is unsure of a resource's ability to maintain confidentiality, the reporting party is advised to ask them before talking to them.

Bergen Community College personal counselors for students and/or the Employee Assistance Program for employees are available to help free of charge and can be seen on an emergency basis.

3. Private Reporting

Reports to College employees who are not confidential resources should be treated with the maximum possible privacy. If a reporting party is unsure of a resource's ability to maintain privacy, the reporting party is advised to ask them before talking to them. The resource will be able to explain the resource's reporting obligations and help a reporting party make decisions about who is in the best position to help. If personally identifiable information is shared, it will be shared with as few people as possible.

under the circumstances and efforts will be made to protect privacy to the greatest extent reasonably possible.

4. Formal Reporting

Complainants are encouraged to speak to College officials, such as the Title IX Coordinator or Deputy Coordinators or Public Safety, to make formal reports. Complainants have the right, and can expect, to have complaints taken seriously by the College when formally reported and to have those incidents investigated and properly resolved through these procedures. Formal reporting still affords privacy to the reporter and only a small group of officials who need to be informed will be notified. Information will be shared as necessary with investigator(s), witnesses, the respondent, and a hearing board if deemed appropriate. The number of people with this knowledge will be kept as few as reasonably possible to preserve a complainant's rights and privacy.

5. Criminal Reporting

If someone is in immediate danger, call 9-1-1. Some acts of discrimination and harassment may also be crimes, such as sexual assault or stalking. Individuals are encouraged to report allegations of criminal conduct to law enforcement even when it is not clear whether the conduct rises to the level of a crime. Regardless, law enforcement can assist with obtaining medical care, getting immediate law enforcement response and protection, connecting with victim advocate services and counseling support, initiating a criminal investigation as appropriate and answering questions about the criminal process.

B. Informal Resolution Process

Informal resolution is an alternative to the formal complaint resolution process. The Title IX Coordinator will determine if an informal resolution is appropriate, based on the willingness of the parties and the nature of the alleged conduct. The College will not require parties to participate in an informal resolution process. An informal resolution process may only take place as a result of a formal complaint that has been filed with an appropriate member of the College.

Sanctions are generally not pursued as the result of an informal resolution process, though the parties may agree to appropriate remedies. The Title IX Coordinator will keep records of any resolution that is reached. The College reserves the right to cancel an informal resolution if sufficient evidence suggests a formal investigation or other sanctions or remedies may be necessary and appropriate.

It is not necessary to pursue an informal resolution first in order to make a formal complaint, and anyone participating in an informal resolution can stop that process at any time and request to continue through the formal process.

Except in cases involving criminal activity and/or sexual assault, an employee or student alleging discrimination, harassment and/or retaliation against an employee under this policy is encouraged to consider an informal resolution. If it is appropriate, an attempt to facilitate an informal resolution of the matter will be made. In the event that an informal resolution is not reached, is not appropriate, or is not pursued, the student or employee who is alleging the discrimination, harassment, or retaliation may initiate a formal investigation.

Upon implementation of an informal resolution process, the College will provide all parties with a written notice disclosing: the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint that arises

from the same allegations, provided, however, that **at any time prior to agreeing to the informal resolution process, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint**, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or that may be shared.

The College will obtain the parties' voluntary, written consent to the informal resolution process prior to its implementation.

An informal resolution process may be conducted for a period of 60-90 days from the date that a formal complaint is received. However, the process may allow for temporary delay, as appropriate, for good cause, with written notice to the complainant and the respondent of the delay or extension and the reasons for such actions. The College will not offer or facilitate an informal resolution process that involves allegations of an employee sexually harassing a student.

C. Formal Resolution Process

1. Filing a Complaint

Any individual who believes that this policy has been violated should contact the Title IX Coordinator or any Title IX Deputy Coordinator as soon as possible.

A. Complaint Intake

Following receipt of notice or a complaint, the Title IX Coordinator or Deputy Coordinator will normally, within five (5) business days, make an initial determination as to whether the information has merit to reasonably indicate there may have been a violation of College policy. If it appears a violation may have occurred, an investigation will begin. If the complaint does not appear to allege a policy violation or if conflict resolution is desired by the complainant and appears appropriate given the nature of the alleged behavior, then the complaint does not proceed to investigation. An investigation will be pursued if there is sufficient information to suggest a policy violation, a pattern of misconduct, and/or a perceived threat of further harm to the community or any of its members exists.

Throughout this process, the College will presume that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process (whether it is through an informal resolution or investigation).

Upon receipt of a formal complaint, the College will provide a written notice to the parties who are known, which will include the following:

- Notice of the College's grievance process;
- Notice of the allegations of sexual harassment, including sufficient details such as the identities of the parties involved in the incident (if known), the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident (if known.);
- A statement that the respondent is presumed not responsible for the alleged misconduct and that a determination regarding responsibility will be made at the conclusion of the grievance process;

- A statement informing the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney; and who may inspect and review evidence pertaining to the incident; and
- A statement informing the parties of any provision in the College's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

During the course of the investigation, the College may decide to investigate allegations about the complainant or respondent that were not included in the initial written notice, if this occurs, the College will provide notice of the additional allegations to the parties whose identities are known.

B. Supportive Measures

The College will implement interim and/or protective actions upon notice of alleged discrimination, harassment, and/or retaliation and will take additional prompt remedial and/or disciplinary action with respect to any member of the community, guest, or visitor who has violated this policy.

Interim actions include but are not limited to: no contact orders, No Trespass/Persona Non Grata notices, providing counseling and/or medical services, academic support, providing a campus escort, academic or work schedule and assignment accommodations, safety planning, and referral to campus and community resources.

The College may suspend, on an interim basis, a student or student organization, or place an employee on administrative leave pending the completion of the investigation and procedures. In cases in which an interim suspension or administrative leave is imposed, the student, employee, or student organization will be given the opportunity to meet with an appropriate administrator prior to such action being imposed, or as soon thereafter as reasonably possible, to show cause why the action should not be implemented. Violation of interim provisions will be grounds for disciplinary action.

During an interim suspension or administrative leave, a student or employee may be denied access to the College campus, facilities, or events, either entirely or with specific application. As determined by the appropriate administrative officer, this restriction includes classes and/or all other College activities or privileges for which the individual might otherwise be eligible. At the discretion of the appropriate administrative officer, alternative coursework options may be pursued to ensure as minimal an impact as possible on the respondent student. At the discretion of the appropriate administrative officer, alternative employment/work options may be pursued to ensure as minimal an impact as possible on the respondent employee.

2. Notice of Charges

Once an investigator has been assigned, written notice of the allegations will be provided to the parties involved. If the respondent is an employee, the written notice will be copied to the employee's department head/director, dean, vice president, and president.

3. Investigation

If a complainant wishes to pursue a formal complaint or if the College determines an investigation is necessary, the Title IX Coordinator will assign an investigator, usually within five (5) business days of determining that a complaint should proceed. Investigations will be thorough and impartial and will

entail interviews with relevant parties and witnesses, and obtaining available evidence. Conflict of interest (real or perceived) by the investigator will not be allowed. The College aims to complete investigations, barring exigent circumstances within 60 days, which can be extended as necessary for appropriate cause or reasonable delays as determined by the Title IX Coordinator with notice to the parties. Investigation may take longer when initial complaints fail to provide direct first-hand information. The College may undertake a short delay (usually 1-2 weeks, to allow for a forensic collection of evidence by law enforcement) when criminal charges are being investigated. Complainants will be informed, at regular intervals, of the status of the investigation. College action will continue regardless of the status of civil or criminal charges involving the same incident. A complainant may proceed with both a criminal charge and a request for a College resolution simultaneously.

A. Student Withdrawal While Charges Pending

The Title IX Coordinator may dismiss a complaint or any allegations at any time during the investigation or hearing, should a responding student decide to withdraw from the College and/or not participate in the investigation and/or hearing. The process will nonetheless proceed in the student's absence to a reasonable resolution and that student will not be permitted to return to the College unless any and all sanctions have been satisfied. The Title IX Officer will continue to act to promptly and effectively remedy the effects of the conduct upon the victim and the community.

B. Employee Resignation

While Charges Pending Should a responding employee resign while charges are pending, the Title IX Coordinator may dismiss a complaint or any allegations at any time during the investigation or hearing. The records of the Title IX Coordinator will reflect that status, as will College responses to any future inquiries regarding employment references for that individual. The Title IX Coordinator will continue to act to promptly and effectively remedy the effects of the conduct upon the victim and the community.

C. Required Dismissal of Complaint

The Title IX Coordinator must dismiss a complaint or any allegations under the following circumstances as defined by new Title IX regulations:

- Did not occur at the College's education program or activity;
- Did not occur against a person in the United States;
- Complainant was not participating or attempting to participate in the College's program at time of complaint; or
- The conduct alleged in the formal complaint would not constitute sexual harassment as defined by Title IX definitions, even if proved.

The College may dismiss a formal complaint or any allegation therein, if at any time during the investigation or hearing:

- A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegation therein;
- The respondent is no longer enrolled or employed by the College; or
- Specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Written notice of the dismissal must be provided to all parties. Upon dismissal, the College may institute action under another provision of the Employee Code of Conduct, Student Code of Conduct, Discrimination Policy and Sexual Harassment Policy. Dismissal of the formal complaint may be appealed.

4. Investigation Findings

A. For Students

Upon receipt of the investigative report, the Title IX Coordinator will forward it to the Vice President of Student Affairs or designee for an appropriate hearing per the Student Code of Conduct procedures. In addition, a copy of the investigation report must be provided to the respondent, the complainant and their advisors. All parties have ten (10) days to review the information and provide a response to the Investigator and/or Title IX Coordinator.

The investigation process for each complaint will require a live hearing involving all parties.

During a hearing:

- Both the complainant and the respondent will receive equivalent notice of the process;
- The complainant and the respondent will be invited to the Hearing;
- The complainant and respondent will be entitled to the same opportunity to have an Advisor present during the Hearing;
- The Advisor of choice may be anyone;
- If either party does not have an Advisor, then the College must provide one for the cross-examination part of the Hearing at no cost to either party;
- The College may restrict participation of Advisor equally except for the cross-examination;
- Both the complainant and the respondent will have the opportunity to present witnesses with information pertinent to the alleged sexual harassment, sexual misconduct or sexual assault, and any relevant information to the Hearing panel during the conduct process;
- The complainant will be provided options for reasonable alternative arrangements if he or she does not want to be present in the same room as the respondent during the Hearing;
- Testimony regarding any party's past sexual conduct will ordinarily not be permitted, except in those instances where there was a prior sexual relationship between the parties and the testimony may be relevant to the issue of consent. If the respondent is found responsible for the conduct alleged in the complaint, his or her past sexual misconduct, if any, may be considered in determining the appropriate outcome.
- Advisors will be allowed to cross-examine either party during the Hearing, which may involve each party's advisor asking the other party and any witnesses all relevant questions and follow-up questions, including that challenging credibility. Cross-examinations 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 party or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.
- An Advisor can be asked to step out of the Hearing by the Hearing Chair for inappropriate behavior or improper questions.
- The College will document the proceedings.

Following the hearing, the decision of whether a policy violation has occurred will be determined by using a preponderance of the evidence standard. The decision will be made by the Decision Maker who will be a member of senior confidential staff. A finding of a policy violation by a preponderance of the evidence means that it is more likely than not that the policy violation occurred. If, following the hearing, the decision is that no policy violation has occurred the process will end. Regardless of the outcome, the complainant, the respondent, and the Title IX Coordinator will be notified of the finding in writing.

A written determination will include the following:

- Identification of the allegations potentially constituting sexual harassment;
- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including, any notification 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 code of conduct to the facts;
- A statement of, and rationale for, the results as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the College will impose 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 procedures and permissible bases for the complainant and respondent to appeal.

A written determination will be provided to all parties simultaneously. The determination regarding responsibilities will become 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.

If, following a hearing, the student is found to have violated College policy, appropriate disciplinary sanctions will be determined after consultation with the Title IX Coordinator. The Vice President of Student Affairs (or designee) will notify the respondent, the complainant, and the Title IX Coordinator in writing of the Vice President's decision. This written decision must be issued within fifteen (15) business days of the date of receipt of the investigative report from the Title IX Coordinator.

B. For Employees

Investigations will be thorough and impartial and will entail interviews with relevant parties and witnesses, and obtaining available evidence. Both the complainant and the respondent will have the opportunity to present witnesses with information pertinent to the alleged sexual harassment, sexual misconduct or sexual assault, and any relevant information. The investigator will document the proceedings. Employees who are under the respective, collective bargaining agreements, are entitled to have union representation consistent with their Weingarten Rights throughout the process.

Upon receipt of the investigative report, the Title IX Coordinator will determine if this policy has been violated by using a preponderance of the evidence standard. A finding of a policy violation by a preponderance of the evidence means that it is more likely than not that the policy violation occurred. If the Title IX Coordinator decides that no policy violation has occurred, then the process will end. Regardless of the outcome, the complainant and the respondent will be notified of the finding in writing. The respondent's department head/director, Dean, Vice President, Director of Human

Resources (or a designee as identified by the President), and the President will also be notified of the finding.

In the event that the employee violated College policy, the Director of Human Resources (or a designee as identified by the President) will determine appropriate disciplinary sanctions based on the recommendation from the Title IX Officer. These recommendations will be submitted to the President for review and approval. If a Vice President and/or Director of Human Resources (or a designee as identified by the President) serves as a party or witness in the investigation, the Title IX Coordinator's recommendation will be sent to the President for determination of disciplinary sanctions.

Regardless of the outcome, the complainant, the respondent, and the Title IX Coordinator will be notified in writing of the outcome within twenty (20) college days of the date of the notice from the Title IX Coordinator.

5. Sanctions

Sanctions will be recommended by the Title IX Coordinator and forwarded to the decision-making authority. Factors considered when determining a sanction may include:

- The nature of, severity of, and circumstances surrounding the violation;
- The respondent's disciplinary history;
- Previously founded complaints or allegations against the respondent involving similar conduct;
- Any other information deemed relevant by the Title IX Coordinator;
- The need to bring an end to the discrimination, harassment, and/or retaliation;
- The need to prevent the future recurrence of discrimination, harassment, and/or retaliation; and/or
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the victim and the community.

a. Student Sanctions

For examples of the range of potential disciplinary sanctions against students, see the section of the Student Code of Conduct entitled Remedies and Sanction.

b. Employee Sanctions

Sanctions for an employee who has violated this policy may include, but are not limited to, verbal or written warning, required counseling, training, demotion, reassignment, suspension, and termination.

6. Appeals

Appeals of the decision of the Dean of Student Life and Conduct and/or the Community Standards Review Board process (for students) or the Executive Director of Human Resources/President (or a designee as identified by the President) (for employees) may be filed by the complainant, the respondent or both. All requests for appeal considerations must be submitted in writing to the Title IX Coordinator within five (5) business days of the date of the final written notice.

Appeals are limited to allegations of the following:

- A procedural error or omission that significantly impacted the outcome;

- The Title IX Coordinator, investigator(s), or decision-maker (s) had a conflict of interest or bias or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the decision
- There is new evidence, unknown or unavailable during the investigation, that could substantially impact the finding or sanction. A summary of this new evidence and its potential impact upon the investigation must be included in the appeal; and/or
- The sanctions imposed are substantially disproportionate to the severity of the violation.

The original finding and sanction/responsive actions will stand if the appeal is not timely or is not based on the grounds listed above, and such a finding and sanction/responsive action(s) are final. When a party requests an appeal, the other party (parties) will be notified in writing and given an opportunity to respond. The College will give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.

The Appeal Decision Maker for either the student or employee process cannot have had any other role in the investigation or resolution process. The Appeal Decision Maker will be determined by the Title IX Coordinator.

Where the designee finds that at least one of the grounds is met, and proceeds with the appeal, additional principles governing the hearing of appeals include the following:

- The original decision will only be changed when there is a compelling justification to do so.
- Appeals are not intended to be full re-hearings of the complaint. Appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the grounds for appeal.
- Sanctions will not be imposed pending the outcome of the appeal. Interim and/or protective actions may be imposed and/or continued as appropriate.
- The designee will render a decision within ten (10) college days to the Title IX Coordinator who will normally provide written notice of the appeal to all parties within three college days from the date of the appeal review.
- All parties will be informed of whether the grounds for an appeal are accepted and the results of the appeal decision. The College will issue a written decision describing the results of the appeal and the rationale for the result. The written decision will be provided simultaneously to both parties.
- Once an appeal is decided, the outcome is final: further appeals are not permitted under this policy.

7. Failure to Complete Sanctions

All respondents are expected to comply with conduct sanctions within the time frame specified in their written notice. Failure to follow through on conduct sanctions by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanctions and/or suspension, expulsion, and/or termination from the College. For students, failure to comply may result in a hold to prevent future registration or other transactions with the College.

III. Remedial Actions

In addition to interim actions, the Title IX Coordinator or Deputy Coordinator may provide remedial actions intended to address the short or long-term effects of harassment, discrimination, and/or retaliation. That is, remedial actions may be taken at the conclusion of the process in addition to any actions that may have been taken on an interim basis, in order to redress harm to the complainant and the community and to prevent further harassment or violations. Remedial actions may also be used when, in the judgment of the Title IX Coordinator or Deputy Coordinator, the safety or well-being of any member(s) of the campus community may be jeopardized by the presence of the respondent on campus or the ongoing activity.

These remedies may include referral to counseling and health services or to the Employee Assistance Program (EAP), altering the academic schedule of a respondent student, (or the alleged complainant, if desired), altering work arrangements, providing campus escorts, implementing contact limitations between the parties, or offering adjustments to academic deadlines and/or course schedules.

Appendix A

Good Samaritan

The welfare of students in our community is of paramount importance. At times, students on and off-campus may need assistance. The College encourages students to offer help and assistance to others in need. Sometimes, students are hesitant to offer assistance to others, for fear that they may get themselves in trouble (for example, a student who has been drinking underage might hesitate to help take a victim of sexual misconduct to Public Safety or a medical provider). The College pursues a policy of limited immunity for students who offer help to others in need. While policy violations cannot be overlooked, the College will provide educational options, rather than punishment, to those who offer their assistance to others in need.

Risk Reduction Tips

Risk reduction tips can often take a victim-blaming tone, even unintentionally. With no intention to victim-blame, and with recognition that only those who commit sexual violence are responsible for those actions, these suggestions may nevertheless help to reduce risk of experiencing a nonconsensual sexual act. Below are suggestions to avoid committing a non-consensual sexual act:

- A. Know your sexual intentions and limits. You have the right to say "NO" to any unwanted sexual contact. If you are uncertain of what you want, ask your partner to respect your feelings.
- B. Communicate your limits firmly and directly. If you say "NO," say it like you mean it. Avoid giving mixed messages. Back up your words with a firm voice and clear body language. Do not assume that someone will automatically know how you feel or will eventually "get the message" without you having to say anything.
- C. Remember that some people think that drinking, dressing provocatively, or going to your or your date's room is saying you are willing to have sex. Be clear up front about your limits in such situations.
- D. Listen to your gut feelings. If you feel uncomfortable or think you might be at risk, leave the situation immediately and go to a safe place.
- E. Don't be afraid to "make waves" if you feel threatened. If you feel you are being pressured or coerced into sexual activity, don't hesitate to state your feelings and leave the situation.
- F. Attend large parties with friends you trust. Agree to "look out" for one another. Leave with the group, not alone. Avoid leaving with people that you don't know very well.
- G. Take care of your friends and ask that they take care of you. A real friend will challenge you if you are about to make a mistake. Respect them when they do.

If you find yourself in the position of being the initiator of sexual behavior, you owe sexual respect to your potential partner. These suggestions may help you to reduce your risk for being accused of sexual misconduct:

- A. Clearly communicate your intentions to your sexual partner and give them a chance to clearly relate their intentions to you.
- B. Understand and respect personal boundaries.
- C. DO NOT MAKE ASSUMPTIONS: about consent; about someone's sexual availability; about whether they are attracted to you; about how far you can go or about whether they are

physically and/or mentally able to consent. If there are any questions or ambiguity, then you DO NOT have consent.

- D. Mixed messages from your partner are a clear indication that you should stop, defuse any sexual tension and communicate better. You may be misreading them. They may not have figured out how far they want to go with you yet. You must respect the timeline for sexual behaviors with which they are comfortable.
- E. Don't take advantage of someone's drunkenness or drugged state, even if they did it to themselves.
- F. Realize that your potential partner could be intimidated by you, or fearful. You may have a power advantage simply because of your gender or size. Don't abuse that power.
- G. Understand that consent to some form of sexual behavior does not automatically imply consent to any other forms of sexual behavior.
- H. Silence and passivity cannot be interpreted as an indication of consent. Read your potential partner carefully, paying attention to verbal and non-verbal communication and body language.

Sexual Offense Prevention and Educational Programming

Bergen Community College recognizes sex discrimination in all its forms as important issues, therefore, the College offers annual educational programming to a variety of groups such as: staff, security, faculty, incoming students, continuing students, student-athletes, and, members of student organizations. Visit www.Notalone.gov for more information and resources on avoiding and preventing sexual assault.

Sexual Misconduct educational programming may address matters such as: a definition of what constitutes sex discrimination, the causes of sex discrimination, myths involved with sex discrimination, prevention, the relationship between sex discrimination and alcohol use, what to do if you are assaulted, the nature of a rape examination, an explanation of the College sexual misconduct policy, how to make a report and file charges within the College, its conduct system, and/or with the local police department, men's issues and sexual assault, and campus community resources to assist both the survivor and the accused.

Federal Enforcer

The U.S. Department of Education, Office for Civil Rights (OCR) is the federal agency charged with enforcing compliance with Title IX. Individuals with complaints of this nature always have the right to file a formal complaint with the United States Department of Education:

Office for Civil Rights (OCR)

400 Maryland Avenue, SW
Washington, DC 20202-1100
Customer Service Hotline Number: 800.421.3481
FAX: 202.453.6012
TDD#: 877.521.2172
Email: OCR@ed.gov
Web: <http://www.ed.gov/ocr>

APPENDIX B

BERGEN COMMUNITY COLLEGE

NEW JERSEY CAMPUS SEXUAL ASSAULT VICTIM'S BILL OF RIGHTS

A college or university in a free society must be devoted to the pursuit of truth and knowledge through reason and open communication among its members. Academic communities acknowledge the necessity of being intellectually stimulating where the diversity of ideas is valued. Its rules must be conceived for the purpose of furthering and protecting the rights of all members of the university community in achieving these ends.

The boundaries of personal freedom are limited by applicable state and federal laws and institutional rules and regulations governing interpersonal behavior. In creating a community free from violence, sexual assault, and nonconsensual sexual contact, respect for the individual and human dignity are of paramount importance.

The state of New Jersey and Bergen Community College recognize that the impact of violence on victims and the surrounding community can be severe and long lasting. Thus, this Bill of Rights has been established to articulate requirements for policies, procedures, and services designed to ensure that the needs of victims are met and that the colleges and universities in New Jersey create and maintain communities that support human dignity.

Bill of Rights

The following rights shall be accorded to victims of sexual assaults that occur:

- On the campus of any public or independent institution of higher education in the State of New Jersey, and
- Where the victim or alleged perpetrator is a student at that institution; and/or
- When the victim is a student involved in an off-campus sexual assault.

Human Dignity Rights:

- The crimes to be assured of any other right guaranteed under this policy.
- To be free from any suggestion that victims must report.
- To have any allegations of sexual assault treated seriously; the right to be treated with dignity personal publicity.
- To be free from any suggestion that victims are responsible for the commission of crimes against them.
- To be free from any pressure from campus personnel to:
 - Report crimes if the victim does not wish to do so;
 - Refrain from reporting crimes to avoid unwanted publicity; and/or
 - Report crimes as lesser offenses than the victim perceives them to be.

Rights to Resources On – and Off – Campus:

- To be notified of existing campus and community-based medical, counseling, mental health, and student services for victims of sexual assault whether or not the crime is formally reported to campus or civil authorities.

- To have access to campus counseling under the same terms and conditions as apply to other students in their institution seeking such counseling.
- To be informed of and assisted in exercising any rights to confidential or anonymous testing for sexually transmitted diseases, human immunodeficiency virus, and/or pregnancy.
- To be informed of and assisted in exercising any rights that may be provided by law to compel and disclose the results of testing of sexual assault suspects for communicable diseases.

Campus Judicial Rights:

- To be afforded the same access to legal assistance as the accused.
- To be afforded the same opportunity to have others present during any campus disciplinary proceeding that is allowed for the accused.
- To be notified of the outcome of the sexual assault disciplinary proceeding against the accused.

Legal Rights:

- To have any allegation of sexual assault investigated and adjudicated by the appropriate criminal and civil authorities of the jurisdiction in which the sexual assault is reported.
- To receive full and prompt cooperation and assistance of campus personnel in notifying the proper authorities.
- To receive full, prompt, and victim-sensitive cooperation of campus personnel with regard to obtaining, securing, and maintaining evidence, including a medical examination when it is necessary to preserve evidence of the assault.

Campus Intervention Rights:

- To require campus personnel to take reasonable and necessary actions to prevent further unwanted contact of victims by their alleged assailants.
- To be notified of the options for and provided assistance in changing academic and living situations if such changes are reasonably available.

Statutory Mandates:

- Each campus must guarantee that this Bill of Rights is implemented. It is the obligation of the individual campus governing board to examine resources dedicated to services required and to make appropriate requests to increase or reallocate resources where necessary to ensure implementation.
- Each campus shall make every reasonable effort to ensure that every student at such campus receives a copy of this document.
- Nothing in this policy or in any “Campus Assault Victim’s Bill of Rights” developed in accordance with the provisions of this act shall be construed to preclude or in any way restrict any public or independent institution of higher education in the state from reporting any suspected crime or offense to the appropriate law enforcement authorities.

Related Documents/Policies:

Student Code of Conduct
Employee Code of Conduct

Policy History: (adopted/amended)

Section A: AF
Adopted: 10/5/94
Resolution: P14
Updated: 8/7/18, 8/14/20