

## Bennington College Non-Title IX Sexual Misconduct, Dating Violence, Domestic Violence and Stalking Policy

Sexual misconduct and other acts covered in this Non-Title IX Sexual Misconduct, Dating Violence, Domestic Violence and Stalking Policy ("Policy") subvert the fundamental core of our values and the educational mission of Bennington College and threaten the well-being of students, faculty, and staff. The College is committed to take action as appropriate and required by law when it receives reports of misconduct prohibited by this Policy.

Bennington College maintains separate policies for types of sexual harassment, sexual misconduct, dating violence, domestic violence and stalking that are either: 1) covered by Title IX of the Education Amendments of 1972 ("Title IX") and the U.S. Department of Education's May 2020 Title IX regulations; and 2) that are not covered by Title IX but are nonetheless covered by College policy. Conduct covered by Title IX is addressed in the College's [Title IX Sexual Harassment, Dating Violence, Domestic Violence and Stalking Policy and Procedures \(2020-2021\)](#), and this Policy. The College does so because the U.S. Department of Education's May 2020 Title IX regulations define sexual harassment more narrowly than the College chooses to define prohibited conduct as an expression of its community values, and because the Department of Education's regulations require certain procedures in Title IX-covered matters that are different than the procedures traditionally employed by the College in cases that involve reports of sexual misconduct, dating violence, domestic violence or stalking.

### Consent Policy

At the foundation of this Policy is the understanding that in order to engage in behavior of a sexual nature there must be clear, knowing, and voluntary consent prior to and during sexual activity. Under Vermont law, "consent" to sexual activity is defined to mean "words or actions by a person indicating a voluntary agreement to engage in a sexual act." For purposes of this Policy, the following is true of consent:

- Consent is informed, active, and freely given and is grounded in rational and reasonable judgment. It requires clear communication between all persons involved in a sexual encounter.
- Consent can be communicated verbally or by actions.
- Consent must be mutually understandable by all parties involved in the sexual experience, which a reasonable person would interpret as a willingness to participate in agreed-upon sexual conduct.
- The person initiating the sexual contact is always responsible for obtaining consent from their partner(s).
- It is not the responsibility of one party to resist or communicate "no" to the sexual advances of another.
- Consent is not the absence of resistance. Silence and/or immobility are inactive behaviors and do not constitute consent. If a partner is inactive (for example, silent or physically

still) sexual activity must stop until both partners have communicated clearly with each other about what, if any, sexual activity is mutually desired.

- Consent to one form of sexual activity does not imply consent to another form of sexual activity. Each new sexual act requires new consent.
- Consent can be withdrawn by either party at any time.
- Consent at one time and to one sexual act does not imply consent at any other time to that or any other sexual act at a later date and regardless of previous relations.
- Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another.
- Consent may not be given by minors, when a physical or mental condition is present such that the person cannot knowingly or voluntarily give consent, or by incapacitated persons. A person may be incapacitated as a result of alcohol or other drug use. A person who is unconscious, unaware, or otherwise physically helpless, and is therefore incapacitated, cannot give consent to sexual activity.
- A person will be considered unable to give valid consent, for example, if they cannot fully understand the details of a sexual interaction (who, what, when, where, why, or how) or because they lack the capacity (due to the consumption of alcohol, drugs, or other factors) to reasonably understand the situation. Individuals who consent to sex must be able to understand what they are doing.
- An imbalance of power may lead to confusion about consent.

Consent cannot result from force, or threat of force, coercion, fraud, intimidation, incapacitation (due to use of alcohol for example), or imbalance of power. The College will use an objective standard when determining incapacitation-related questions; that is, the College will determine whether from the standpoint of a reasonable person, the respondent knew or should have known that the complainant could not effectively consent because they were incapacitated.

It should be noted that ignorance of the policy noted above, or the intoxication of a respondent, will not (particularly given the College's objective standard) be considered an excuse for violating this policy.

#### Notice of Nondiscrimination on the Basis of Sex

Bennington College is committed to providing an environment free from discrimination as defined under applicable state and federal laws, including but not limited to, Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs and activities. Prohibited sex discrimination includes sex-based discrimination and sexual harassment and sexual misconduct as described in the College's Title IX Sexual Harassment, Dating Violence, Domestic Violence and Stalking Policy and Procedures, and this Policy. The College does not discriminate on the basis of sex, nor does it tolerate sexual harassment or sexual misconduct in its education programs or activities and/or in the employment setting.

The College expects all members of the campus community to conduct themselves in a manner that does not infringe upon the rights of others consistent with Title IX and this Policy, and in accordance with amendments to the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act") made by the Violence Against Women Reauthorization Act of 2013. This Policy is intended to define community expectations and prohibited conduct regarding issues of sexual harassment, sexual misconduct, domestic violence, dating violence, and stalking; establish a mechanism for determining when those expectations have not been met; define procedures for responding to incidents of such misconduct; provide resources available to those affected by such behavior; and provide for corrective and remedial action where necessary.

The College is committed to educating our community to effectively identify and reduce the existence of sexual harassment, sexual misconduct, domestic violence, dating violence, and stalking as defined in this Policy and all applicable related laws. This Policy reaffirms our commitment to providing a safe and nondiscriminatory working and learning environment.

#### Title IX Coordinator

The Associate Vice President for Institutional Initiatives is the College's Title IX Coordinator, and is responsible for coordinating the College's efforts to comply with and carry out its responsibilities under Title IX and this Policy. The Title IX Coordinator's core responsibilities include overseeing the school's response to reports and complaints of misconduct covered by this Policy and identifying and addressing any patterns or systemic problems revealed by such reports and complaints. To accomplish this, subject to the exemption for confidential employees discussed below, the Title IX Coordinator must be informed of all reports and complaints raising issues covered by this Policy, even if the report or complaint was initially filed with another individual or office or if the investigation will be conducted by another individual or office. The Title IX Coordinator is available to respond to inquiries regarding misconduct prohibited by this Policy and/or related retaliation, and to meet with students, employees, or third parties regarding Title IX-related issues, such as issues related to the College's compliance with Title IX and the Clery Act, response to covered reports or complaints, related grievance procedures, relevant patterns of conduct, or related education and prevention programs.

There may be times when it is necessary for the Title IX Coordinator to delegate certain of their duties or functions as outlined in this policy and these procedures or otherwise. References to the Title IX Coordinator in this policy and procedures should therefore be read throughout as if they also stated "Title IX Coordinator or designee."

#### Title IX Coordinator

Meredith McCoy, Associate Vice President for Institutional Initiatives and Title IX Coordinator  
802-440-4337 | [meredithmccoy@bennington.edu](mailto:meredithmccoy@bennington.edu)

Deputy Title IX Coordinator for Students Christine Winget, Associate Dean of Student Life  
802-440-4390 | [christinewinget@bennington.edu](mailto:christinewinget@bennington.edu)

Deputy Title IX Coordinator for Staff Heather Faley, Director of Human Resources

## General Definitions

### Complainant

A complainant is a student or employee of the College who is reported to have experienced conduct that could constitute Prohibited Conduct as defined below, regardless of whether the student or employee makes a report or seeks disciplinary action. When deemed appropriate at the College's discretion, a complainant may also be a third party involved in some way in an academic, extracurricular, or residential program of the College ("covered third party") who has allegedly been subjected to conduct in violation of this Policy by a student or employee. For ease of reference and consistency, the term "complainant" is used in this policy to refer to a person who believes that he or she has been subjected to Prohibited Conduct, or who is believed by another to have been subjected to such conduct.

### Respondent

For purposes of this Policy, a respondent is a student, employee or covered third party who has been reported to be the perpetrator of conduct that could constitute Prohibited Conduct as defined in this Policy. A covered third party is a person who is not a student or employee of the College, but who is someone over whom the College has some measure of control that would allow the College to take some form of action against them if it is determined that they engaged in Prohibited Conduct (e.g., a vendor or volunteer).

### Officials With Authority

Officials with authority to institute corrective measures regarding matters involving Prohibited Conduct include the College's Title IX Coordinator and Deputy Title IX Coordinators, whose contact information is provided above. An Official With Authority will, upon receipt of a formal complaint of *Title IX Sexual Harassment*, take action on such a complaint in accordance with the procedures outlined below.

### Prohibited Conduct<sup>1</sup>:

This Policy prohibits the following forms of misconduct, collectively referred to throughout the policy as "Prohibited Conduct"<sup>2</sup>:

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<sup>1</sup> The definitions of dating violence, domestic violence, sexual assault, and stalking used in this policy are consistent with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act"), as amended effective 2014. In its primary prevention and awareness programs for incoming students and new employees, as well as in its primary prevention and awareness programs for students and employees, the College will include the definitions of dating violence, domestic violence, sexual assault, and stalking under the criminal law of Vermont. However, the College utilizes its own definitions of these prohibited behaviors, which are consistent with the Clery Act as set forth below, for purposes of this policy, and makes decisions regarding responsibility for violations of this Policy through its own procedures and standards of proof (i.e. by a preponderance of the evidence standard), not through the procedures or standards of proof employed in the criminal justice system.

<sup>2</sup> As noted above, the College also prohibits *Title IX Sexual Harassment* (i.e., Quid Pro Quo Sexual Harassment, Severe, Pervasive and Objectively Offensive Sexual Harassment, Sexual Assault, and Domestic Violence, Dating Violence and sex-based Stalking within the scope of Title IX) as defined by the Department of Education's May 2020 Title IX regulations, in the College's Title IX Sexual Harassment, Dating Violence, Domestic Violence and

*Non-Title IX Misconduct* (i.e., Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, and Stalking outside the scope of Title IX, Sexual Exploitation as defined below, and Retaliation).

Specifically, *Non-Title IX Misconduct* is defined as follows for purposes of this Policy:

#### *Non-Title IX Sexual Assault*

Non-Title IX Sexual Assault is reported conduct that, if proved, would fall within the definitions immediately below but that would not constitute Title IX Sexual Assault because it did not reportedly occur in a program or activity of the College in the United States, but which the College decides to address through this Policy:

- Rape:<sup>3</sup>
  - The carnal knowledge of a person (i.e., penile-vaginal penetration), without the consent of that person, including instances where the person is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity (it should be noted that either females or males could be complainants under this definition);
  - Oral or anal sexual intercourse (i.e., penile penetration) with another person, without the consent of that person, including instances where the person is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
  - To use an object or instrument (e.g., an inanimate object or body part other than a penis) to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of that person, including instances where the person is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity;
- Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of that person, including instances where the person is incapable of giving consent because of their age or because of their temporary or permanent mental or physical incapacity (for purposes of this definition, "private body parts" includes breasts, buttocks, or genitals, whether clothed or unclothed);

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Stalking Policy and Procedures. Reported conduct that, if proved, would fall within the scope of that policy and its procedures will be handled under that policy and its procedures. Reported conduct that, if proved, would fall within the scope of this Policy will be handled under this Policy and the procedures provided and referenced below, except as provided specifically in the Title IX Sexual Harassment, Dating Violence, Domestic Violence and Stalking Policy and Procedures in certain mixed cases that involve both Title IX and non-Title IX-covered reported conduct,

<sup>3</sup> Both completed rape and attempted rape are prohibited by this policy.

- Incest: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; or
- Statutory Rape: Sexual intercourse with a person who is under the statutory age of consent.

Non-Title IX Sexual Assault can be committed by any person against any other person, regardless of gender, gender identity, sexual orientation, or past or current relationship status. Sexual assault may occur with or without physical resistance or violence.

Any incident falling within this definition is a violation of College policy and is prohibited.

#### *Non-Title IX Dating Violence*

Non-Title IX Dating Violence for purposes of this Policy is reported conduct on the basis of sex not reportedly committed in an education program or activity of the College in the United States that constitutes violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant, but which the College decides to address through this Policy. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

For the purposes of this definition— (A) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. (B) Dating violence does not include acts covered under the definition of domestic violence.

Any incident falling within this definition is a violation of College policy and is prohibited.

#### *Non-Title IX Domestic Violence*

Non-Title IX Domestic Violence for purposes of this Policy is reported conduct on the basis of sex not reportedly committed in an education program or activity of the College in the United States that constitutes a felony or misdemeanor crime of violence, but that the Colleges decides to address through this Policy, that is reportedly committed—

- (A) By a current or former spouse or intimate partner of the victim;
- (B) By a person with whom the victim shares a child in common;
- (C) By a person who is cohabiting with, or has cohabited with, the victim as a spouse or intimate partner;
- (D) By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
- (E) 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 jurisdiction in which the crime of violence occurred.

Any incident falling within this definition is a violation of College policy and is prohibited.

### *Non-Title IX Stalking*

Non-Title IX Stalking for purposes of this Policy is reported conduct on the basis of sex not reportedly committed in an education program or activity of the College in the United States but that the College decides to address through this Policy that constitutes engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

- (A) Fear for the person’s safety or the safety of others; or
- (B) Suffer substantial emotional distress.

(ii) For purposes of this definition—

- (A) 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, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property.
- (B) Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.
- (C) Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Examples of stalking behaviors or activities include, but are not limited to the following, if they occur in the context of stalking as defined above (i.e., the behaviors or activities would cause a reasonable person to fear for their safety or the safety of others, or to suffer substantial emotional distress): (1) non-consensual communication, including face-to-face communication, telephone calls, voice messages, e-mails, text messages, written letters, gifts, or any other communications that are unwelcome; (2) use of online, electronic or digital technologies, such as posting pictures or text in chat rooms or on websites, sending unwanted or unsolicited e-mail or talk requests, posting private or public messages on Internet sites, social networks, and/or school bulletin boards, installing spyware on a person’s computer, or using Global Positioning Systems (GPS) or similar technology to monitor a person; (3) pursuing, following, waiting for, or showing up uninvited at or near a residence, workplace, classroom, or other places frequented by the person; (4) surveillance or other types of observation, including staring and voyeurism; (5) trespassing; (6) vandalism; (7) non-consensual touching; (8) direct verbal or physical threats against a person or a person’s family member, pet or personal property; (9) gathering information about a person from friends, family, or co-workers; (10) accessing private information through unauthorized means; (11) threats to harm self or others; (12) defamation and/or lying to others about the person; and (13) using a third party or parties to accomplish any of the above.

Behaviors or activities that fall within this definition are violations of College policy and are prohibited.

### *Non-Title IX Sexual Harassment*

*Non-Title IX Sexual Harassment* is a form of sex discrimination that includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that has the purpose or effect of substantially interfering with an individual's work or academic performance or creating an intimidating, hostile, or offensive working, shared living, or educational environment, on the basis of sex, but that does not fit within the definition of *Title IX Sexual Harassment* stated in the College's Title IX Sexual Harassment, Dating Violence, Domestic Violence and Stalking Policy and Procedures because of the nature of the reported conduct and/or because it did not reportedly occur in a program or activity of the College in the United States. The College will determine whether conduct falls within this definition by using both an objective standard (that is, would a reasonable person experience the conduct as intimidating, hostile or offensive as defined here) and a subjective standard (that is, did the person actually perceive the conduct as intimidating, hostile or offensive as defined here).

Such sexual harassment is unwelcome conduct of a sexual nature, and can include, but is not limited to, unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, where:

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

Examples of such sexual harassment include, but are not limited to the following, if they substantially interfere with an individual's academic or work performance or create an intimidating, hostile or offensive work or educational environment:

- touching or grabbing any part of a person's body (in a manner that is sexual or offensive on the basis of sex but that does not constitute "fondling", which is a form of *Title IX Sexual Assault* or *Non-Title IX Sexual Assault* as defined above and below) after that person has indicated, or it is known or should be known, that such physical contact is unwelcome;
- Continuing to ask a student or employee to socialize on or off campus when that person has indicated he or she is not interested;
- Displaying or transmitting sexually suggestive pictures, objects, cartoons, electronic messages, attachments or related links, or posters, if it is known or should be known that the behavior is unwelcome;
- Continuing to write sexually suggestive notes, messages, or letters if it is known or should be known that the person does not welcome such behavior;

- Referring to or calling a person a sexualized name if it is known or should be known that the person does not welcome such behavior;
- Regularly telling sexual jokes or using sexually vulgar or explicit language in the presence of a person if it is known or should be known that the person does not welcome such behavior;
- Communicating derogatory or provoking remarks about or relating to a student or employee's sex, sexual orientation, or gender identity;
- Directing harassing acts or behavior against a person on the basis of their sex, sexual orientation, or gender identity; and
- Off campus conduct that falls within the above definition and affects a person's on-campus educational, shared living, or work environment.

Sexual harassment prohibited by this Policy may occur regardless of the sex, sexual orientation, or gender identity of any individual involved. Sexual harassment may occur in a setting in which the power inherent in a faculty member's or supervisor's relationship to their students or subordinates is exploited. While sexual harassment may take place between persons of unequal power and/or status or between equals, e.g., student-student, faculty-faculty, or staff-staff.

In determining whether alleged conduct constitutes sexual harassment, those entrusted with carrying out this policy will look at the record as a whole and at the totality of the circumstances, such as the nature of and the context in which the alleged incidents occurred. Bennington College recognizes that the protection of free and open speech and the open exchange of ideas are important to any academic community. This recognition is therefore an important element in the "reasonable person" standard used in judging whether sexual harassment has occurred. This policy is meant neither to proscribe nor to inhibit discussion, in or out of the classroom, of complex, controversial, or sensitive matters, when in the judgment of a reasonable person they arise appropriately and with respect for the dignity of others. Bennington College also recognizes, however, that verbal conduct can be used specifically to intimidate or coerce and to inhibit genuine discourse, free inquiry, and learning. Such abuses are unacceptable. If someone believes that another's speech or writing is offensive, wrong, or hurtful, they are encouraged to express that judgment in the exercise of their own free speech or to seek redress under the noted procedure(s) when appropriate.

### *Sexual Exploitation*

*Sexual Exploitation* occurs when a person takes sexual advantage of another person for the benefit of anyone other than that other person without that other person's consent. Examples of behavior that could constitute sexual exploitation include but are not limited to the following:

- Recording or capturing through any means images (e.g., video, photograph) or audio of another person's sexual activity, intimate body parts, or nudity without that person's consent;

- Distributing images (e.g., video, photograph) or audio of another person's sexual activity, intimate body parts, or nudity, if the individual distributing the images or audio knows or should have known that the person(s) depicted in the images or audio did not consent to such disclosure and object(s) or would object to such disclosure; or
- Surreptitiously viewing another person's sexual activity, intimate body parts, or nudity in a place where that person would have a reasonable expectation of privacy, without that person's consent, if the individual viewing the other person's or persons' sexual activity, intimate body parts, or nudity in such a place knows or should have known that the person(s) being viewed would object to that.

Exception: The College's prohibition of sexual exploitation is not intended to prohibit the use of sexually explicit materials that are reasonably related to the College's academic mission. Specifically, this section is not intended to proscribe or inhibit the use of sexually explicit materials, in or out of the classroom, when in the judgment of a reasonable person they arise appropriately to promote genuine discourse, free inquiry, and learning.

### *Retaliation*

*Retaliation* means intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations or this Policy, 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 regarding Prohibited Conduct (including both *Title IX Sexual Harassment* and *Non-Title IX Misconduct*). *Retaliation* is strictly prohibited. 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 purpose of interfering with any right or privilege secured by Title IX or its implementing regulations or this Policy, constitute retaliation, as do any adverse action taken against a person because they have made a good faith report of Prohibited Conduct or participated in any proceeding under the Title IX Sexual Harassment, Dating Violence, Domestic Violence and Stalking Policy and Procedures or this Policy. *Retaliation* may include intimidation, threats, coercion, harassment, or adverse employment or educational actions that would discourage a reasonable person from engaging in activity protected under the Title IX Sexual Harassment, Dating Violence, Domestic Violence and Stalking Policy and Procedures or this Policy. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance process under either such policy does not constitute prohibited retaliation, provided, however, that a determination regarding responsibility is not alone sufficient to establish that any party made a materially false statement in bad faith.

The College will not engage in, and will investigate and address, reports of retaliatory conduct. *Retaliation* under this policy may be found whether or not the underlying complaint is ultimately found to have merit.

Any person who believes that they have been subjected to such retaliation should immediately contact the Title IX Coordinator or a Deputy Title IX Coordinator. Any person who

takes such retaliatory actions will be subject to disciplinary action. Complaints of *Retaliation* will be addressed through the procedures for *Non-Title IX Misconduct* outlined in this Policy.

### Consensual Relationships

Because of their potential to damage the bonds of mutual trust and responsibility upon which the Bennington community depends, sexual or dating relationships between faculty and students, as well as between staff and students, are prohibited at all times and in all circumstances except those described immediately below, even if the relationship is consensual and regardless of the age of the student.

Recent Bennington College graduates who are hired in a staff role and who have an existing dating or sexual relationship with a current student may be exempted from this policy if they have no supervisory or functional staff role with the student and where the College, in its sole discretion, determines that such is not a conflict of interest or in conflict with the best interests of the student; however, they must inform both Human Resources and their hiring manager of the existing relationship before they are hired. Failure to abide by this policy will result in discipline of the faculty or staff member, up to and including dismissal from employment at the College.

### Options for Reporting and Confidential Disclosures

The College encourages individuals who experience Prohibited Conduct to talk to someone about what happened so they can get the support they need, and so the College can respond appropriately.

There is no such thing as an “unofficial” complaint of Prohibited Conduct. The College takes all complaints seriously and to that end feels it important to address all such complaints appropriately and as practicable given the circumstances of each case, the complainant’s wishes regarding the handling of the complaint, and the College’s obligation to maintain a safe campus community.

However, the College also recognizes that individuals who have concerns about Prohibited Conduct may wish to speak to someone without making a formal complaint, and therefore look for assurances of confidentiality. Different employees on campus have different abilities to maintain a person’s confidentiality. Some individuals are required to maintain near complete confidentiality; talking to them is sometimes called a “privileged communication.” Other employees may talk to an individual in confidence, and generally only report to the College that an incident occurred without revealing any personally identifying information. Third, some employees (called “Responsible Employees”) are required to report the details of an incident to the Title IX Coordinator.

This Policy is intended to make students, faculty, and staff aware of the various reporting and confidential disclosure options available to them—so they can make informed choices about where to turn if they are subjected to conduct that violates this Policy. Regardless of whether an individual files a complaint with the College or with local law enforcement, the College will provide written notification to students and employees about existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other available services, both within the

College and in the community. Similarly, when a student or employee reports an incident to the College, whether it occurred on or off campus, the College will provide the student or employee with a written notification of their rights and options.

Anyone with information about potential Prohibited Conduct should report that information to the Title IX Coordinator, through any of the following methods:

- On a 24 hours/day, 7 days/week basis, by sending an email to the Title IX Coordinator or a Deputy Title IX Coordinator; or
- During normal College business hours, by calling or meeting (virtually or in person) with the Title IX Coordinator or a Deputy Title IX Coordinator.

Contact information for these individuals is as follows:

Meredith McCoy, Associate Vice President for Institutional Initiatives  
802-440-4337 | [meredithmccoy@bennington.edu](mailto:meredithmccoy@bennington.edu)

Deputy Title IX Coordinator for Students Christine Winget, Associate Dean of Student Life  
802-440-4390 | [christinewinget@bennington.edu](mailto:christinewinget@bennington.edu)

Deputy Title IX Coordinator for Staff Heather Faley, Director of Human Resources  
802-440-4423 | [hfaley@bennington.edu](mailto:hfaley@bennington.edu)

## Amnesty

It is of paramount importance to the College that all perceived violations of this Policy be reported, so that those affected can receive the support and resources needed. Therefore, in order to facilitate reporting, students, acting in good faith, who report violations of this Policy will not be subject to disciplinary action for violations of Student Conduct standards related to alcohol use and/or drug use. While no disciplinary action will be taken, Bennington College reserves the right to take steps necessary to address health and safety concerns for the individual and the community.

## Confidential Resources | On Campus

Clinical staff within the Psychological Services and Health Services Offices who receive information about potential violations of this Policy while acting in their clinical capacity are not required to report such information to the Title IX Coordinator without a client's/patient's permission. These individuals are considered to be "confidential resources." This means that in most cases, these confidential resources will not inform anyone of such communications without a client's/patient's consent, and the College will not endeavor to take any action in response to such communications. These professionals may have the responsibility to disclose otherwise-privileged information appropriately when they perceive an immediate and/or serious threat to any person or property. In addition, medical and mental health professionals are required by law to report an allegation of sexual assault and/or certain assaults of a person under age 18. Individuals who wish to talk about Prohibited Conduct confidentially, with the understanding that the College will not take any action based on such confidential communications, are encouraged to contact one of these confidential resources.

In accordance with the Clery Act, these confidential resources will not report Clery crimes they learn about through confidential communications for purposes of the College's compilation of campus crime statistics. The College does not have procedures that encourage these confidential resources to inform those they counsel of procedures for reporting crimes voluntarily and confidentially for inclusion in the College's annual disclosure of crime statistics.

In addition, the College's Director of Student Health Promotion, Ali Tartaglia, DrPH (whose contact information is: Barn 113, (802) 440-4755 (office), (802) 440-HOPE (4673) 24/7, [alison Tartaglia@bennington.edu](mailto:alison Tartaglia@bennington.edu)) has been designated by the College as a confidential resource. This means that she is not required by College policy to share detailed information about sexual assault or other issues covered by this Policy without the consent of a person reportedly subject to such misconduct with the Title IX Coordinator, unless she perceives an imminent risk of harm or the incident involves an allegation of sexual assault or other covered abuse of a person under age 18. Pursuant to the Clery Act, she is required to share only general information with Campus Public Safety so that it can compile campus crime statistics, but this would not involve sharing details or the identity of anyone reportedly involved in an incident.

If an individual who makes a report to a confidential resource insists that their name or other identifiable information not be revealed and the College is able to respect that request, the College will be unable to conduct an investigation into the particular incident or pursue disciplinary action against the alleged perpetrator. Even so, these confidential resources will still assist the individual in receiving other necessary protection and support, such as victim advocacy, academic support or accommodations, disability, health, or mental health services, and changes to living, working, transportation, or course schedule accommodations, where requested and reasonably available. Further information about this is provided in the Supportive Measures section of this Policy, below. An individual who at first requests confidentiality may later decide to file a complaint with the College or report the incident to local law enforcement, and thus have the incident fully investigated. These confidential resources will provide the individual with assistance if the individual wishes to pursue those options.

Contact information for confidential resources is as follows:

- Director of Psychological Services 802-440-4451
- All other clinical staff within Psychological Services 802-440-4451 • Director of Health Services 802-440-4426
- All other clinical staff within Health Services 802-440-4426
- Director of Student Health Promotion (802) 440-HOPE (4673)

If you dial x767 (SOS) on campus or 802-447-4250 from any non-campus phone, emergency personnel on campus can arrange for you to speak with the Psychological Services on-call counselor or Health Services on-call clinician.

Non-Confidential Resources | On Campus (also called "Responsible Employees")

Most faculty and staff at the College are considered to be “responsible employees.” Responsible employees include all College faculty and staff employees, except as previously defined as confidential resources, and all student employees acting in their employment capacity (which includes, but is not limited to, House Chairs, who are considered to be responsible employees). Responsible employees are respectful of a complainant’s wishes to the extent appropriate and are discreet, but they are not able to maintain confidentiality. General inquiries or questions about this Policy and/or Prohibited Conduct do not have to be reported and may remain private, and the College will strive to protect the privacy interests of individuals to the extent it can while maintaining its obligations to uphold relevant policies and regulations and/or to take reasonable steps to promote the safety of members of the College community. Otherwise, once any responsible employee learns of an incident of Prohibited Conduct, the responsible employee must immediately notify the Title IX Coordinator of the incident. The responsible employee must report all relevant details about the incident (such as the name of the complainant and respondent, any witnesses, and other relevant facts, such as the date, time, and specific location of the alleged incident) that are known to the responsible employee.

If a complainant discloses an incident to a responsible employee but wishes to maintain confidentiality or requests that no investigation into a particular incident be conducted or disciplinary action taken, the College will weigh that request against the College’s obligation to provide a safe, nondiscriminatory environment for all individuals, including the complainant. If the College honors the request for confidentiality, a complainant must understand that the College will be unable to conduct an investigation into the particular incident or pursue disciplinary action against the alleged perpetrator. Although rare, there are times when the College may not be able to honor an individual’s request and will initiate an investigation in order to provide a safe, nondiscriminatory environment for all individuals. Further information about this is provided below.

The College will protect the confidentiality of individuals allegedly subjected to conduct prohibited by this policy to the extent practicable in light of the need to do investigations and conduct disciplinary proceedings. Campus security authorities who become aware of Clery crimes will report them to the College’s Office of Public Safety so that they may be included in the College’s compilation of campus crime statistics. The College will not include the names of complainants or other identifying information in publicly available reports that are compiled as required by the Clery Act.

#### Additional Resources | Off Campus

There are a number of local and national agencies available to provide support to individuals who have experienced sexual harassment, dating violence, domestic violence, sexual assault, or stalking. The College can assist an individual with accessing these, and other, resources.

- National Sexual Assault Hotline, 800-656-HOPE
- National Domestic Violence Hotline, 800-799-7233
- Project Against Violent Encounters (PAVE), 802-442-2111
- Southwestern Vermont Medical Center, 802-442-6361

- United Counseling Services (UCS), 802-442-5491

Note: Individuals are not obligated to notify or utilize any of these resources.

### External Reporting Options

In addition to the off-campus resources noted above, complainants may also seek assistance through other external organizations or agencies. Making a complaint through this Policy does not foreclose either civil or criminal legal action by the complainant, and a complainant who wishes to consider pursuing such action should seek legal advice. A complainant may simultaneously pursue a criminal complaint and a complaint under these procedures.

A complainant may also file a complaint by writing or calling the following state or federal agencies, as applicable:

- Bennington Police, 118 South Street, Bennington, VT, 05201, phone: 802-442-1030
- Vermont Attorney General's Office, Civil Rights Unit, 109 State Street, Montpelier, VT 05602, phone: 802-828-3171 (voice/TDD).
- Equal Employment Opportunity Commission, 1 Congress Street, Boston, MA 02114, phone: 617-565- 3200 (voice), 617-565-3204 (TDD).
- Vermont Human Rights Commission, 133 State Street, Montpelier, VT 05633-6301, phone: 802-828-2480 (voice/ TDD).
- Office for Civil Rights (OCR), U.S. Department of Education, 8th Floor, 5 Post Office Square, Boston, MA 02109, phone: 617-289-0111 (voice), 800-877-8339 (TDD).

These agencies can conduct impartial investigations, facilitate conciliation, and if they choose to do so pursuant to their procedures, may file a charge or a complaint. The Office of the Dean of Students, the Title IX Coordinator, or the Office of Campus Safety will offer to, and will upon request, assist students or employees in contacting law enforcement agencies. This action may be taken regardless of whether an individual chooses to file a complaint with the College. For their own part, a complainant may choose to notify such agencies with or without assistance from the College, or may choose not to notify such authorities.

Individuals who are being or who may have been subjected to domestic violence, dating violence, sexual assault or stalking may have the right to obtain orders of protection, restraining orders and/ or relief from abuse orders from Vermont courts. The College will support complainants if they wish to have the College's assistance in making contact with law enforcement authorities and other external resources to seek such orders. The College will respect such orders to the extent applicable. In addition, the College can also impose no-contact conditions on students, employees, and third parties over which it has some measure of control. The College will inform complainants of their options in this regard.

### Medical Care

Whether or not a person decides to pursue criminal charges or a complaint at the College, individuals are encouraged to immediately seek any necessary medical care after an incident of

sexual misconduct, domestic violence, or dating violence, and to seek help from appropriate law enforcement, medical, or College personnel.

### Preservation of Evidence

Even if a person is unsure initially whether they will want to pursue criminal charges or seek a protection order, it is important to preserve all possible evidence in case an individual later decides to do so. Therefore, a person should refrain from changing clothes, showering, or otherwise changing his or her physical state after an incident, until after they have consulted with medical personnel about how to best preserve evidence. Any such individual should also consult with College officials, law enforcement officers, or health care professionals regarding their ability to have evidence collected by a Sexual Assault Nurse Examiner ("SANE"). Individuals should also endeavor to preserve other evidence that may be relevant to a case of sexual harassment, sexual misconduct, domestic violence, dating violence, stalking, or related retaliation, such as text messages, email messages, other electronically stored information, and other physical evidence. Anyone with questions about how to do this should consult with College officials.

### Law Enforcement Investigations

If a complainant wishes to participate in a law enforcement investigation, steps involved in such investigations often include interviews and meetings with law enforcement officers, collection of any available physical and/or electronic evidence, and meetings with advocates and prosecutors.

### Supportive Measures

Supportive measures are 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 are designed to restore or preserve equal access to College's education programs or activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the College's educational environment, or deter Prohibited Conduct.

In accordance with the Clery Act, the College will provide written notification to complainants about options for, available assistance in, and how to request changes to academic, living, transportation, and working situations or other supportive measures, where they are requested by a complainant and are reasonably available. A complainant does not have to participate in an informal or formal College process, or report conduct prohibited by this policy to law enforcement authorities, in order to request such accommodations or measures. Such accommodations or measures will be kept confidential unless maintaining such confidentiality would impair the College's ability to provide them. The College may also be able to provide supportive measures to either or both the complainant and the respondent consistent with an individualized assessment of their need, prior to or during the pendency of informal or formal proceedings as outlined below. Such measures may include but are not limited to academic accommodations (e.g., alter academic schedules, withdraw from/retake a class without penalty, access academic support such as tutoring, extensions of time or other course-related adjustments), counseling, a confidential resource, extensions of time or other

course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of campus, changes in transportation and/or working situations, and other similar accommodations.

Requests for supportive measures should be directed to the Title IX Coordinator. Requests will be evaluated and responded to by the Title IX Coordinator or designee after consultation, as needed, with other campus personnel whose cooperation may be necessary or helpful in evaluating or providing requested measures. The Title IX Coordinator is ultimately responsible for coordinating the effective implementation of supportive measures.

Decisions about supportive measures will be made based on individualized assessments for both complainants and respondents, and will seek to minimize the burden, to the extent practicable given the needs of a particular situation, on either party. Resources such as confidential resources and counseling services will be provided to each party on a parallel basis, but the College will not designate the same individual to be a confidential resource for both parties.

All individuals are encouraged to report to the Title IX Coordinator any concerns about the failure of another to abide by any restrictions imposed through interim measure. In the event of an immediate health or safety concern, individuals should contact 911 immediately. The College will take prompt action to enforce a previously implemented measure, and disciplinary penalties can be imposed through this Policy and/or through other College student conduct or employee policies for failing to abide by a College-imposed supportive measure. Again, complainants do not have to file a formal complaint, participate in a disciplinary process, or file a criminal complaint in order to ask the College to implement supportive measures.

#### Emergency or Interim Removal or Suspension and Administrative Leave in Non-Title IX Misconduct Cases

In cases that involve allegations of *Non-Title IX Misconduct* (that is, Prohibited Conduct as defined by this Policy that does not fall within the definition of *Title IX Sexual Harassment* in the College's Title IX Sexual Harassment, Dating Violence, Domestic Violence and Stalking Policy and Procedures), the College may at its discretion initiate emergency and/or interim suspensions of students and suspension or dismissal of employees at its discretion and/or in a manner that is not inconsistent with the College's other policies, procedures and practices, which include but are not limited to the College's employment at will policy.

#### Initial Communication with a Complainant

If a report alleges conduct that would, if proved, constitute Prohibited Conduct as defined by this Policy, the Title IX Coordinator will:

- promptly contact the complainant to discuss the availability of supportive measures as defined below;
- consider the complainant's wishes with respect to supportive measures;

- inform the complainant of the availability of supportive measures with or without the filing of a formal complaint; and
- explain to the complainant the process for filing a formal complaint.

### College Procedures for Reviewing/Handling Complaints

Any member of the Bennington College community or covered third party who believes that they have been subjected to Prohibited Conduct by any member(s) of the Bennington College community may, depending on the nature of the alleged misconduct, make use of some or all of these three options: (1) informal resolution, (2) mediation, or (3) administrative investigation and review. Whichever option(s) is/are used, Bennington College endeavors to ensure the complainant and respondent are treated in an unbiased manner with dignity, respect, and sensitivity. All three options may be used (subject to limitations noted below), or the matter may bypass the first two options and proceed directly to an administrative investigation and formal resolution. Even where the College does not appear to have a measure of control over a third party who is believed to have engaged in or who is believed to be engaging in such behavior, the College encourages reporting so that the College can at least refer the complainant to supportive resources. Absent extenuating circumstances, the College will ordinarily determine which of the three options will be pursued initially within 14 calendar days of when the Title IX Coordinator receives a written or verbal complaint of prohibited misconduct, as described below.

The complaint process begins by the complainant or other reporting person's providing a written or verbal complaint to the Title IX Coordinator. The complaint may be written by the complainant, or dictated to a College official and approved by the complainant. For cases involving complaints against the President, the complainant must file a complaint with the Provost who will transmit the complaint to the Board of Trustees. The board will proceed from that point in a manner that is as consistent as practicable with the procedures outlined below.

There is no time limit for the filing of complaints. However, prolonged delays in reporting may make it more difficult to gather information, which could affect the College's ability to conduct a full investigation.

A person should contact the Title IX Coordinator if, for example:

- As a visitor to the College (e.g., a guest of another student, a prospective student, or an alumnus or alumna), they believe that they have been subjected to conduct in violation of this Policy by a member or former member of the College community.
- As a member or former member of the College community they believe that, while a member of the College community, they have been subjected to conduct in violation of this Policy by a vendor, contractor, visitor, or other third party.

The College will investigate and respond as appropriate and practicable, given the nature of its relationship to the parties. In some cases (such as, for example, cases in which a student, employee, or covered third party involved in an alleged incident of Prohibited Conduct does not wish to participate in the process but the College decides that the alleged misconduct needs to be investigated and addressed), the Title IX Coordinator may move

forward with an investigation and/or related disciplinary proceedings even if the complainant does not wish to participate fully. In such cases, the College may extend the full rights of a complainant as defined in this policy to affected parties as deemed appropriate by the College. The Title IX Coordinator's proceeding in this manner in such cases does not make the Title IX Coordinator a complainant or otherwise a party to the case.

### Determinations of Applicable Procedures

As explained in the College's Title IX Sexual Harassment, Dating Violence, Domestic Violence and Stalking Policy and Procedures, if some of the conduct alleged in a complaint falls within that policy and a formal complaint about such conduct is received from a complainant who is participating or attempting to participate in a College program or activity, and some of the conduct alleged falls within this Policy, the College will address the entire matter through the procedures applicable to *Title IX Sexual Harassment* matters as outlined in the Title IX Sexual Harassment, Dating Violence, Domestic Violence and Stalking Policy and Procedures, and it will, to promote efficiency, choose to follow *Title IX Sexual Harassment* procedures to address *Non-Title IX Prohibited Conduct* and other non-Title IX alleged misconduct in such mixed cases, so that all related misconduct may be addressed through one investigation and resolution process).

If it appears based upon initial review or upon information gathered during an investigation that the matter does not satisfy and/or no longer satisfies all of the elements of a *Title IX Sexual Harassment* case, the College will, as required by the May 2020 Title IX regulations, dismiss the matter for purposes of the *Title IX Sexual Harassment* process, and will transfer it for handling under the *Non-Title IX Prohibited Conduct* procedures outlined and/or referenced below, as deemed appropriate by the College. Investigation and resolution of a matter that does not fall within the definition of *Title IX Sexual Harassment* may be pursued, dismissed altogether, or transferred to another College process, as deemed appropriate in the College's discretion and/or as appropriate under applicable law.

If the respondent is a student and an employee, the Title IX Coordinator will determine which procedures apply based upon the facts and circumstances, such as whether the respondent's status as a student or an employee predominates in the context of the Prohibited Conduct. If a student-employee is found to have engaged in Prohibited Conduct, the student-employee may be subject to sanctions both in connection with their employment, and in connection with their student status, as appropriate under these and other applicable procedures.

### Notice

If the College initiates an investigation of *Non-Title IX Misconduct* it will provide to the parties a written notice (by electronic or other means) that includes:

- Information about the College's formal and informal resolution processes;
- A statement of the allegations of behavior potentially constituting Prohibited Conduct, including sufficient details known at the time and with sufficient time to prepare a response before any initial post-intake interview. Sufficient details include the identities

of the parties involved in the incident, if known, the conduct allegedly constituting Prohibited Conduct, and the date and location of the alleged incident, if known;

- A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process;
- Information regarding the College's presumption of good faith reporting and a summary of the College's false information policy;
- Notification that parties may have an advisor of their choice, who may be, but is not required to be, an attorney;
- Notification of existing counseling, health and mental health services available on campus and/or in the community; and
- Notification that taking any retaliatory action (directly or through others) against any person because they are involved in the investigation is prohibited and will be considered a separate violation of College policy.

If in the course of an investigation the College decides to investigate allegations about any party that are not included in the notice described above, it will provide notice of the additional allegations to the parties whose identities are known.

**Consolidation of Formal Complaints** The College may consolidate formal complaints as to allegations of *Non-Title IX Misconduct* against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of such Prohibited Conduct arise out of the same facts or circumstances. Where a grievance process involves more than one complainant or more than one respondent, references in this section to the singular "party," "complainant," or "respondent" include the plural, as applicable.

#### **Alternative Resolution of *Non-Title IX Misconduct* Cases**

Alternative resolution may be used in *Non-Title IX Misconduct* cases and other alleged policy violation-related cases that fall within the scope of this Policy, as deemed appropriate by the Title IX Coordinator. The procedures for such alternative resolutions will generally be those outlined in Option 1 and Option 2 below, but other procedures may be utilized as determined at the discretion of the Title IX Coordinator, with agreement of the parties as appropriate.

#### **Option 1–Informal Resolution**

1. Any member of the Bennington College community or covered third party who believes that they have been subjected to Prohibited Conduct by any member(s) of the Bennington College community may pursue a complaint through informal resolution.
2. Complaints may be written or verbal.
3. If the Title IX Coordinator determines based upon the complaint that pursuing resolution of the complaint through Informal Resolution would not be appropriate, they will notify the

complainant in writing. If the complainant wishes to pursue the complaint further, they may request to proceed with mediation or administrative investigation and review as outlined below. If the Title IX Coordinator decides that continuing with informal resolution is appropriate, then the complainant and the Title IX Coordinator may agree to pursue one of the following courses of action, to be completed, absent extenuating circumstances, within 14 working days of that agreement:

- The Title IX Coordinator or designee will attempt an informal resolution of the complaint directly and privately with the respondent.

- The Title IX Coordinator or designee will attempt an informal resolution of the complaint by meeting together with the complainant and the respondent.

- The Title IX Coordinator or designee will attempt an informal resolution of the complaint by some other informal means, as deemed appropriate by the Title IX Coordinator or designee, with the agreement of the parties.

4. Each party may be accompanied by an advisor of their choice in any stage of this informal procedure.

5. A complaint pursued through informal resolution will be considered to have been resolved when both parties have signed a statement indicating their acceptance of the outcome of the process, and the Title IX Coordinator or designee has also approved and signed the statement. A complaint that has been resolved through informal resolution may not be pursued through an administrative investigation and review.

6. If a complaint cannot be resolved through informal resolution, or if the Title IX Coordinator or designee determines at any point that the case is not appropriate for informal resolution, the Title IX Coordinator or designee will (with the cooperation of the complainant or if deemed necessary by the College) refer the case to mediation or administrative investigation and review as described below.

7. Absent extenuating circumstances, an informal resolution process will be completed within 45 calendar days of the Title IX Coordinator's receipt of a verbal or written complaint.

### Option 2–Mediation

1. Any member of the Bennington College community or covered third party who believes that they have been subjected to Prohibited Conduct by any member(s) of the Bennington College community may pursue a complaint through a mediation procedure. Mediation is generally defined as intervention between parties to promote reconciliation, settlement, or compromise. Mediation is different from the "Informal Resolution" procedure outlined above because a neutral person other than the Title IX Coordinator or designee will meet with the complainant and respondent, separately and/or together, in order to understand the parties' respective positions, and then attempt to help the parties come to a mutual understanding.

2. A complaint may be written or verbal. If the Title IX Coordinator determines based upon the complaint that pursuing resolution of the complaint through mediation would not be appropriate, they will notify the complainant in writing. If the complainant wishes to pursue the complaint further, they may request to proceed with administrative investigation and review as

outlined below. If the Title IX Coordinator decides that mediation is appropriate, then the Title IX Coordinator will appoint a mediator who will seek to resolve the complaint using mediation. This person will meet with both parties, separately and/or together. Both parties must consent in order for the mediator to meet with both parties together.

3. Each party may be accompanied by an advisor of their choice at any stage of this mediation procedure.

4. A complaint pursued through mediation will be considered to have been resolved when both parties have signed a statement indicating their acceptance of the outcome of the mediation procedure, and the Title IX Coordinator has also approved and signed the statement. A complaint that has been resolved through mediation may not be pursued through administrative investigation and review.

5. If the complaint cannot be resolved through mediation, or if the Title IX Coordinator determines that the case is not appropriate for mediation, the Title IX Coordinator will (with the cooperation of the complainant or if deemed necessary by the College) refer the case to administrative investigation and review as described below.

6. Absent extenuating circumstances, a mediation process will be completed within 45 calendar days of the Title IX Coordinator's receipt of a verbal or written complaint.

### Option 3—Administrative Investigation and Review

Any member of the Bennington College community or covered third party who believes that they have been subjected to Prohibited Conduct by any member(s) of the Bennington College community or covered third party may pursue a complaint through an administrative investigation and review process. All proceedings will include a prompt, fair, and impartial process from the initial investigation to the final result. As required by the Clery Act, the investigation and decision-making process will be conducted by officials who, at a minimum, receive annual training on the issues related to dating violence, domestic violence, sexual assault, and stalking, and on how to conduct an investigation process that protects the safety of parties and promotes accountability.

Throughout the process, the College will provide the complainant and the respondent with the same opportunities to have others present during the institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by an advisor of their choice. While the College will not limit the choice of advisor or their presence for either the complainant or the respondent in any meeting or institutional disciplinary proceeding, the College has established restrictions regarding the extent to which the advisor may participate in the proceedings, as described below.

A written complaint must be filed with the Title IX Coordinator in order to initiate an administrative investigation. This could be prepared in writing by the complainant, or dictated by the complainant to a College official and approved by the complainant. If the Title IX Coordinator or designee determines based on the complaint that an investigation should proceed, the College will handle the case in the manner described above and below. Otherwise the Title IX Coordinator will issue a notice of dismissal. Absent extenuating

circumstances, if an administrative investigation is to be pursued, it will begin within 14 calendar days of the Title IX Coordinator's receipt of a written complaint.

A complaint may also be filed (to be handled through the administrative investigation procedure) by the Acting Provost, the Dean of Studies, or the Vice President for Finance and Administration, or may be initiated by the Title IX Coordinator, if it has come to such person's attention that a member of the Bennington College community may have been subjected to conduct in violation of this Policy by any other member of the College community or a covered third party.

In all cases, the final decision of whether to conduct an investigation rests with the Title IX Coordinator. The issuance of a notice of dismissal cannot be appealed. The complainant is free at any time to pursue civil or criminal action against the respondent.

If the information received about the incident(s) in question indicates that other College policies may have been violated (e.g., other policies that govern the conduct of students or employees), the Title IX Coordinator will decide at their discretion whether such potential policy violations will be investigated and decided through the administrative investigation and review procedures provided here, or through separate procedures. The Title IX Coordinator's decision in this regard will control over the provisions of any other College policy language that could otherwise be read to the contrary.

If an investigation will be conducted, both parties will receive written notice as described above.

A "No Contact Order" is routinely issued to restrict contact and communication between a complainant and a respondent for the duration of the investigation. No contact orders are not disciplinary in nature (though violation of them could result in College discipline). This is in addition to other measures that may be taken as previously outlined, such as changing the living accommodations for one of the parties.

The Title IX Coordinator or designee will appoint an investigator or investigators (referred to here in the singular as "investigator" for the sake of convenience) to investigate a complaint. The College will provide notice to the parties of the identity of the investigator. If a party believes that an investigator has a bias against or for complainants or respondents generally or them particularly as a party, or a conflict of interest, the party may submit a written objection to the Title IX Coordinator that outlines the basis for their objection to the investigator's service. The Title IX Coordinator will make a decision on such objections, and will appoint any alternate investigator, and follow this process as necessary, until an investigator is selected to conduct the investigation.

The investigator will conduct a thorough fact-finding investigation. The investigation will usually include meetings with the complainant and the respondent separately, as well as witnesses who may have material information about the events that are the basis of the complaint. The investigator may also collect and examine any physical evidence or documents, emails, text messages, etc. that may be relevant to the events in question. At any time during the investigation, the complainant and respondent may provide written statements or other supporting materials that may be helpful to the investigator.

The complainant and respondent are entitled to be accompanied by an advisor of their choice whenever meeting with the investigator. Advisors can confer privately with their advisee, but cannot question the process nor address the investigator. The parties will be given periodic status updates throughout the investigation.

To protect the integrity of the investigation, complainants, respondents, witnesses, affected parties and advisors shall not disclose any information discussed or revealed during the investigation while the investigation and adjudication process is still pending, other than to the investigator, and/or a confidential resource such as their mental health counselor or attorney (who also must not disclose such information), or a non-attorney advisor (who also must not disclose such information), except if they reasonably believe that disclosing such information to a law enforcement agency is necessary to lessen or avoid a substantial and imminent risk of physical harm to any person, or they are otherwise required by law to do so.

The College will endeavor to complete the investigation portion of the process within 90 days of issuing a notice of investigation as described above, but this may be extended at the College's discretion due to factors such as the complexity of the matter, the availability of witnesses, requests by a law enforcement agency for a temporary delay in the investigation process (see below), College breaks, and other legitimate reasons.

Once the investigator has gathered all of the information that they determine should be gathered as an initial matter, they will prepare a preliminary report that summarizes the information gathered in the investigation to that point. The preliminary report will be made available to the parties for their review.

The parties will have a period of 7 calendar days to review such information and, if they choose to, they may: 1) suggest additional investigation by the investigator, including but not limited to interviews of additional witnesses; and/or 2) suggest questions to be posed by the investigator to the other party or witnesses. The investigator will determine in their discretion whether and to what extent to pursue some or all of the additional investigation and questioning requested by the parties, and will frame any resulting investigation and questioning at the investigator's discretion.

Once any additional investigation is completed, the investigator will create a final investigation report that will contain any updated summary of the information gathered and the investigator's analysis, rationale, and recommendation regarding whether a preponderance of the evidence establishes a violation of any of the College policies under investigation. The parties will then have 5 working days to provide a written response to the final investigation report. Each party will be allowed to review the other party's written response. The final investigation report, its attachments, and the parties' written responses will be provided to a Review Panel, for its consideration as provided below.

Should a respondent who has been notified of an investigation/adjudication decide not to participate in the investigation, the investigation may proceed, a finding regarding responsibility may be reached, and a sanction may be imposed based on the information available.

The complainant may request that the investigation be stopped at any time. Bennington College and/or the Title IX Coordinator will determine whether the investigation

will be stopped, or whether, due to countervailing concerns of campus safety or other factors, the investigation will be continued.

## Making a Determination

### Student Respondent Cases

In cases where the respondent is a student, the investigator's final investigation report, its attachments, and the parties' written responses to the report will be provided to the Review Panel for its consideration. The Review Panel is a three-person panel consisting of the Title IX Coordinator, who will serve as chair, the Dean of Students, a Deputy Title IX Coordinator and/or their designees.

The Review Panel will give notice to the parties that they may, if they wish, meet with the Review Panel to discuss the final investigation report, its attachments, and the parties' written responses to the report. Parties do not need to meet with the Review Panel if they do not wish to do so. An audio record of any meetings between parties and the Review Panel will be created, and the other party will be permitted to review such audio recording within 10 days of the meeting. A party who reviews such a recording will have an additional 3 days to submit a written response to the audio recording.

After careful consideration of the final investigation report, its attachments, the parties' written responses to the report, any meeting(s) with the parties, and any written responses to the audio recording, the Review Panel will make the determination regarding whether any Bennington College policy under investigation has been violated. The Review Panel's determination will also be based on a preponderance of the evidence standard, i.e., whether it is more likely than not that a policy was violated. The Review Panel is not bound by the investigator's report (rather, it serves to advise) and may accept or reject the investigator's recommended finding in whole or in part, and/or may request the collection of additional relevant information before making a determination.

If the Panel does not find that a violation of College policy has occurred, it will so inform the parties, simultaneously and in writing. In such cases, the complainant may appeal the decision within 5 working days on the grounds, and pursuant to the procedures, set forth below.

If the Review Panel finds that a violation of this policy has occurred, it may impose an appropriate sanction, up to and including expulsion from the College. The Panel will send the complainant and the respondent simultaneous written notice of the finding and decision, and the option to appeal within 5 working days on the grounds, and pursuant to the procedures, set forth in the Appeals section below.

### Faculty and Staff Respondent Cases

If either the complainant or the respondent are faculty or staff employees, the Title IX Coordinator will schedule the case for administrative review following receipt of the final investigation report. An administrative review of the case will be conducted by the Provost or designee (for cases involving faculty) or the Director of Human Resources or designee (for

cases involving staff ) to determine using the preponderance of the evidence standard whether or not the respondent is responsible for a policy violation and, if so, what the sanction will be.

Where formal disciplinary action is to be taken against a faculty or staff member, appropriate sanctions may range from a verbal warning up to and including discharge from employment. The complainant and the respondent will receive simultaneous written notice of the outcome of the complaint and the option to appeal. Faculty or staff respondents or complainants in cases involving faculty or staff respondents may appeal the decision within 5 working days to the President (in the case of faculty members) or to the Vice President for Finance and Administration (in the case of staff employees) on the grounds, and pursuant to the procedures, set forth in the Appeals section below

#### Sanctions

Sanctions for violations of this Policy and other College policies investigated under the procedures above may include one or more of the following:

- Expulsion
- Suspension
- Written Reprimand or Warning
- Verbal Reprimand or Warning
- Separation from employment
- Disciplinary Probation
- Employee or Faculty Probation
- Nonrenewal of contract
- Revocation of honors, awards, or degrees
- Restricted access to College facilities or activities, including student organizations or athletic or intramural participation
- Community Service
- Issuance of a "No Trespass" or "No Contact" Order
- Removal from student housing

In addition, the College may determine that additional remedies are warranted, such as education or training for some or all members of the College community. Although sanctions for violation(s) of this policy can include any form of discipline as stated above, students found to have engaged in rape as defined in this policy will most likely receive a sanction of suspension or expulsion.

#### Appeals

Either the complainant or the respondent may appeal the determination of a case and/or the sanctions. The right to appeal is contingent upon participation in the administrative investigation process. Appeals in student respondent cases must be filed with the Provost within 5 working days of the written determination. Appeals in faculty respondent cases must be filed with the President within 5 working days of the delivery of the written determination. Appeals in staff employee respondent cases must be filed with the Vice President for Finance and Administration within 5 working days of the written determination. The President, Provost, or Vice President for Finance and Administration will determine, in their sole discretion, the format of appeals.

The other party may be notified of any submitted appeal through the Title IX Coordinator or their designee. The other party may submit a written response to the appeal within 5 working days of delivery of the appealing party's appeal. Both parties will be informed of any change to the results of a disciplinary process that occurs prior to the time that such results become final, and when such results become final.

The President, Provost, or Vice President for Finance and Administration may implement, modify, increase, or suspend the determination of responsibility and/or sanctions imposed and will simultaneously send his or her appeal decision letter to the parties. A notice of the appeal decision letter will also be sent simultaneously to the individual who conducted the administrative review. The decision of the President, Provost, or Vice President for Finance and Administration is final in all cases.

Appeals may be based only upon the following grounds:

1. That there is newly discovered evidence that could not have been discovered during the investigation and pre-appeal administrative investigation process, and that would have had a significant effect on the outcome;
2. That there was a violation of the procedures under this Policy that had a significant effect on the outcome; and/or
3. That the sanction or sanctions imposed are not appropriate in light of the violation.

Absent extenuating circumstances, appeals will ordinarily be decided within 30 days of the appellate officer's receipt of the appeal.