

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.

Under the new regulations established in 2020, sexual harassment, including sexual assault is considered unlawful sex discrimination.

Policy Statement:

Barclay College will not exclude, separate, deny benefits to, or otherwise treat differently any person on the basis of sex, in accordance with Title IX regulations. Barclay College is obligated to investigate and resolve sexual harassment complaints for conduct only in the US, on school grounds, during school-sponsored events, and in school-owned or –recognized housing.

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Definitions of Sexual Harassment

SEXUAL HARASSMENT means conduct on the basis of sex that satisfies one or more of the following: (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct (quid pro quo conduct); (2) 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 recipient’s education program or activity; or (3) “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30).

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 2020, sexual 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 meet the following guidelines:

- ▶ First, Title IX covers “quid pro quo” harassment, when a school employee conditions access to educational benefits on unwelcome sexual conduct. Note that this provision does not cover sexual conduct by students or other agents.
- ▶ Second, sexual harassment includes “unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the school’s education program or activity.”
- ▶ Third, the new definition incorporates four components from the Clery Act and the Violence Against Women Act: sexual assault, domestic violence, dating violence and stalking. These additions are intended to clarify that one particularly severe incident (even if not “pervasive”) can qualify as Title IX sexual harassment if it falls within any of these definitions.

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 sexual harassment. Thus, in Barclay College policy sex “discrimination” is a sub-category of sexual “harassment.”

SEXUAL 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 judgements. 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 an 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 sexual harassment 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 sexual harassment 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 sexual harassment 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 sexual harassment. Any staff or faculty member can help a person report sexual harassment 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 sexual harassment may take advantage of any or all of the following resources.

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, Title IX Coordinator's 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 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 respondent, and to prevent retaliation by any individual. The steps may include changes to the schedule, housing assignment or work location of either party.

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

GRIEVANCE 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.

Barclay College will use the preponderance of the evidence standard to evaluate evidence, using the same standard of evidence for formal complaints against students as for complaints against employees, including faculty, and apply the same standard of evidence to all formal complaints of sexual harassment.

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.

The Complainant and Respondent will 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. Barclay College will supply an advisor for either party if so desired.

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 written report shall include a summary of the investigation; findings of fact and an explanation of the evidence in support of such findings.

The Title IX Coordinator will then set up a live hearing for cross-examination by each party. Such cross-examination will be done in such a manner as to safeguard against further trauma or inconvenience (e.g., virtually, through separate rooms, questioning not conducted by the respondent personally, etc.). Hearsay statements are not admissible.

All complaints must be investigated and resolved in a live hearing with each party entitled to an adviser or attorney to conduct cross examination and a presumption of innocence

The hearing will be conducted with the Decision Making team in a reasonable amount of time to give both parties time to review evidence and develop a response. The Title IX Coordinator will not be involved in the decision making process.

The Decision Making team will consist of the following:

- In student / student complaints, the CARE team.
- In student / staff or staff / staff complaints, (1) the respondent's immediate supervisor of the staff member, (2) the VP of Student Services or VP of Business Services—depending upon which department is involved in the complaint, and (3) the Human Resources Director.

If one member would fill more than one position, the VP of Academics will step, if the VP of Business Services is involved the HR Specialist will step in so that there are three decision makers in all Title IX hearings.

- In student / faculty, staff / faculty, or faculty / faculty complaints, (1) the respondent's division chair, (2) the VP of Academics, and (3) the Human Resource Director.

If the division chair is involved in the complaint the VP of Student Services will step in, if the VP of Academics is involved the VP of Student Services will step in, if the HR director is involved the HR Specialist will step in. There will be three decision makers in all Title IX hearings.

Appeal Process

An appeal process is equally available to both parties, and is available on at least three bases:

- 1.) Procedural irregularity that affected the outcome
- 2.) New evidence that was not reasonably available when the determination of responsibility was made that could affect the outcome
- 3.) The Title IX Coordinator, investigator, or decision-maker had a conflict of interest or bias that affected the outcome

The results of the hearing will be forwarded to the Barclay College VP for Student Services, **VP for Academics**, 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.