

**Bergen Community College  
Board of Trustees  
Section (HR)**

**Policy #** HR: 001-002: 2019

**Effective Date:** Nov. 25, 2019

**Responsible Official:** Title IX Coordinator

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**Discrimination, Harassment, & Sexual Misconduct Policy: Bergen  
Community College Title IX Policy**

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**Reason for Policy:**

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

**Entities Affected by this Policy:** Faculty, staff, students, vendors, visitors, and guests.

**Policy Statement:**

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

Title IX of the Education Amendments of 1972 prohibits discrimination based on sex in educational programs and activities that receive federal financial assistance. To ensure compliance with Title IX and other federal and state civil rights laws, the College has developed policies and procedures that prohibit sex discrimination in all of its forms.

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

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

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

**All reports of discrimination, harassment, and/or retaliation shall be promptly made to the Title IX Officer (or one of the designated Deputy Coordinators).** The Executive Director of Human Resources serves as the Title IX Officer. S/He oversees implementation of the College's Policy on Discrimination, Harassment, and Sexual Misconduct. The designated Title IX Deputy Coordinators are the Dean of Student Life and Conduct, and the Human Resources Generalist. Reporting responsibilities are stated in Section III below for those individuals who become aware of incidents involving discrimination, harassment, or sexual misconduct. Additionally, a complainant's options for reporting are addressed more specifically in **Procedures Section A** below.

## **I. Prohibited Conduct**

### **A. Discrimination**

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

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

campus community on the basis of their actual or perceived membership in the protected classes listed above is in violation of the College policy on discrimination.

## **A. Harassment**

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

### **1. Bias-Related Harassment**

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

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

### **2. Sexual Harassment**

This policy prohibits any form of sexual harassment. Sexual harassment is unwelcome sexual- or gender-based verbal, written, online, and/or physical conduct. Anyone experiencing sexual harassment in any College program is encouraged to report it online ([www.bergen.edu/report](http://www.bergen.edu/report)), to Bergen's Title IX Coordinator or a Deputy Coordinator, or by methods identified in the Complaint Resolution Process in **Procedures Section A**. Sexual harassment creates a hostile environment and offenders may be disciplined when it is sufficiently severe, pervasive, persistent, or objectively offensive that it:

- has the effect of unreasonably interfering with, denying, or limiting employment opportunities or the ability to participate in or benefit from the College's educational, social, and/or community programs, or
- is based on power differentials (*quid pro quo*), the creation of a hostile environment, or retaliation.

Some examples of possible sexual harassment include:

- A professor insists that a student have sex with him/her in exchange for a good grade. This is harassment regardless of whether the student complies with the request.
- A student repeatedly sends sexually oriented jokes on an e-mail list the student created, even when asked to stop, causing one recipient to avoid the sender on campus and stop attending a class in which they are both registered.
- Two supervisors frequently rate several employees' bodies and sex appeal, commenting suggestively about their clothing and appearance.

**Consensual Relationships.** There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as faculty and student, supervisor and employee). These relationships may be less consensual than perceived by the individual whose position confers power. The relationship may also be viewed in different ways by each of the parties, particularly in retrospect. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to a romantic or sexual involvement, this past consent may not remove grounds for a later charge of a violation of applicable sections of the Employee Code of Conduct. For the personal protection of members of this community, relationships in which power differentials are inherent (faculty-student, staff-student, administrator-student) are strongly discouraged. Consensual romantic or sexual relationships in which one party maintains a direct supervisory or evaluative role over the other party are unethical. Therefore, persons with direct supervisory or evaluative responsibilities who are involved in such relationships must bring those relationships to the timely attention of their supervisor, and will likely result in the necessity to remove the employee from the supervisory or evaluative responsibilities, or shift the student out of being supervised or evaluated by someone with whom they have established a consensual relationship.

### 3. Sexual Misconduct

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

**Consent.** Consent is knowing, voluntary, and clear permission by word or action to engage in mutually agreed upon sexual activity. Since individuals may experience the same interaction in different ways, it is the responsibility of each party to make certain that the other has consented before engaging in the activity. For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Consent to a specific sexual contact (such as kissing or fondling) cannot be presumed to be consent for another specific sexual activity (such as intercourse). A current or previous dating relationship is not sufficient to constitute consent. Silence or the absence of resistance alone is not consent. The existence of consent is based on the totality of the circumstances, including the context in which the alleged incident occurred. Individuals can withdraw consent

at any time during sexual activity by expressing in words or actions that they no longer want the act to continue, and, if that happens, the other person must stop immediately.

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

An individual who engages in sexual activity when the individual knows, or should know, that the other person is physically or mentally incapacitated has violated this policy. It is not an excuse that the respondent to a claim of sexual misconduct was intoxicated and, therefore, did not realize the other person's incapacity.

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

**a. Sexual Harassment**

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

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

**b. Non-Consensual Sexual Contact**

Defined as any sexual penetration or intercourse (anal, oral, or vaginal) however slight with any object by a person upon another person that is without consent and/or by force.

Sexual penetration includes vaginal or anal penetration by a penis, tongue, finger, or object, or oral copulation by mouth-to-genital contact or genital-to-mouth contact.

**c. Non-Consensual Sexual Contact**

Defined as any intentional sexual touching however slight with any object by a person upon another person that is without consent and/or by force.

Sexual touching includes any bodily contact with the breasts, groin, genitals, mouth, or other bodily orifice of another individual or any other bodily contact in a sexual manner.

**d. Sexual Exploitation**

Defined as taking non-consensual or abusive sexual advantage of another; and the conduct does not fall within the definitions of sexual harassment, non-consensual sexual intercourse, or non-consensual sexual contact. Examples of sexual exploitation include, but are not limited to:

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

**e. Relationship Violence**

Defined as violence between those in an intimate relationship (this includes romantic, dating, or domestic relationships). Examples include, but are not limited to:

- physical assault between two people in a current or prior intimate relationship who do not live together (Dating Violence); and
- physical assault between two people in an intimate relationship who live together (Domestic Violence).

**f. Stalking**

- Defined as a course of conduct directed at a specific person that is unwelcome and would cause a reasonable person to feel fear or suffer substantial emotional distress. Examples include, but are not limited to: sending multiple unwanted text messages, phone calls, or electronic communications;
- following, watching, photographing, or otherwise tracking an individual without his or her permission; and
- sending unwelcome gifts, notes, or other items to another person.

## **B. Retaliation**

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

Retaliation is defined as any adverse action taken against a person participating in a protected activity because of their participation in that protected activity. Retaliation against an individual for alleging a violation of their civil rights, supporting a complainant, or for assisting in providing information relevant to a claim, is a serious violation of this policy. Acts of alleged retaliation should be reported immediately to the Title IX Coordinator or Deputy Coordinators.

## **C. Other Offenses**

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

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

## **II. Scope/Jurisdiction/Application**

This policy applies to allegations of discrimination, harassment, and retaliation that take place on Bergen Community College property or at College-sponsored events, regardless of their location. This policy may also apply to allegations of discrimination, harassment, and retaliation that occur off-campus or to actions online when the Title IX Coordinator or Deputy Coordinator determines that the off-campus or online conduct could have an on-campus impact or impact on the educational mission of the College. Such impact includes:

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

### **III. Reporting Responsibilities**

All College employees who are aware of or witness discrimination, harassment, sexual misconduct, or retaliation are required to promptly report to the Title IX Coordinator or a Title IX Deputy Coordinator.

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

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

#### **A. Title IX Officer and Deputy Coordinators**

##### **Title IX Coordinator**

Gwendolyn Harewood, Director of Human Resources & Employee Relations

A-316, Pitkin Education Center  
[gharewood@bergen.edu](mailto:gharewood@bergen.edu)  
201.879.1577

In addition, the following people have been designated to handle inquiries regarding these policies:

**Title IX Deputy Coordinator (for faculty & staff)**

Yvette Aviles, Assistant Director of Human Resources  
A-316, Pitkin Education Center  
[yaviles@bergen.edu](mailto:yaviles@bergen.edu)  
201.879.1259

**Title IX Deputy Coordinator (for students)**

Ralph Choonoo, Executive Assistant to the Vice President of Student Affairs  
L-123, Pitkin Education Center  
[rchoonoo@bergen.edu](mailto:rchoonoo@bergen.edu)  
201.879.7991

**B. Role of the Title IX Officer and Deputy Coordinators**

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

**C. Responsible Employees**

A “responsible employee” is a College employee who has the authority to address sexual misconduct, or who has the duty to report incidents of sexual misconduct or other student misconduct, or who a student could reasonably believe has this authority or duty.

When a victim/survivor tells a responsible employee about an incident of sexual misconduct, the victim/survivor has the right to expect the College to take immediate and appropriate steps to investigate what happened and to resolve the matter promptly and equitably.

A responsible employee must report to the Title IX Coordinator and/or Deputy Coordinator all relevant details about the alleged sexual misconduct shared by the victim/survivor. The Title IX Coordinator and/or Deputy Coordinator will need to determine what happened – including the names of the victim/survivor and alleged perpetrator(s) if known, any witnesses, and any other relevant facts, including the date, time and location.

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

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

**The following employees are the College’s “responsible employees”:**

- Executive Team Members
- Administrative and Professional Staff
- Faculty
- Title IX Coordinator and Deputy Coordinators
- All Human Resources staff – excluding student assistants
- Academic Counselors and Academic Advisors (both Faculty and Staff)
- Athletics professional staff and coaches - – excluding student assistants
- All Student Life professional staff and Student Organization Advisors excluding interns and student assistants
- All Student Affairs professional staff – excluding interns and student assistants
- All Public Safety Staff – excluding interns and student assistants

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

#### **D. Police Reporting**

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

- a. Emergency - 911
- b. Office of Public Safety
  - i. Paramus Campus (24hrs): Dial “6” or 201.447.7200
  - ii. Meadowlands Campus, Lyndhurst: 201.301.9600
  - iii. Ciarco Learning Center, Hackensack: 201.301.9700
- c. Bergen County Sherriff’s Office (non-emergency number): 201.336.3500
  - i. 10 Main Street, Hackensack, NJ 07601

#### **D. Federal Timely Warning Obligations**

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

### **III. Statement of Rights for Complainants and Respondents**

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

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

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

### **IV. Records**

In implementing this policy, records of all complaints, resolutions, and hearings will be kept by the Title IX Coordinator indefinitely.

## Procedures:

### Complaint Resolution Process

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

#### A. Confidentiality and Reporting of Offenses

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

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

No employee should ever promise absolute confidentiality except those designated as confidential personal counselors, health service providers, victim services advocates, domestic violence resources, local or state assistance agencies, or members of the clergy who are permitted by law to maintain confidentiality. Reports may be private, but not confidential. Reports to police and/or Title IX officials do not obligate the complainant to file any criminal or College conduct charges.

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

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

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

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

**b. If the incident is an assault:**

Report the incident:

- Emergency – 911 [Call 911 if you are not safe and in need of immediately medical attention.]
- Office of Public Safety
  - Paramus Campus (24hrs): 201.447.7200 or Dial 6 on Paramus campus
  - Meadowlands Campus, Lyndhurst: 201.301.9600
  - Ciarco Learning Center, Hackensack: 201.301.9700
- Bergen County Sherriff's Office (non-emergency number): 201.336.3500
  - 10 Main Street, Hackensack, NJ 07601

Seek immediate **medical attention:**

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

On-campus resources:

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

- HS-100, Pitkin Education Center, 201.447.9257

Off-campus resources:

**Valley Hospital**

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

**Hackensack University Medical Center**

- 30 Prospect Avenue, Hackensack, NJ 07601, 551.996.2000

Seek **emotional support.**

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

On-campus resources:

### **Center for Health, Wellness and Personal Counseling**

- HS-100, Pitkin Education Center, 201.447.9257

Off-campus resources:

### **HealingSpace of YWCA 24-hour hotline – 201.487.2227**

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

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

- Sexual assault occurred within 5 days
- You are at least 13 years old
- You are safe and not in need of immediate medical attention\*
- You want to activate one or more SART professionals
- ***\*Call 911 if you are not safe or need immediate medical attention.***

### **To activate SART:**

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

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

### **Magellan Employee Assistance Program (employees):**

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

**Options for filing a report include:**

## **2. Anonymous and Third Party Reporting**

The Title IX Coordinator and Deputy Coordinators accept anonymous and third-party reports of conduct alleged to violate this policy and will follow up on such reports. The individual making the report is encouraged to provide as much detailed information as possible to allow the Title IX Officer or Deputy Coordinators to investigate and respond as appropriate. The College may

be limited in its ability to investigate or respond to an anonymous or third party report unless sufficient information is provided. (See [www.bergen.edu/report](http://www.bergen.edu/report))

### **1. Confidential Reporting**

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

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

### **2. Private Reporting**

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

### **3. Formal Reporting**

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

### **4. Criminal Reporting**

If someone is in immediate danger, call 9-1-1. Some acts of discrimination and harassment may also be crimes, such as sexual assault or stalking. Individuals are encouraged to report allegations of criminal conduct to law enforcement even when it is not clear whether the

conduct rises to the level of a crime. Regardless, law enforcement can assist with obtaining medical care, getting immediate law enforcement response and protection, connecting with victim advocate services and counseling support, initiating a criminal investigation as appropriate and answering questions about the criminal process.

## **B. Informal Resolution Process**

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

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

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

## **C. Formal Resolution Process**

### **1. Filing a Complaint**

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

#### **A. Complaint Intake**

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

## **B. Interim Action**

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

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

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

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

### **2. Notice of Charges**

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

### **3. Investigation**

If a complainant wishes to pursue a formal complaint or if the College determines an investigation is necessary, the Title IX Coordinator will assign an investigator, usually within five college days of determining that a complaint should proceed. Investigations will be thorough and impartial and will entail interviews with relevant parties and witnesses, and obtaining available evidence. Conflict of interest (real or perceived) by the investigator will not be allowed. The College aims to complete investigations within 60 days, which can be extended as

necessary for appropriate cause by the Title IX Coordinator with notice to the parties. Investigation may take longer when initial complaints fail to provide direct first-hand information. The College may undertake a short delay (usually 3-10 days, to allow evidence collection) when criminal charges are being investigated. Complainants will be informed, at regular intervals, of the status of the investigation. College action will continue regardless of the status of civil or criminal charges involving the same incident. A complainant may proceed with both a criminal charge and a request for a College resolution simultaneously.

#### **A. Student Withdrawal While Charges Pending**

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

#### **B. Employee Resignation While Charges Pending**

Should a responding employee resign while charges are pending, the records of the Title IX Coordinator will reflect that status, as will College responses to any future inquiries regarding employment references for that individual. Should an employee decide to leave and not participate in the investigation and/or hearing, the process will nonetheless proceed in the employee's absence to a reasonable resolution and that employee will not be permitted to return to the College unless any and all sanctions have been satisfied. The Title IX Coordinator will continue to act to promptly and effectively remedy the effects of the conduct upon the victim and the community.

### **4. Investigation Findings**

#### **A. For Students**

Upon receipt of the investigative report, the Title IX Coordinator will forward it to the Dean of Student Life and Conduct or designee for an appropriate hearing per the Student Code of Conduct procedures. During a hearing:

- Both the complainant and the respondent will receive equivalent notice of the process.
- The complainant will have the opportunity to be present throughout the entire Hearing.
- The complainant will be entitled to the same opportunity to have others present during a Hearing as is provided to the respondent, including an adviser or college support person;

- Both the complainant and the respondent will have the opportunity to present witnesses with information pertinent to the alleged sexual harassment, sexual misconduct or sexual assault, and any relevant information to the Hearing panel during the conduct process;
- The complainant will be provided options for reasonable alternative arrangements if he or she does not want to be present in the same room as the respondent during the Hearing;
- Testimony regarding any party's past sexual conduct will ordinarily not be permitted, except in those instances where there was a prior sexual relationship between the parties and the testimony may be relevant to the issue of consent. If the respondent is found responsible for the conduct alleged in the complaint, his or her past sexual misconduct, if any, may be considered in determining the appropriate outcome.
- The College will document the proceedings.

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

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

## **B. For Employees**

Investigations will be thorough and impartial and will entail interviews with relevant parties and witnesses, and obtaining available evidence. Both the complainant and the respondent will have the opportunity to present witnesses with information pertinent to the alleged sexual harassment, sexual misconduct or sexual assault, and any relevant information. The investigator will document the proceedings.

Upon receipt of the investigative report, the Title IX Coordinator will determine if this policy has been violated by using a preponderance of the evidence standard. A finding of a policy violation by a preponderance of the evidence means that it is more likely than not that the policy violation occurred. If the Title IX Coordinator decides that no policy violation has occurred, then

the process will end. Regardless of the outcome, the complainant and the respondent will be notified of the finding in writing. The respondent's department head/director, Dean, Vice President, Executive Director of Human Resources, and the President will also be notified of the finding.

In the event that the employee violated College policy, the Executive Director of Human Resources (or designee) will determine appropriate disciplinary sanctions based on the recommendation from the Title IX Officer. These recommendations will be submitted to the President for review and approval. If a Vice President and/or Executive Director of Human Resources serves as a party or witness in the investigation, the Title IX Coordinator's recommendation will be sent to the President for determination of disciplinary sanctions. Regardless of the outcome, the complainant, the respondent, and the Title IX Coordinator will be notified in writing of the outcome within twenty college days of the date of the notice from the Title IX Coordinator.

## **5. Sanctions**

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

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

### **a. Student Sanctions**

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

### **b. Employee Sanctions**

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

## **6. Appeals**

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

Appeals are limited to allegations of the following:

- A procedural error or omission that significantly impacted the outcome;
- There is new evidence, unknown or unavailable during the investigation, that could substantially impact the finding or sanction. A summary of this new evidence and its potential impact upon the investigation must be included in the appeal; and/or
- The sanctions imposed are substantially disproportionate to the severity of the violation.

The original finding and sanction/responsive actions will stand if the appeal is not timely or is not based on the grounds listed above, and such a finding and sanction/responsive action(s) are final. When a party requests an appeal, the other party (parties) will be notified and given an opportunity to respond.

For students: In cases involving student conduct, a person designated by the Vice President for Student Affairs will review the appeal request(s).

For employees: In cases involving employee conduct, a person designated by the President will review the appeal request(s).

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

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

## **7. Failure to Complete Sanctions**

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

## **V. Remedial Actions**

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

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

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### **Related Documents/Policies:**

Policy Prohibiting Discrimination

Policy Prohibiting Discrimination: Policy Prohibiting Sexual Harassment

Student Code of Conduct

Employee Code of Conduct

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### **Policy History: (adopted/amended)**

Section A: AF

Adopted: 10/5/94

Resolution: P14

Updated: 8/7/18



## Appendix A

### Good Samaritan

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

### Risk Reduction Tips

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

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

- Take care of your friends and ask that they take care of you. A real friend will challenge you if you are about to make a mistake. Respect them when they do.

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

- Clearly communicate your intentions to your sexual partner and give them a chance to clearly relate their intentions to you.
- Understand and respect personal boundaries.
- DON'T MAKE ASSUMPTIONS about consent; about someone's sexual availability; about whether they are attracted to you; about how far you can go or about whether they are physically and/or mentally able to consent. If there are any questions or ambiguity then you DO NOT have consent.
- Mixed messages from your partner are a clear indication that you should stop, defuse any sexual tension and communicate better. You may be misreading them. They may not have figured out how far they want to go with you yet. You must respect the timeline for sexual behaviors with which they are comfortable.
- Don't take advantage of someone's drunkenness or drugged state, even if they did it to themselves.
- Realize that your potential partner could be intimidated by you, or fearful. You may have a power advantage simply because of your gender or size. Don't abuse that power.
- Understand that consent to some form of sexual behavior does not automatically imply consent to any other forms of sexual behavior.
- Silence and passivity cannot be interpreted as an indication of consent. Read your potential partner carefully, paying attention to verbal and non-verbal communication and body language.

### **Sexual Offense Prevention and Educational Programming**

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

Sexual Misconduct educational programming may address matters such as: a definition of what constitutes sex discrimination, the causes of sex discrimination, myths involved with sex

discrimination, prevention, the relationship between sex discrimination and alcohol use, what to do if you are assaulted, the nature of a rape examination, an explanation of the College sexual misconduct policy, how to make a report and file charges within the College, its conduct system, and/or with the local police department, men's issues and sexual assault, and campus community resources to assist both the survivor and the accused.

### **Federal Enforcer**

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

### **Office for Civil Rights (OCR)**

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

## **APPENDIX B**

### **BERGEN COMMUNITY COLLEGE**

#### **NEW JERSEY CAMPUS SEXUAL ASSAULT VICTIM'S BILL OF RIGHTS**

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

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

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

#### **Bill Of Rights**

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

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

#### **Human Dignity Rights:**

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

### Rights to Resources On- and Off-Campus:

- to be notified of existing campus and community-based medical, counseling, mental health, and student services for victims of sexual assault whether or not the crime is formally reported to campus or civil authorities
- to have access to campus counseling under the same terms and conditions as apply to other students in their institution seeking such counseling
- to be informed of and assisted in exercising any rights to confidential or anonymous testing for sexually transmitted diseases, human immunodeficiency virus, and/or pregnancy
- to be informed of and assisted in exercising any rights that may be provided by law to compel and disclose the results of testing of sexual assault suspects for communicable diseases.

### Campus Judicial Rights:

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

### Legal Rights:

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

### Campus Intervention Rights:

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

### Statutory Mandates:

- Each campus must guarantee that this Bill of Rights is implemented. It is the obligation of the individual campus governing board to examine resources dedicated to services required

and to make appropriate requests to increase or reallocate resources where necessary to ensure implementation.

- Each campus shall make every reasonable effort to ensure that every student at that institution receives a copy of this document.
- Nothing in this act or in any “Campus Assault Victim’s Bill of Rights” developed in accordance with the provisions of this act shall be construed to preclude or in any way restrict any public or independent institution of higher education in the state from reporting any suspected crime or offense to the appropriate law enforcement authorities.