

# TITLE IX SEXUAL HARASSMENT, DATING VIOLENCE, DOMESTIC VIOLENCE, AND STALKING POLICY AND PROCEDURES

Bennington College 2020-2021

In May 2020, the U.S. Department of Education issued new regulations to colleges governing institutional responses to certain types of sexual misconduct. Those regulations became effective on August 14, 2020 and College procedures adopted to comply with the regulations are outlined below. This Title IX Sexual Harassment, Dating Violence, Domestic Violence, and Stalking Policy and Procedures ("this Policy") will be used by the College to address incidents alleged to have taken place on or after August 14, 2020. Any incidents alleged to have taken place prior to August 14, 2020 will be addressed through the policies and procedures outlined in the Bennington College Sexual Harassment, Sexual Misconduct, Domestic Violence, Dating Violence, and Stalking Policy and Procedures 2019-2020, and not through the policies and procedures outlined in this Policy. This delineation of applicable policies and procedures will apply regardless of when the alleged incident is reported.

Sexual harassment and other acts covered in this Policy subvert the fundamental core of our values and the educational mission of Bennington College and compromise 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.

## 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 as described in this Policy. The College does not discriminate on the basis of sex, nor does it tolerate sexual harassment 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 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 outline community expectations and prohibited conduct regarding issues of sexual harassment, domestic violence, dating violence, and stalking as defined by the May 2020 Title IX regulations and this Policy; 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, interpersonal 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. 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  
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 Employees  
Heather Faley, Director of Human Resources  
802-440-4423 | [hfaley@bennington.edu](mailto:hfaley@bennington.edu)

## 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 they have 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 or employee who has been reported to be the perpetrator of conduct that could constitute Prohibited Conduct as defined in this policy.

### *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>:

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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, and Title IX and May 2020 Title IX regulations. 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

This Policy prohibits the following forms of misconduct, collectively referred to throughout the Policy as “Prohibited Conduct”:

*Title IX Sexual Harassment* (i.e., Quid Pro Quo Sexual Harassment (as defined below), Severe, Pervasive and Objectively Offensive Sexual Harassment, Sexual Assault, and Domestic Violence, Dating Violence and sex-based Stalking within the scope of Title IX).

The College also prohibits: *Non-Title IX Misconduct* (i.e., Non-Title IX Sexual Harassment, Non-Title IX Sexual Assault, Non-Title IX Domestic Violence, Non-Title IX Dating Violence, and Non-Title IX Stalking outside the scope of Title IX, Sexual Exploitation as defined below, and Retaliation). Non-Title IX Misconduct is defined and addressed separately through the College’s Non-Title IX Sexual Harassment, Dating Violence, Domestic Violence and Stalking Policy and Procedures (Bennington College 2020-2021), and not through this Policy.

Specifically, *Title IX Sexual Harassment* is defined as follows for purposes of this Policy:

*Title IX Sexual Harassment* (i.e., Quid Pro Quo Sexual Harassment (as defined below), Severe, Pervasive and Objectively Offensive Sexual Harassment, Sexual Assault, and Domestic Violence, Dating Violence and sex-based Stalking within the scope of Title IX); and

“*Title IX Sexual Harassment*” is a subset of Prohibited Conduct. Under Department of Education regulations (see 34 C.F.R., Part 106) issued in May 2020 (“May 2020 Title IX regulations”) to implement Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 et seq., the College is required to prohibit certain forms of sexual harassment as defined in those regulations. *Title IX Sexual Harassment* is Prohibited Conduct of the following types committed by or against students and/or employees in an education program or activity of the College, in the United States. Further, in order for the College to consider a Formal Complaint of such misconduct as falling within its *Title IX Sexual Harassment* policy and procedures, the complainant must be participating in or attempting to participate in a the College program or activity at the time the complaint is filed.

Conduct takes place within the College’s “programs and activities” when that conduct occurs: (1) in a location, at an event, or in a circumstance where the College exercises substantial control over both the respondent and the context in which the conduct occurs; or (2) in any building owned or controlled by a student organization recognized

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the Clery Act and Title IX and the May 2020 Title IX regulations 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.

by the College. Conduct that occurs off campus in locations or at events with no connection to the College is unlikely to have occurred in a program or activity of the College.

Conduct that does not meet this strict definition for *Title IX Sexual Harassment* is still prohibited by Bennington College if it otherwise constitutes Prohibited Conduct within the definition of *Non-Title IX Misconduct* as defined in the Non-Title IX Sexual Harassment, Dating Violence, Domestic Violence and Stalking Policy and Procedures (Bennington College 2020-2021).

The following Prohibited Conduct definitions apply for purposes of the definition of *Title IX Sexual Harassment*:

#### *Title IX Quid Pro Quo Sexual Harassment*

Quid pro quo sexual harassment for purposes of the *Title IX Sexual Harassment* definition is conduct on the basis of sex committed in an education program or activity of the College in the United States by which an employee of the College conditions the provision of an aid, benefit, or service of the College on a student's or employee's participation in unwelcome sexual conduct.

#### *Title IX Severe, Pervasive and Objectively Offensive Sexual Harassment*

Severe, pervasive and objectively offensive sexual harassment for purposes of the *Title IX Sexual Harassment* definition is conduct on the basis of sex committed in an education program or activity of the College in the United States that constitutes unwelcome conduct determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a student or employee equal access to a the College education program or activity.

#### *Title IX Sexual Assault*

As required by the May 2020 Title IX regulations, Title IX Sexual Assault incorporates the definitions of the FBI's Uniform Crime Reporting (NIBRS) program, and is defined as follows:

- Rape:<sup>2</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

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<sup>2</sup> Both completed rape and attempted rape are prohibited by this policy.

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);
- **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.

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.

### *Title IX Dating Violence*

Title IX dating violence for purposes of the *Title IX Sexual Harassment* definition is conduct on the basis of sex 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. 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.

#### *Title IX Domestic Violence*

Title IX domestic violence for purposes of the *Title IX Sexual Harassment* definition is conduct on the basis of sex committed in an education program or activity of the College in the United States that constitutes a felony or misdemeanor crime of violence 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.

#### *Title IX Stalking*

Title IX stalking for purposes of the *Title IX Sexual Harassment* definition is conduct on the basis of sex committed in an education program or activity of the College in the United States 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.

### 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:

Title IX Coordinator 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 with students 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: Student Health Center, (802) 440-4755 (office), (802) 440-HOPE (4673) 24/7, [alisontartaglia@bennington.edu](mailto:alisontartaglia@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.

May 2020 Title IX regulations contemplate that certain information will generally be treated confidentially, except as qualified by statements in those regulations. For example, the regulations provide that colleges must maintain as confidential any supportive measures provided to a complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the institution to provide the supportive measures. The regulations also provide that colleges must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness,

except as may be permitted by the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of the Title IX regulations, including the conduct of any investigation, hearing, or judicial proceeding arising under those regulations.

Campus safety authorities who become aware of Clery crimes will report them to the College's Office of Campus 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 Student Life, 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. As noted above, 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 Removal and Administrative Leave

##### Emergency Removal of Students or Employees in *Title IX Sexual Harassment* Cases

When the College determines that there is an immediate threat to the physical health or safety of any student or other individual arising from reported conduct that falls within the definition of *Title IX Sexual Harassment* in this policy, the College can remove a respondent from its education program or activity (which may include removing an employee respondent from their employment at College) and issue any necessary related no-trespass and no-contact orders. The College will make the decision to remove a respondent from its education program or activity based on an individualized assessment and/or risk analysis by the Title IX Coordinator in consultation with other College personnel, departments or teams such as a threat assessment team.

If the College makes such a decision, the respondent will be provided with notice and an opportunity to challenge the decision immediately following the removal. Specifically, the respondent shall have forty-eight hours in which to submit a letter to or appear personally or virtually before the [IDENTIFY APPROPRIATE INDIVIDUAL HERE] to contest the emergency removal (though a meeting could be scheduled sooner if requested by the respondent, if practicable).

##### Administrative Leave in *Title IX Sexual Harassment* Cases

The College always maintains the discretion to place non-student employee respondents on paid administrative leave during the pendency of an investigation and resolution process as outlined below.

The College may also place a non-student employee respondent on unpaid administrative leave during the pendency of an investigation and resolution process.

The College may place student-employee respondents on administrative leave from their employment during the pendency of an investigation and resolution process where deemed appropriate as a supportive measure, under circumstances where it can do so without unreasonably burdening the student-employee respondent.

### Initial Communication with a Complainant

If a report alleges conduct that would, if proved, constitute Prohibited Conduct, 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 formal resolution. 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 Conduct, as described below.

The complaint process begins by the complainant or other reporting person providing a written or verbal complaint to the Title IX Coordinator. As explained below, while an initial complaint need not be in writing, a formal written complaint (described below) will have to be submitted if the complainant wishes to have an administrative investigation and formal resolution conducted. The complaint may be written by the complainant, or dictated to a College official and approved and signed 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 sign a formal complaint and 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 signing of a formal complaint in such cases does not make the Title IX Coordinator a complainant or otherwise a party to the case.

#### Determinations of Applicable Procedures, Dismissals, Transfers and Appeals of Such Determinations

When a complainant requests an investigation, the Title IX Coordinator will promptly upon receipt of a formal complaint:

- 1) determine whether the conduct alleged would, if proved, constitute Title IX Sexual Harassment (i.e., *Quid Pro Quo* Sexual Harassment, Severe, Pervasive and Objectively Offensive Sexual Harassment, Sexual Assault, or sex-based Domestic Violence, Dating Violence or Stalking) as defined in the Title IX Sexual Harassment definition stated above;
- 2) determine whether the conduct allegedly occurred in the College's education program or activity;
- 3) determine whether the conduct allegedly occurred in the United States; and
- 4) determine whether at the time the formal complaint was made, the complainant was participating or attempting to participate in a College program or activity.

If a formal complaint of conduct that would, if proved, satisfy all four of these elements and constitute *Title IX Sexual Harassment* as defined in this policy is filed by a complainant or signed by the Title IX Coordinator, it will be investigated and resolved through the procedures applicable to *Title IX Sexual Harassment* matters as outlined below.

The College will, as noted above, investigate alleged *Title IX Sexual Harassment* when a complainant submits a signed or electronically-submitted formal complaint to the Title IX coordinator and requests an investigation. The Title IX Coordinator may also choose at their discretion to sign a formal complaint and initiate an investigation, even if the complainant chooses not to do so. Again, in cases where the complainant does not wish to submit a formal complaint but the Title IX Coordinator decides in their discretion to sign a complaint and initiate an investigation and resolution process, the Title IX Coordinator will not be a complainant or otherwise a party to the matter.

If some but not all of the conduct alleged in the complaint satisfies all four of these elements and a formal complaint is received from a complainant or signed by the Title IX Coordinator, the College will address the entire matter through the procedures applicable to *Title IX Sexual Harassment* matters as outlined below (that is, it will as required by federal regulations follow *Title IX Sexual Harassment* procedures to address the alleged *Title IX Sexual Harassment*, 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 4 of these elements, 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 College's Non-Title IX Sexual Harassment, Dating Violence,

Domestic Violence and Stalking Policy and Procedures (Bennington College 2020-2021) or in other College procedures, as deemed appropriate by 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.

Even if the initial allegations of a matter fall within the definition of *Title IX Sexual Harassment*, the College may (but is not required to) dismiss a formal complaint or any allegations therein if at any time during the investigation or resolution process:

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

If a formal complaint is dismissed by the College under the circumstances described above, the College will simultaneously provide to the parties written notice (by electronic or other means) of the dismissal and the reasons for the dismissal, and notice of the parties' opportunity to appeal such dismissal through the *Title IX Sexual Harassment* appeal procedures outlined below.

If the respondent is a student-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 *Title IX Sexual Harassment* 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;
- 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.

In *Title IX Sexual Harassment* cases, the notice will also notify parties that they may inspect and review evidence during the investigation and resolution process, as provided below.

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 *Title IX Sexual Harassment* 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 Process in *Title IX Sexual Harassment* Cases:

##### Options 1 (Informal Resolution) and Option 2 (Mediation)

At any time prior to reaching a determination regarding responsibility, the College may facilitate resolution through an alternative to formal resolution (e.g., Option 1 (informal resolution) or Option 2 (mediation) where requested by a party and agreed to by both parties. If a party requests the initiation of an alternative resolution process and the Title IX Coordinator agrees that the matter is appropriate for alternative resolution, the College will provide to each party a written notice that discloses:

- The allegations;

- The requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations-
  - As noted below, the College generally permits parties to withdraw from the informal resolution process and initiate or re-initiate an administrative investigation and formal resolution process at any time before the informal resolution process is completed and any informal resolution is agreed to in writing by the parties); and
- Any consequences resulting from participating in the informal resolution process, including the records that will be maintained by the Title IX Coordinator or could be shared.

All parties and the Title IX Coordinator must agree to informal resolution for either Option 1 or Option 2 to be used. The Title IX Coordinator will assess the request for informal resolution in light of factors such as, but not limited to, the severity of the alleged violation and the potential risks to campus community members posed by the reported misconduct. The College will only proceed with an alternative to formal resolution if both parties provide their voluntary, written consent to having the matter resolved through an alternative process.

The matter will be deemed resolved if and when the parties expressly agree in writing to an outcome that is acceptable to them and the resolution is approved by the Title IX Coordinator (in consultation with other College administrators as deemed necessary). A party may withdraw from an alternative resolution process at any time prior to their execution of a written informal resolution agreement. After an alternative resolution is agreed to in writing between the parties, neither party may initiate a formal resolution process regarding the same factual allegations.

At any time before a matter is resolved through alternative resolution, the Title IX Coordinator may terminate an alternative resolution process and initiate or re-initiate a formal investigation and resolution process at any time, as they deem appropriate in their discretion.

#### **Administrative Investigation and Formal Resolution Process**

Parties' equal opportunity to present witnesses may include evidence from fact and expert witnesses. Parties are not restricted in their ability to discuss the allegations under investigation or to gather and present relevant evidence. Parties whose participation is invited or expected will receive written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.<sup>3</sup>

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## Preliminary Investigative Report

In *Title IX Sexual Harassment* matters when the investigator has gathered all of the information that they determine should be gathered preliminarily, the investigator will prepare a preliminary investigative report. The preliminary investigative report will summarize relevant evidence but will not contain any recommendations regarding whether the respondent violated this policy or any other College policy at issue. Further:

- The College will provide each party with an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised, including the evidence upon which College does not intend to rely in reaching a determination regarding responsibility and/or which the investigator does not deem relevant, and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Such evidence will not include un-redacted privileged records or information that may have been gathered or received during the investigation, absent written consent from the party holding the privilege.
- The College will send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy.
- Parties and advisors are not permitted to download, print or copy such evidence subject to inspection and review, and are not permitted to re-disclose such evidence without the College's permission. Parties and advisors will be required to sign an acknowledgment form indicating that they understand these prohibitions. Violations of these prohibitions may subject parties to College discipline under applicable conduct codes.

## Review and Response to Preliminary Investigative Report

In *Title IX Sexual Harassment* matters, the complainant and the respondent will have an opportunity to review the preliminary investigative report and provide written responses to the report. The complainant and the respondent must submit any comments, feedback, additional documents, evidence, suggested questions for individuals interviewed, requests for additional investigation, names of additional witnesses, or any other information they deem relevant to the investigator, additional documents or other evidence, within 10 calendar days after the preliminary investigative report is sent or made available to them for review. The parties' written responses will be considered by the investigator prior to completion of the final investigative report, and some or all of the responses may be attached or otherwise incorporated into the final investigative report.

In the event that new, relevant information is provided or identified at this stage, the information will be incorporated into the preliminary report as deemed appropriate by the investigator.

## Final Investigative Report

### Final Investigative Report Generally

In *Title IX Sexual Harassment* matters, after considering any written response submitted by either party, or after the 10 calendar day comment period has lapsed without receiving a written response or responses, the investigator will address any relevant issues identified by the complainant and/or the respondent, and as appropriate, pursue any additional investigative steps as needed. The final investigative report will include the investigator's non-binding recommendation as to whether the respondent should be found responsible for violating the policy provisions at issue. The investigator's recommendation will be reached by applying the preponderance of evidence standard, i.e., whether it is more likely than not that the Policy was violated. The final investigative report will be reviewed by the Title IX Coordinator before it is issued. Final investigative reports will be provided simultaneously to the parties and their advisors, if any. Further:

- The final investigative report created by the investigator will fairly summarize relevant evidence and include as exhibits evidentiary materials as deemed appropriate by the investigator;
- At least 10 calendar days prior to the hearing referenced below, the College will send to each party and the party's advisor, if any, the final investigative report and exhibits in an electronic format or a hard copy, for their review and written response;
- Any written response a party wishes to provide must be submitted to the Title IX Coordinator or designee within 10 calendar days of receiving the final investigative report and exhibits; and
- The final investigative report and the parties' written responses, if any, will be provided to the hearing officer in advance of the hearing.

Deadlines for parties' review of information and submission of comments may be extended upon request for good cause, at the discretion of the Title IX Coordinator or their designee.

Should a respondent who has been notified of an investigation/adjudication fail to cooperate with the investigator, the investigation may proceed, a finding 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 can be stopped, or whether, due to countervailing concerns of campus safety, it is unable to honor the complainant's request to stop the investigation.

## Hearings

### Live Hearings

Live hearings will be provided in *Title IX Sexual Harassment* matters, as required by the May 2020 Title IX regulations.

### Hearing Officers

Hearings will be presided over by a hearing officer, who will make the decision as to whether or not the respondent violated the Policy provisions at issue. This decision will be made using the preponderance of the evidence standard, which means that a Policy violation will only be found if the evidence establishes that it is more likely than not that the violation occurred. The hearing officer has broad authority to determine the process, timing and conduct of a hearing. For example, the hearing officer will determine the order of presentation, timing and overall duration of the hearing, what information and evidence will be heard, what information and questions are relevant to the determination of the matter, and what cross-examination questions will or will not be permitted.

Hearing officers will be appointed by the Title IX Coordinator. In selecting a hearing officer for a particular matter, the Title IX Coordinator will take care to select an individual who does not have a conflict of interest or bias against complainants or respondents generally or an individual complainant or respondent. The College will notify the parties of the identity of the hearing officer in advance of the hearing, and parties may, within 3 calendar days of such notice, object to the service of the hearing officer by providing a written statement (which may be transmitted electronically) as to why the party believes that the hearing officer has a conflict of interest or bias. The Title IX Coordinator or designee will make decisions regarding such objections and the appointment of an alternate hearing officer, as necessary.

### Advisors

Each party may have an advisor of their choice present at a hearing for the limited purpose of conducting cross-examination on behalf of that party. Advisors may be, but are not required to be, attorneys. If a party does not have an advisor of their choice present at a hearing, the College will without fee or charge to the party provide an advisor of the College's choice, again for the limited purpose of conducting cross-examination on behalf of that party. No later than 10 calendar days before the hearing, parties should inform the Title IX Coordinator in writing of the identity of any

advisor of choice who will accompany them to the hearing, so that the College will know whether or not it needs to arrange for the presence of a College-provided advisor.

At a time and manner deemed appropriate by the hearing officer, the advisor for each party will be permitted to ask the other party and any witnesses all relevant cross-examination questions and follow-up questions, including those challenging credibility. Except for that limited role, advisors may not participate actively in the hearing and may not speak or otherwise communicate on the part of the party that the advisor is advising. However, the advisor may consult privately in a non-disruptive manner with their advisee during and/or at a recess in the hearing. Scheduling accommodations generally will not be made for advisors if they unduly delay the process. The College reserves the right to take appropriate action regarding any advisor who disrupts the process, or who does not abide by the restrictions on their participation as determined in the sole discretion of the hearing officer, which may include exclusion of the advisor from the hearing and the appointment of an alternate College-provided advisor.

### Requests for Appearance of Witnesses

If a party wishes to have an individual appear at the hearing as a witness, they must provide notice of the identity of the proposed witness and a brief description of the subject matter of the witnesses' testimony to the Title IX Coordinator or designee at least 10 calendar days before the date of the hearing. The Title IX Coordinator or designee, in consultation with the hearing officer as necessary, will determine whether the witness is likely to have information that is relevant to the hearing, and if it is determined that the witness is likely to have relevant information, the Title IX Coordinator or designee will inform the witness that their presence at the hearing is required (to the extent that the College has jurisdiction to require the presence of the witness) or requested.

### Conduct of Hearings and Relevance

At or before the hearing, the hearing officer will receive a copy of the final investigative report, any attachments thereto, and copies of the parties' written responses to the final investigative report, if any, which will be part of the information of record to be considered by the hearing officer. The recommendation regarding responsibility made by the investigator in the final investigative report is only advisory and is not binding on the hearing officer; the hearing officer will make an independent determination regarding responsibility based upon the investigative report, evidence admitted at the hearing, and the testimony and cross-examination of parties and witnesses at the hearing, as applicable.

Subject to the discretion of the hearing officer, hearings will ordinarily begin with introductory remarks by the hearing officer, followed by opening statements from any

party who wishes to provide one, followed by the hearing officer's asking relevant initial questions of the parties as deemed appropriate by the hearing officer. During this portion of the hearing, advisors may confer privately and in a non-disruptive manner with their advisee, but they are not allowed to make opening statements or otherwise address the hearing officer or anyone else present at the hearing.

After the hearing officer has asked their initial questions of the parties, the hearing officer will permit each party's advisor to ask the other party all relevant questions and follow-up questions, including those challenging credibility.

Subject to the discretion of the hearing officer, questioning of witnesses will generally follow a similar process, whereby the hearing officer will pose relevant questions to each witness, then the parties' advisors will be permitted to ask relevant questions of witnesses.

In accordance with May 2020 Title IX regulations, such cross-examination by advisors will be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally.

Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the hearing officer will first determine whether the question is relevant and explain any decision to exclude a question as not relevant. Advisors are not permitted to object to hearing officer decisions regarding relevance during a hearing.

Regarding the evidence subject to inspection and review that was provided to the parties and their advisors under the *Title IX Sexual Harassment* matter-specific investigation procedures outlined above, a copy of such evidence will be made available at the hearing, and each party and/or their advisor (as applicable) will have an equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

Information protected under a legally recognized privilege (such as, for example, privileged communications between a party and their physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in a treatment capacity, or privileged communications between a party and their attorney), is not relevant unless the person holding the privilege has waived the privilege.

At the request of either party, the College will provide for the hearing to occur with the parties located in separate rooms with technology enabling the hearing officer and parties to simultaneously see and hear the party or the witness answering questions. Live hearings may be conducted with all parties physically present in the same geographic location or, at the College's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.

If a party or witness does not submit to cross-examination at the live hearing, the hearing officer will not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the hearing officer will not draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

At the discretion of the hearing officer, parties (but not their advisors) will usually be given an opportunity to make a closing statement at the conclusion of the hearing.

### Record of Hearings

The College will create an audio or audiovisual recording and/or transcript, of any live hearing, and will make it available to the parties for inspection and review.

### Determinations Regarding Responsibility

Within 14 days after the hearing, the hearing officer (and if necessary the sanctioning officer, as provided below) will prepare and issue a written determination regarding responsibility and sanctions. In determining responsibility, the hearing officer will apply the preponderance of the evidence standard. The written determination will include:

- Identification of the section(s) of the College's Title IX Sexual Harassment policy alleged to have been violated;
- A description of the procedural steps taken from the receipt of the complaint through the determination, including but not limited to, as applicable, any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of definitions of sexual harassment in the College's Title IX Sexual Harassment Policy to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility and, where necessary and in

collaboration with the sanctioning officer, a statement regarding any sanctions and the rationale therefor; and

- Identification of the College's procedures and permissible bases for the complainant and respondent to appeal (as outlined below).

The determination regarding responsibility becomes final either on the date that the College provides the parties with the written determination of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which the appeal would no longer be considered timely.

The determination will also notify the parties whether remedies designed to restore or preserve equal access to the College's education program or activity will be provided by the College to the complainant, but will not provide details about any such remedies.

If sanctions are necessary, they will be assigned in accordance with the Sanctions section below. The parties will receive notice simultaneously of the written determination regarding responsibility and, if necessary, any sanctions as determined through the procedures outlined below.

### Sanctions

Sanctions for violations of this Policy may include one or more of the following:

- Expulsion
- Suspension
- Written Reprimand or Warning
- Verbal Reprimand or Warning
- Separation from employment and/or student-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

*Each party to a case falling under this policy has a right to appeal the Title IX Coordinator’s dismissal of a formal complaint for Title IX purposes or a determination regarding responsibility and/or sanctions on the following grounds:*

- *Procedural irregularity that affected the outcome of the matter;*
- *New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;*
- *The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter; and/or*
- *The sanctions are not appropriate.*

Appeals in student respondent cases must be filed with the Provost within 5 working days of the case 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 case determination.

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.

Where an appeal is based on procedural irregularity, new evidence and/or bias/conflict of interest grounds, the President, Provost, or Vice President for Finance and Administration may affirm a finding of responsibility or return the matter to a hearing officer for further proceedings consistent with the appeal decision. Where an appeal challenges sanctions, the President, Provost, or Vice President for Finance and Administration may affirm, increase, decrease, or modify the sanctions. Appeal

decisions will be sent to the parties simultaneously. The decision of the President, Acting Provost, or Vice President for Finance and Administration is final in all cases.

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