

Title IX Policy and Procedures

Title IX states:

“No person in the United States shall on the basis of sex, be excluded from participation in, or be denied the benefits of; or be subjected to discrimination under any education program or any activity receiving Federal financial assistance.”

Policy Statement:

Barclay College will not exclude, separate, deny benefits to, or otherwise treat differently any person on the basis of sex unless expressly authorized to do so under Title IX or the Department’s implementing regulations.

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Definitions of Sexual Harassment

-SEX HARASSMENT is defined as unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual harassment is conduct that explicitly or implicitly affects a person’s employment or education or interferes with a person’s work or educational performance or creates an environment such that a reasonable person would find the conduct intimidating, hostile, offensive, or discriminatory. Sexual harassment includes sexual violence (see definition below). The college will respond to reports of any such conduct in accordance with BC Policy on Sexual Harassment.

Thus, in compliance with Title IX of the Education Amendments of 1972, sex harassment applies to, but is not limited to: recruitment, admissions, housing, athletic and extracurricular activities, rules and regulations, discipline, class enrollment, access to programs, courses and internships, distribution of financial assistance, distribution of institutional resources, hiring practices, employment, promotion, and policies.

Sexual harassment may include incidents between any members of the college community, including faculty and other academic appointees, staff, student employees, students, coaches, residents, interns, and non-student or non-employee participants in college programs (e.g., vendors, contractors, visitors, and patients). Sexual harassment may occur in hierarchical relationships, between peers, or between individuals of the same sex or opposite sex. To determine whether the reported conduct constitutes sexual

harassment, consideration shall be given to the record of the conduct as a whole and to the totality of the circumstances, including the context in which the conduct occurred.

-SEX DISCRIMINATION for the purposes of this policy, “sexual harassment” includes all forms of “discrimination” and/or mistreatment based on sex, including but not limited to: sexual assault and sexual harassment. In Barclay College policy, sex discrimination is a form of sex harassment. Thus, in Barclay College policy sex “discrimination” is a sub-category of sex “harassment.”

-SEX ASSAULT occurs when physical sexual activity is engaged without the consent of inactivity or conduct may include physical force, violence, threat, or intimidation, ignoring the objections of the other person, causing the other person’s intoxication or incapacitation through the use of drugs or alcohol, or taking advantage of the other person’s incapacitation (including voluntary intoxication).

-CONSENT is informed. Consent is an affirmative, unambiguous, and conscious decision by each participant to engage in mutually agreed-upon sexual activity. Consent is voluntary. It must be given without coercion, force, threats, or intimidation. Consent means positive cooperation in the act or expression of intent to engage in the act pursuant to an exercise of free will. Consent is revocable.

-INCAPACITATION is defined as the physical and/or mental inability to make informed, rational judgments. States of incapacitation include, but are not limited to, unconsciousness, sleep, and blackouts. Where alcohol or drugs are involved, incapacitation is defined with respect to how the alcohol or other drugs consumed affects a person’s decision-making capacity, awareness of consequences, and ability to make fully informed judgments. Being intoxicated by drugs or alcohol does not diminish one’s responsibility to obtain consent. The factors to be considered when determining whether consent was given include whether the accused knew, or whether a reasonable person should have known, that the complainant was incapacitated.

-DOMESTIC VIOLENCE is defined as abuse committed against an adult or a minor who is a spouse or former spouse, cohabitant or former cohabitant, or someone with whom the abuser has a child, has an existing dating or engagement relationship, or has had a former dating or engagement relationship.

-DATING VIOLENCE is defined as abuse committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

-STALKING is behavior in which a person repeatedly engages in conduct directed at a specific person that places that person in reasonable fear of his or her safety or the safety of others.

Any person who is the target of sexual assault, dating violence, domestic violence, stalking or sexual harassment should immediately consult the Title IX Office for advice, options, and information on informal resolutions and fact-finding investigations.

-Additional types of misconduct covered by these Policies:

- Electronically recording, photographing, or transmitting intimate or sexual utterance sounds or images of another person;
- Allowing third parties to observe sexual acts;
- Engaging in voyeurism;
- Exposing oneself
- Falsifying a posting on a electronic site involving sex or sexual activity
- Knowingly transmitting a sexually transmitted infection, including HIV, to another person for questions or additional information, please contact Barclay College's Title IX Coordinator.

REPORTING AN INCIDENT OF SEX BASED MISCONDUCT

Any person who has been the victim of sex-based misconduct has the right to report or not report the alleged incident. There are a number of reporting options available. It is important to understand that choosing one option does not preclude you from pursuing another option now or in the future.

A person who wishes to report sex-based misconduct may report directly to any or all of the following:

- Title IX Coordinator
- Any non-student Barclay College employee
All Barclay College employees, with the exception of confidential resources, must refer reports of sex-based misconduct to the Title IX Coordinator. No staff or faculty member, except confidential resources, can guarantee confidentiality when a report is made known to them about sex-based misconduct. Any staff or faculty member can help a person report sex-based misconduct to the Title IX Coordinator.
- Any Resident Assistant or Barclay College appointed Student Chaplain
- Local law enforcement
Barclay College's process is completely separate from the police and courts. Barclay College's Title IX process and the criminal process may be pursued simultaneously.
- Office of Civil Rights of the U.S. Department of Education

A person who wishes to speak confidentially about an incident of sex-based misconduct may take advantage of any or all of the following resources. Information provided to these resources will not, except in limited circumstances, be forwarded to the Title IX Coordinator without the express written permission of the reporter.

- **On Campus Resources**

The Barclay College Chaplain and Counselors have been designated as the only confidential resources. Reports made to these individuals will not be forwarded to the Title IX Coordinator without the express written permission of the reporter.

- **Off Campus Resources**

Healthcare professionals and crisis centers counselors

HOW TO FILE A COMPLAINT:

Complete an Incident Report and submit to the Title IX Coordinator. The report may be accessed on the Barclay College website or business office.

REPORTING RETALITATION:

Any form of retaliation under this policy is prohibited. An individual who believes they are the focus of retaliation, should make a complaint with the President of Barclay College. If the individual believes the president is part of the retaliatory behavior, the complaint should be made to the chair of the board of trustees.

INVESTIGATION PROCESS:

“If one gives an answer before he hears, it is his folly and shame” – Proverbs 18:13 (ESV)

All complaints of harassment or discrimination will be investigated in a manner that is adequate, reliable, and impartial. Investigations may be conducted by the Title IX Coordinator.

For matters involving discrimination or harassment based on sex (covered by Title IX), the Title IX Coordinator will ensure that the investigation complies with all Title IX requirements.

For matters involving discrimination or harassment based on disability (covered by ADA/Section 504), the Title IX Coordinator will ensure the investigation complies with all Section 504 requirements.

A criminal investigation pending or concluded, will not alter Barclay College's responsibility to conduct an investigation. Although the investigation may be delayed or suspended at the request of law enforcement while the law enforcement agency is gathering evidence.

In the event the investigation is delayed at the request of a law enforcement agency, appropriate steps will be taken to provide for the safety of the complainant and the Barclay College community and to prevent retaliation by an individual. The steps may include changes to the schedule, housing assignment or work location of the respondent or summary suspension/leave from the College issued to the respondent.

Barclay College will promptly resume its Title IX investigation as soon as the College receives notification that law enforcement has completed the evidence-gathering process.

INTERIM MEASURES

The Title IX Coordinator with members(s) of the Cabinet officially designated by the President, will determine appropriate interim measures to be taken during the investigation. Interim remedial actions can include, but are not limited to the following:

- No Contact Orders
- Interim Suspension
- Administrative Leave (Employee)
- Reassignment of Housing
- Reassignment of Job
- Class Schedule Change
- Prohibit or Restrict Participation in Extracurricular Activities
- Prohibit or Restrict Access to Campus for Third Parties

INVESTIGATION PROCESS

The Complainant will be contacted by the College Title IX Coordinator to schedule a meeting. During the meeting, the Barclay College Title IX Coordinator will:

- Inform Complainant of his/her rights under the Barclay College Student Handbook or Employee Handbook;
- Give the Complainant the opportunity to submit a written statement and evidence;
- Give the Complainant the opportunity to list any witnesses who may have information pertaining to the complaint;

- Inform the Complainant to have no contact with the Respondent during the course of the investigation;
- Inform the Complainant that there will be follow-up meetings to discuss the case and status.

The Respondent will be contacted by the Barclay College Title IX Coordinator to schedule a meeting.

During the meetings, the Barclay College Title IX Coordinator will:

- Inform the Respondent of his/her rights under the Student Handbook or Employee Handbook;
- Inform the Respondent to have no contact with the Complainant during the course of the investigation;
- Present the allegations and provide the Respondent the opportunity to respond;
- Give the Respondent the opportunity to submit a written statement and evidence to contest the allegations;
- Give the Respondent the opportunity to list any witnesses who may have information pertaining to the complaint;
- Inform the Respondent that there will be follow-up meetings to discuss the case and status.

Any person identified by the Complainant or Respondent who has information that pertains to the allegation will be contacted by the Barclay College Title IX Coordinator.

The Barclay College Title IX Coordinator who conducts the investigation shall prepare a written report within fifteen (15) business days after commencing the investigation, unless additional time to complete the investigation is required. In that case, the investigator shall report on the status of the investigation to the complainant and the respondent as applicable at the expiration of the fifteen (15) day period and every fifteen (15) business days thereafter.

At the conclusion of the investigation, the Barclay College Title IX Coordinator will meet with the Complainant and review the written report and explain the next steps in the process.

The Barclay College Title IX Coordinator will contact the Respondent and review the written report and explain the next steps in the process.

The Complainant and Respondent may have a support person/advisor present during the investigation process. The support person/advisor does not have to be a member of the Barclay College community.

The written report shall include a summary of the investigation; findings of fact and an explanation of the evidence in support of such findings (including a determination with respect to the factual allegations of the complaint); conclusions as to whether there have been any violations based on the factual findings; and a discussion of the reasons for such conclusions.

The results of the investigation will be forwarded to the Barclay College VP for Student Services and/or VP for Business Services for review and any action deemed appropriate in accordance with federal, state, and local laws, and the Barclay College Student or Employee Handbook.

Barclay College Title IX investigation process, findings and rulings do not limit the Complainant's and Respondent's rights to pursue other avenues of recourse which may include filing charges or a complaint with local, state and federal authorities responsible for addressing **unlawful** discrimination and harassment.