

Berklee College of Music

Non-Discrimination, Harassment, and Sexual Misconduct Equity Policy and Process¹

Berklee College of Music is a diverse community comprised of individuals with different life experiences, viewpoints, and belief systems. A welcoming and inclusive culture is essential to maintaining the college's role as a leader in music education, and Berklee highly values the dynamic environment that results when students, faculty, administrators, and staff from diverse backgrounds come together to learn, live, and work.

The following Equity Policy and Process was designed to further Berklee's goal of inclusion, respect, and equality for all community members, and affirms Berklee's commitment to promote fairness and equity in all aspects of the institution.

EQUITY POLICY

I. Non-Discrimination, Harassment, and Sexual Misconduct Policy Statement

This policy prohibits acts of discrimination, harassment, and sexual misconduct, including but not limited to sexual assault or harassment, domestic violence, dating violence, and stalking. Such acts are serious violations of Berklee community values and are strictly prohibited by the college. This policy and the college's commitment to fostering a safe, supportive, and diverse climate is a fundamental part of a Berklee community where all can study, live, and work together in an environment of equal opportunity, inclusiveness, and mutual respect.

Berklee adheres to all federal and state civil rights laws barring discrimination, including but not limited to Title IX and Title VI of the Education Amendments of 1972, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Rehabilitation Act, and the Massachusetts Equal Rights Law. Berklee is committed not only to compliance with these mandates, but to promoting a culture that is in line with the values these civil rights laws envision. To that end, the Equity Policy and Process is intended to address and resolve complaints involving

¹ This Policy and Process is the result of input from various areas of the college, as well as guidance from outside sources. As the Policy and Process is implemented, modifications or additions may be made, which will be communicated on an ongoing basis to the community through publication at <https://www.berklee.edu/equity>, where the most up to date version of this Policy and Process will always be found.

any legally protected characteristic with a unified policy and centrally administered processes that are equally applicable to all members of the Berklee community.

Specifically, this policy and process prohibits and addresses sexual misconduct, sexual assault, dating and domestic violence, stalking, and discrimination or harassment based on race, color, religion, gender, gender identity, transgendered status, national origin, age, disability, military or veteran status, sex, sexual orientation, genetic information, marital status, pregnancy, or any other characteristic protected by law (collectively referred to as “protected characteristics”).

II. Applicability and Scope

Who - This policy applies to:

- All members of the Berklee community (including Berklee undergraduate and graduate programs, Berklee Valencia, and Berklee Online), including students, faculty, staff, and applicants for admission or employment, regardless of sexual orientation or gender identity; and
- Third parties (i.e., visitors, independent contractors, and others who are neither students nor employees), where their conduct is directed toward or otherwise affects Berklee community members.

Where - This policy applies to:

- Conduct that occurs on campus (Boston or Valencia), including online or electronic conduct initiated or received on campus or through use of college computing or network resources; and
- Conduct that occurs off campus, including online or electronic conduct, when the conduct:
 - occurs in the context of an employment or education program or activity of the college;
 - has the effect of continuing adverse effects on campus, including adverse impact on any member of the college community or the college;
 - has continuing adverse effects in an off campus employment or education program or activity, such as travel abroad, research, performances, or internship programs;
 - causes concern for safety or security of Berklee’s campus; or
 - has, or may have, the effect of contributing to or continuing a hostile environment in a college program or activity.

What - This policy applies to:

- All forms of prohibited conduct defined below, including but not limited to discrimination, harassment, sexual misconduct, sexual assault, dating and domestic violence, and stalking.
- Any other policy violation related to discrimination on the basis of a protected characteristic may also be addressed under this policy and the Equity Complaint Process that follows.
- Protected characteristics include race, color, religion, gender, gender identity, transgendered status, national origin, age, disability, military or veteran status, sex, sexual orientation, genetic information, marital status, pregnancy, or any other characteristic protected by law.

When – This policy applies regardless of the length of time since the conduct occurred; however, disciplinary action can generally only be taken against a respondent as long as he or she is enrolled, employed, or otherwise involved with the college. Any respondent who is found responsible, however, may be removed or prohibited from campus or Berklee programs or activities regardless of status.

A complaint that this policy has been violated will be addressed through the college's Equity Complaint Process. The Equity Complaint Process applies regardless of the status of the parties involved, who may be students, faculty, administrators, or staff. Complaints made to the college by third parties against any Berklee community member are also subject to the Equity Complaint Process. While the college may choose to pursue complaints by a Berklee community member against third parties or former community members, disciplinary action can generally only be taken against an individual as long as he or she is enrolled, employed, or otherwise involved with the college.

The Chief Equity Officer serves as Title IX Coordinator and oversees this policy and implementation of the Equity Complaint Process for responding to complaints of discrimination, discriminatory harassment, sexual harassment, sexual assault, and other violations of this policy. In addition to coordinating the equity process generally, the Title IX Coordinator is charged with the responsibility of coordinating Berklee's efforts to comply with its obligations under Title IX, including addressing complaints of sexual misconduct, coordinating investigations, overseeing sanctioning, and providing appropriate interim measures for the Berklee community.

Inquiries about this policy and procedure should be made to:

- Dr. Christopher Kandus-Fisher
Chief Equity Officer/Title IX Coordinator
Associate Vice President of Student Affairs
921 Boylston, Boston, MA 5th Floor
617-747-2330
ckandusfisher@berklee.edu

Inquiries about discrimination or harassment covered by this policy may also be directed to:

- U.S. Department of Education: Office for Civil Rights, 5 Post Office Square, 8th Floor, Suite 900, Boston, MA 02109-3921, (617) 289-0111;
- Equal Employment Opportunity Commission, JFK Building, Room 475, 15 New Sudbury Street, Boston, MA 02203, 617 565-3200;
- Massachusetts Commission Against Discrimination, One Ashburton Place, Boston, MA 02108, 617 727-3990

III. Prohibited Conduct and Definitions²

A. Discrimination

It is the policy of Berklee College of Music to maintain a working and learning environment that is safe, respectful, productive, and free from unlawful discrimination and/or harassment based on race, color, religion, gender, gender identity, transgendered status, national origin, age, disability, military or veteran status, sex, sexual orientation, genetic information, marital status, pregnancy, or any other characteristic protected by law (collectively referred to as “protected characteristics”). All such unlawful harassment or discrimination is strictly prohibited on campus and at all college-sponsored functions, events, and activities, regardless of location. Berklee College of Music, its faculty, staff, students, service providers, and suppliers will be held responsible for their acts of discrimination and harassment and are subject to appropriate disciplinary or remedial actions. This policy covers nondiscrimination in employment and in access to educational opportunities.

² Criminal definitions under state and federal law for some of the conduct described under this policy such as relationship violence (including dating and domestic violence) and stalking can be found in Attachment A to this policy.

The term “discrimination” refers to any conduct that excludes an individual from participation, denies the individual benefits, treats the individual differently, or otherwise adversely affects a term or condition of an individual’s employment, education, living environment, or participation in a college program *on the basis of* the affected individual’s protected characteristic. Examples of discrimination include but are not limited to denying a student a performance opportunity because of the student’s race, disability, sexual orientation, or other protected characteristic; giving a student a lower grade than deserved because of the student’s gender, military service, religion, or other protected characteristic; denying an employee a promotion because of the employee’s age, gender, or other protected characteristic.

B. Harassment

Harassment is unwelcome, offensive conduct that occurs on the basis of an individual’s race, color, religion, gender, gender identity, transgendered status, national origin, age, disability, military or veteran status, sex, sexual orientation, genetic information, marital status, pregnancy, or any other characteristic protected by law. Harassment often takes the form of degrading or hostile behavior, and has the purpose or effect of unreasonably interfering with the individual’s employment or education, or creating a hostile, intimidating, or offensive working, living or learning environment. Sexual harassment is one form of harassment (defined more fully below) that is characterized by unwelcome conduct that is sexual in nature.

The fact that a person was personally offended by a statement or incident does not alone constitute harassment in violation of policy. Whether harassment occurred is measured from both an objective (reasonable person’s view) and subjective (the complainant’s view) standard, and depends on the totality of the circumstances, including: the context of a communication or incident; the relationship of the individuals involved; whether an incident was isolated or part of a course of conduct; the seriousness or severity of the incident; the intent of the individual who engaged in the offensive conduct; and its effect or impact on the individual and the working or learning community.

In all instances, a key factor is whether the reported behavior occurred *because of* one of the protected characteristics listed above. If it did not, the behavior is not subject to this policy (such behavior may be subject to other Berklee policies, such as the Student Code of Community Standards).

C. Sexual Misconduct

Title IX of the Education Amendments of 1972 prohibits discrimination based on sex in educational programs and activities and Berklee has developed policies and procedures that prohibit such sex discrimination in all of its forms. Sexual Misconduct is a broad term which encompasses, but is not limited to, sex or gender discrimination, sexual assault, sexual violence, rape, sexual harassment, gender-based harassment, sexual exploitation, coercion, and intimidation. Conduct defined below violates college policy, regardless of whether the conduct rises to the level of violating the law.

a. *Sex-Based Harassment* is a form of sex discrimination that includes sexual harassment and gender-based harassment.

- *Sexual harassment* involves unwelcome or unwanted conduct of a sexual nature. It can include unwelcome sexual advances, requests for sexual favors, and other physical or verbal conduct of a sexual nature.
- *Gender-based harassment* is unwelcome conduct of a nonsexual nature based on an individual's actual or perceived sex, including conduct based on gender identity, gender expression, and nonconformity with gender stereotypes.

Such conduct is harassment when:

- It is made a condition of academic status or employment;
- Refusing or submitting to the conduct is used as a basis for academic or employment decisions; or
- The conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance.

Sexual or gender-based harassment has the purpose or effect of unreasonably interfering with an individual's work or academic performance if, for example, it is sufficiently serious, pervasive or persistent as to create an intimidating, hostile, humiliating, demeaning, discriminatory or sexually offensive working, academic, residential or social environment under both an objective (reasonable person's view) and subjective (the complainant's view) standard.

Some examples of unwelcome or unwanted conduct that could constitute sexual or gender-based harassment depending upon the totality of the

circumstances, including the severity of the conduct and its pervasiveness, include (but are not limited to):

- Lewd remarks, whistles, or personal reference to one's anatomy;
- Visual displays of degrading sexual images;
- Unwanted physical contact such as patting, pinching, or constant brushing against a person's body;
- Subtle or overt pressure for sexual favors;
- Persistent and offensive sexual jokes and comments;
- Persistent and unwanted requests for dates;
- Email, text, or social media messages of an offensive sexual nature;
- Hostile or intimidating conduct such as yelling or screaming at an individual based on sex/gender;
- Taunting slurs or other hostility for failing to conform to expected notions of masculinity or femininity;
- Sexual violence of any type.

Sexual or gender-based harassment can occur between

- Teacher and student
- Supervisor and employee
- Teacher and teacher
- Student and student
- Staff member and student
- Other relationships among colleagues, peers, and coworkers
- Service providers and vendors of the college

b. *Sexual Assault* is actual or attempted sexual contact with another person without that person's consent, whether by an acquaintance or by a stranger, and is a form of sexual violence. There are many degrees and forms of sexual assault including, but not limited to, the following:

- *Non-consensual Sexual Intercourse or Rape.* Any form of sexual intercourse (anal, oral, or vaginal) with any object without consent. Intercourse includes but is not limited to: vaginal penetration, however slight, by a penis, object, tongue

or finger; anal penetration, however slight, by a penis, object, tongue or finger; or mouth-to-genital contact.

- *Non-consensual Sexual Contact.* Non-consensual sexual contact involves intentional and unwelcome sexual touching, however slight, usually but not necessarily involving contact with genitals, breasts, groin or buttocks by a body part or object, that is without consent. Sexual touching includes but is not limited to: intentional contact with someone's breasts, buttocks, groin or genitals; touching someone else with any of these body parts; making someone touch you or themselves on these same body parts; or intentional physical contact in a sexual manner, even if it does not involve contact with or by these body parts.
- c. *Sexual Violence* includes physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent. A number of different acts fall into this category, including but not limited to, acts of non-consensual sexual contact and non-consensual sexual intercourse such as rape, sexual assault, sexual battery, sexual coercion, forcible sodomy, forcible oral copulation, sexual assault with an object, forcible fondling, and threat of sexual assault. All such acts of sexual violence are forms of sexual harassment covered under Title IX.
- d. *Consent* is giving clear permission, by words or actions, to engage in mutually agreed-upon specific sexual contact. It must be informed, voluntary, and mutual, and can be withdrawn at any time. Consent is an active and on-going choice to knowingly, and without pressure, engage in a sexual encounter.

Consent is *not* giving in because of fear, or due to pressure, manipulation, deception, or lying. Silence, previous sexual relationships, current relationships, or the use of alcohol or drugs is not an indication of consent. Consent can never be given if a person is incapacitated, drugged, asleep, unconscious, or impaired because of a physical or mental condition, or is under the legal age to give consent (16 years of age in Massachusetts). Consent also may never be obtained through use of coercion, intimidation, force, or threats.

Consent may be initially given, but it may be withdrawn at any point, either verbally, through physical resistance, or by losing consciousness. “No” or any other negative statement, act, or physical gesture indicating the desire to stop contact at any time must be understood as denial or withdrawal of consent. If consent is withdrawn sexual contact must stop immediately.

- e. *Incapacitation* is the inability to make informed, rational judgments and decisions. If alcohol or drugs are involved, incapacitation may be measured by evaluating how the substance affects a person’s decision-making capacity, awareness, and ability to make informed judgments. The impact of alcohol and drugs varies from person to person; however, warning signs of possible incapacitation include but are not limited to slurred speech, unsteadiness, impaired coordination, inability to perform personal tasks such as undressing, inability to maintain eye contact, vomiting, and sudden change in emotion. The question is whether the respondent knew, or a sober, reasonable person in the position of the respondent should have known, that the other person was incapacitated.
- f. *Coercion* includes the use of pressure or oppressive behavior, including express or implied threats of harm, or severe or pervasive emotional intimidation, which places an individual in fear of immediate or future harm or physical injury or causes a person to engage in unwelcome sexual activity. A person’s words or conduct amount to coercion if they wrongfully impair the other’s freedom of will and ability to choose whether or not to engage in sexual activity. In assessing whether coercion was used, the frequency, duration, and intensity of the pressure applied will be taken into consideration. If sexual acts were preceded by threats or coercion, there is no consent.
- g. *Intimidation* is spoken, written, or physical conduct directed toward an individual or individuals that reasonably leads the target to fear for their physical well-being, or to engage in sexual conduct for self-protection, or that is intended to create or may be reasonably determined to have created a threatening or hostile environment.
- h. *Sexual Exploitation* occurs when a person takes sexual advantage of another person for the benefit of anyone other than that person

without that person's consent. Examples of behavior that could rise to the level of sexual exploitation include, but are not limited to:

- Prostituting another person;
- Recording or distributing images (e.g., video, photograph) or audio of another person's sexual activity, intimate body parts, or nakedness without that person's consent;
- Viewing another person's sexual activity, intimate body parts, or nakedness in a place where that person would have a reasonable expectation of privacy, without that person's consent, and for the purpose of arousing or gratifying sexual desire;
- Knowingly or recklessly exposing another person to a significant risk of sexually transmitted infection; or
- Administering alcohol or drugs (such as "date rape" drugs) to another person without his or her knowledge or consent.

D. Relationship Violence

Relationship Violence (also known as Dating Violence or Domestic Violence) refers to actual or threatened violent or manipulative behavior by a person who is currently or was previously in an intimate, dating, or domestic relationship with the person subject to such behavior. Relationship violence can also involve domestic violence committed by a person with whom the person subject to the violence shares a child or domicile in common. The existence of a relationship will be gauged by its length and type, and frequency of interaction.

Relationship Violence includes but is not limited to:

- Physical violence, such as kicking, hitting, pinching, choking, or biting;
- Sexual violence, such as forcing a partner to take part in a sex act when the partner does not consent;
- Emotional violence, such as isolation, intimidation, belittling, stalking, "outing" someone against his/her will, cyber-bullying/harassment, or threat of physical force; or
- Economic abuse, such as withholding financial resources to intimidate, threaten or cause a person to remain in a relationship because of access to finances.

E. Stalking

Stalking is defined as a persistent, unwanted or unwelcome, and repeated course of conduct that would cause a reasonable person to become fearful for the person's safety or the safety of another, or suffer substantial emotional distress. Stalking includes "cyber stalking," a form of stalking over an electronic medium such as the internet, social networks, blogs, cell phones, texts or other similar devices. Such modes of contact may be used to pursue or harass someone when it is unsolicited, unwelcome, or unwanted conduct from the stalker.

Examples of stalking include, but are not limited to:

- Following a person(s);
- Repeatedly appearing at a person's home, work, or class;
- Making frequent phone calls, emails, texts etc. to a person(s);
- Leaving written messages or objects for a person(s); or
- Vandalizing a person's property

Anyone can be stalked, regardless of sex or gender. A stalker can be an intimate partner or former partner, classmate, roommate, professor, co-worker, or any acquaintance or a stranger.

F. Hate Crimes

For the purpose of this policy, a "hate crime" is defined as violence to a person or damage to property (or a threat to do so) or any other criminal act that is motivated entirely or partly by hostility toward or intolerance of another's race, color, religion, gender, gender identity, transgendered status, national origin, age, disability, military or veteran status, sex, sexual orientation, genetic information, marital status, pregnancy, or any other characteristic protected by law. Hate crimes are not limited to actual completed crimes but may also be threatened or attempted crimes and may include assault and battery, vandalism, or other destruction of property, or verbal threats of physical harm. Harassment or intimidation may also be a hate crime when intended to deprive or interfere with a person's civil rights.

G. Hostile Environment

A hostile environment exists when harassment or discrimination is sufficiently serious to deny or limit an individual's ability to participate in or benefit from the college's education or employment programs or activities. In determining whether harassment or discrimination has created a hostile environment, the college considers the conduct from the perspective of a reasonable person, and assessment of a variety of factors related to the severity, persistence, or pervasiveness of the conduct, including: (1) the type, frequency, and duration; (2) the identity and relationships of persons involved; (3) the number of individuals involved; (4) the location of the conduct and the context in which it occurred; and (5) the degree to which the conduct affected one or more community member's education or employment. The more severe the harassment or discrimination, the less need there is to show a repetitive series of incidents to find a hostile environment. Indeed, a single or isolated incident of harassment or discrimination may be sufficient to create a hostile environment, particularly if the harassment is physical. Likewise, a series of incidents may be sufficient even if the harassment or discrimination is not particularly severe.

IV. Disabilities

The college is committed to full compliance with the Americans with Disabilities Act (ADA) and its amendments and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws pertaining to individuals with disabilities. For students, the Director of Disability Services has been designated as the ADA/504 Coordinator responsible for coordinating efforts to comply with these disability laws, including investigation of any complaint alleging noncompliance. For faculty and staff, the Director for the Office for Diversity and Inclusion has been designated as the ADA/504 Coordinator responsible for coordinating efforts to comply with these disability laws, including investigation of any complaint alleging noncompliance.

The Equity Complaint Process described below covers claims of disability-related harassment and discrimination. Disability accommodation requests are handled separately from the Equity Complaint Process. Procedures for requesting accommodations are described elsewhere in the Human Resources Policy Manual and Student Handbooks.

Employee requests for disability-related accommodations should be made to Kevin Johnson, Director for the Office for Diversity and Inclusion. Student requests for

accommodations should be directed to Bob Mulvey, Director of Disability Services.

V. Retaliation

The college, as well as state and federal laws, prohibits retaliation against any person who, in good faith, reports, assists in reporting, or participates in an investigation of possible discrimination, harassment, or sexual or gender-based misconduct. Retaliation against an individual for reporting a complaint or concern about a violation or suspected violation of this policy, supporting a complainant, or for assisting in providing information in the context of an investigation or disciplinary proceeding pursuant to this policy is a serious violation of Berklee's policy and will be subject to discipline pursuant to this policy and the Equity Complaint Process.

Retaliation is any conduct or behavior that interferes with a person's rights and ability to pursue both internal disciplinary processes and charges through external law enforcement authorities. Retaliation may include intimidation, threats, coercion, or adverse employment or educational actions. Retaliation includes taking, or causing third parties to take, any such action. Retaliation against a complainant may be violating college policy and the law, even if the original complaint of misconduct cannot be substantiated.

Incidents of suspected retaliation should be reported to the investigator assigned to the matter or to any individual identified below in the *Formal Reporting to the College* section.

VI. Options, Reporting, and Confidentiality

The college encourages individuals who have been subjected to a violation of this policy to talk to somebody about what happened – so they can get the support they need, and so the college can respond appropriately.

Overview/What to Do

This policy explains options and resources available to Berklee community members who believe they have been subject to any type of discrimination, harassment, sexual or gender-based misconduct, or any other conduct prohibited by this policy. The following is an overview of what to do and how the college will respond, investigate, and provide support.

Immediately

For any individual subject to or witness to physical violence of any type, the first step is always the same: ***get to a safe place as soon as possible and call a trusted friend or advocate***. Any individual subject to physical violence should seek medical attention. Take care to preserve any evidence of the incident, even if there is uncertainty whether a claim will be filed or legal action will be taken. This may assist in proving that a criminal offense occurred or be helpful in obtaining a protection order, should the individual choose to do so later.

Assess your options

If any individual has been subject to or witnessed any type of discrimination, harassment, sexual or gender-based misconduct, or any other conduct prohibited by this policy, the following options are available:

- Seek confidential support and counseling from the Personal Counseling Staff located in the Counseling and Advising Center (617-747-2310) and other confidential resources listed in this policy. An after-hours confidential resource (personal counseling staff) can be accessed by calling Public Safety at (617-747-2333);
- Report the incident to the college or file a complaint with the college, so it may investigate and provide protective and remedial measures, by contacting Berklee's Chief Equity Officer/Title IX Coordinator, Dr. Christopher Kandus-Fisher (617-747-2330, ckandusfisher@berklee.edu), any Deputy identified herein, or one of the other college reporting sources identified below;
- Notify law enforcement authorities and file a criminal complaint by calling Berklee Public Safety (617-747-2333), 911, or other law enforcement units listed in this policy. In Valencia, contact police by dialing 112, or call Berklee Valencia Security Control Center at +34 961 975 817.

If Berklee is Notified

The college's Chief Equity Officer/Title IX Coordinator will contact the complainant and provide information regarding rights, options, how to get immediate confidential help and, in appropriate circumstances, will notify the Deputy of Advocacy and Support: Toni Blackwell, Associate Dean for Student Health and Wellness (617-747-2462).

The Deputy of Advocacy and Support, in consultation with the Chief Equity Officer/Title IX Coordinator, will also put appropriate interim measures in place, including but not limited to: Avoidance of Contact orders, changes to class assignments, changes to housing or working assignments, temporary interim removal of the respondent from housing, classes, or workplace, counseling, assistance with court-ordered restraining orders, academic support, delays in project or examination due dates, campus No Trespass orders, administrative leave, and any other measures that may be necessary to protect the safety and well-being of the Berklee community. Some of these measures may be available under certain circumstances even if one decides to seek only confidential support. The college will treat any protective measures with confidentiality to the extent that maintaining such confidentiality does not impair the ability of the college to provide the protective measure.

Berklee will take additional prompt remedial or disciplinary action with respect to any individual who has been found to engage in harassing or discriminatory behavior or retaliation.

Procedures for addressing, investigating, and adjudicating complaints or reports of violation of this policy are fully described in the Equity Complaint Process.

Going forward

The college is committed not only to fully addressing instances of prohibited conduct, but also to taking measures to prevent its recurrence and address its effects. Even after an investigation is completed, complainants should follow up with the college if they have lingering concerns or would like further support of any type.

A. Confidential Resources

Individuals who have been subject to discrimination, harassment, sex or gender-based misconduct, or any other conduct prohibited by this policy are encouraged to seek support for their emotional and physical needs. A person seeking confidential emotional or health care may contact the following resources.

A report to a confidential resource listed below is *not* a report to the college and will not result in remedial action or an investigation or disciplinary action.

Confidential resources are there to support emotional, physical, and spiritual needs only; any person who desires for the college to take investigatory/disciplinary action must make a report to one of the College Reporting resources, listed below this section.

For students, the following staff members within the student health and wellness team are confidential resources:

- Director of Counseling Services, Karen Grimes (617-747-2310, kgrimes@berklee.edu).
- Professional Counselors in the Counseling and Advising Office (617-747-2310) between 9am and 5pm, Monday through Friday. For after hours emergencies contact the Public Safety emergency line (617-747-2333) and ask to speak to the on-call counselor. (Certain professional counselors may also be trained sexual assault victim advocates.)

These individuals will maintain the confidentiality of a report unless (i) they are given permission to share information by the person who disclosed the information; (ii) there is an imminent threat of harm to self or others; (iii) the conduct involves suspected abuse of a minor under the age of 18; or (iv) as otherwise required or permitted by law or court order.

For employees:

- Employee Assistance Program (EAP)
E 4 Health, Inc.
1-800-828-6025
www.LifeScopeEAP.com
www.E4Healthinc.com

Emergency Medical Attention:

- Beth Israel-Deaconess Hospital
617-754-2450
- Massachusetts General Hospital
617-724-4100
- Brigham and Women's Hospital
617-732-5636
- Boston Medical Center

617-414-4075

In cases of sexual violence, the college encourages individuals to request a Sexual Assault Exam at any of the above hospitals. The exam includes preventive treatment for sexually transmitted infections, pregnancy, and evidence collection, if sought. The exam is conducted by a Sexual Assault Nurse Examiner (SANE) who is a Registered Nurse with advanced training and certification in conducting sexual assault exams. If an individual chooses not to preserve evidence or seek medical assistance, any of the other options outlined here may still be taken.

Other confidential resources related to sexual misconduct or relationship violence:

- The Boston Area Rape Crisis Center, 800-841-8371(Provides a crisis line, 24-hour advocacy, and counseling services)
- National Sexual Assault Hotline: 1-800-656-4673
- National Domestic Violence Hotline: 1-800-799-7233
- National Dating Abuse Hotline: 1-866-331-9474
- Massachusetts Coalition Against Sexual Assault and Domestic Violence / Jane Doe, Inc., 24-hour Multi-lingual: 617-248-0922, SafeLink Hotline: 877-785-2020, janedoe.org (Advocacy, referral and support services; LGBT services)
- RAINN (Rape, Abuse and Incest National Network)
Hot Line: 1-800-656-HOPE
WWW.rainn.org
- The Victim Rights Law Center, 617-399-6720 X19
(Provides direct legal representation to victims/survivors of rape and sexual assault)
- LGBTQ Specific Resources
 - Pandora Project, <http://pandys.org/lgbtsurvivors.html>
 - GLBTQ Domestic Violence Project, 24 Hour Domestic Violence Hotline: 1-800-832-1901

NOTE: While the above confidential resources may maintain an individual's confidentiality vis-à-vis the college, they may have reporting or other obligations under state law, such as mandatory reporting to the Department of Children and Families in the case of minors; threat of imminent harm to self or others; or the requirement to testify if subpoenaed in a criminal case.

B. College Reporting / Responsible Employees

a. *Formal Reporting to the College*

The following offices and individuals have been trained to receive and respond to allegations of violations of this policy:

- Dr. Christopher Kandus-Fisher, Chief Equity Officer/Title IX Coordinator
617-747-2330, ckandusfisher@berklee.edu
- Eileen Alviti, Director, Employee Relations & Staffing/Deputy for
Employee Investigations, 855 Boylston Street, Human Resources, 4th Floor,
617-747-2305, ealviti@berklee.edu
Michelle Quinones, Director of Community Standards/Deputy for Student
Investigations, 617-747-2849, mquinones@berklee.edu
- Berklee Primary Response Team (24 hours): 617-851-6763
- Valencia: Jorge Rostoll, Senior Director of Operations,
jrostoll@berklee.edu, 617-747-3416 and Clara Barbera, Director, Student
Affairs Valencia cbarbera@berklee.edu, 617-747-3403

b. *Responsible Employees*

All Berklee employees (including staff, administrators, faculty, and Resident Assistants) - with a few limited exceptions - are considered “Responsible Employees” under this policy and as a result are required to promptly report allegations of violations of this policy that they observe or learn about to the Chief Equity Officer/Title IX Coordinator, Dr. Christopher Kandus-Fisher, ckandusfisher@berklee.edu.

Although Responsible Employees are required to report conduct under this policy to the Chief Equity Officer/Title IX Coordinator, they will otherwise maintain the privacy of the information related to the matter reported, meaning they will only share it with the Chief Equity Officer/Title IX Coordinator and other employees with a need to know.

All Responsible Employees are required to report any incident of sexual misconduct, even if the person(s) concerned about or affected by the misconduct is unsure about pursuing a disciplinary complaint. The Chief Equity Officer/Title IX Coordinator who will assess the report and consult with the complainant will review reported allegation(s). Responsible employees who knew about but did not report allegations of sexual misconduct may be subject to disciplinary action.

Note however that Responsible Employees are not required to report information about violations of this policy learned through public awareness events such as “Take Back the Night” or other forums at which students disclose experiences with sexual violence. The college will proceed with an inquiry or investigation in these circumstances if the disclosing student wishes to file a complaint.

c. Requests for Confidentiality

A complainant may disclose an incident but request confidentiality, that no investigation into the particular incident be pursued, or that no action through the college process be taken. In such instances the Chief Equity Officer/Title IX Coordinator will weigh the request against the college’s obligation to provide a safe, non-discriminatory environment for all students and employees, including the complainant. A range of factors may be considered in making this assessment (including but not limited to whether the alleged accused is likely to commit additional acts of violence, whether the act was committed with a weapon, if the complainant is a minor, whether the college can obtain relevant evidence of the misconduct through some other means, or whether the report reveals a pattern of behavior at a given location or by a particular group). The presence of one or more of these factors could lead the college to investigate and, if appropriate, pursue action against the accused. If none of these factors are present, the college will likely respect the complainant’s request.

Similarly, a complainant may desire to have investigatory or disciplinary action taken, but may wish to have his/her identity as the complainant kept confidential. Depending on the circumstances, this may or may not be possible. If any number of people could have reported the incident (for instance, if it occurred in the classroom), it may be possible for the complainant’s identity to remain confidential and not shared with the respondent. However, in other cases, it may not be possible to proceed with investigatory or disciplinary action without revealing the identity of the complainant.

If the college honors a complainant’s request for confidentiality or decision not to participate in an investigation (or if the complainant makes an anonymous complaint), the college’s ability to meaningfully investigate the incident or pursue action against the alleged accused may be limited.

If the college determines that it cannot maintain a complainant’s confidentiality, the college will inform the complainant prior to an investigation and, to the extent possible, share information only with a limited number of personnel responsible

for handling the college's response. The college may not require a complainant to participate in any investigation or disciplinary proceeding. The college will remain ever mindful of the complainant's well-being, and will take ongoing steps to protect the complaint from retaliation or harm and work with the complainant to create a safety plan. Retaliation against the complainant or any witnesses involved in the process, whether by students or college employees, will not be tolerated.

Because the college is under a continuing obligation to address the issue of discrimination, harassment, and sexual or gender-based misconduct campus-wide, reports of that nature (including non-identifying reports) will also prompt the college to consider broader remedial action – such as increased monitoring, supervision or security at locations where the reported acts occurred; increasing education and prevention efforts, including to targeted population groups; and/or revisiting its policies and practices.

d. *Required Disclosures*

Clery Act. Pursuant to the Clery Act and the 2013 Amendments to the Violence Against Women Act, anonymous statistical information regarding reported criminal incidents must be shared with Berklee Public Safety for inclusion in the Daily Crime Log. This information will also be included in the College's Annual Security Report. The college may also share aggregate and not personally identifiable data about reports, outcomes, and sanctions. This information is collected only for statistical reporting as mandated by the Clery Act; no individuals or identifying details are revealed.

If a report of misconduct discloses a serious and immediate threat to the campus community, Berklee Public Safety will issue a timely notification to protect the health or safety of the community as required by the Clery Act. The notification will not include identifying information about a reporting party.

All college investigations and disciplinary processes are conducted in accordance with the requirements of Title IX, the Clery Act, the Violence Against Women Act, FERPA, state and local law, and college policy. Information about particular investigations and disciplinary processes will only be released in accord with law or college policy.

For further information regarding the Clery Act and other Public Safety functions, contact Roy J. Murphy, Senior Director of Public Safety, Chief of Police, or Nadine Taylor-Miller, Associate Director of Public Safety, at 617-747-2682.

Mandated Reporter Obligations. Members of the Berklee community who hold certain positions are considered “mandated reporters” and are required by law to report suspected abuse of minors, including sexual abuse, to the Massachusetts Department of Children and Families (DCF). These positions include, but are not limited to, teachers, educational administrators, police officers, nurses, medical treatment providers, social workers, preschool, summer, and after-school program staff, child care providers, and guidance or family counselors.

C. Law Enforcement

The conduct discussed in this policy may also constitute violations of the law, to which other laws and regulations may apply beyond the scope of this policy and Berklee’s disciplinary measures. Criminal definitions under state and federal law for some of the conduct described under this policy such as relationship violence (including dating and domestic violence) and stalking can be found in Attachment A to this policy.

A victim of a crime is encouraged, but is not required, to report the incident to Berklee Public Safety Department and/or local law enforcement in order to pursue criminal charges. The criminal process and the college’s disciplinary processes are not mutually exclusive or dependent on each other, meaning that a person may pursue either a criminal complaint or college complaint or both. The fact that there is a criminal complaint filed will not prevent the college from taking its own internal investigatory and disciplinary action. In some cases, however, the college may delay temporarily its internal processes while a law enforcement investigation is ongoing.

Any person may call the Berklee Public Safety Department (617-747-2333) or 911 for immediate safety assistance. The college can assist in making a criminal report to local law enforcement and will cooperate with law enforcement agencies if a community member decides to pursue the criminal process, to the extent permitted by law. Criminal complaints may be filed by contacting Berklee Public Safety (617-747-2333) or local law enforcement (911).

In criminal cases, the preservation of evidence is critical and must be done properly and promptly. In cases of rape or other forms of sexual assault, it is important not to shower, change clothes and even brush your hair, as physical evidence may be lost. In cases of violence or physical abuse, it is important to document injuries, including by taking photographs. The Berklee Public Safety Department (617-747-2333) or local law enforcement (911) can assist in filing a

criminal complaint and in securing appropriate physical examination, including by a Sexual Assault Nurse Examiner.

In some cases, an individual may also wish to consider an Abuse Prevention Order, also known as a “restraining order” or “209A order,” or a Harassment Prevention Order, also known as a “258E order,” from the local courts. These are civil proceedings independent of the college. If a court order is issued the college will, to the extent possible, assist the protected person in benefiting from the restrictions imposed by the court and will also facilitate on campus compliance with the order. The college may also limit an individual’s or organization’s access to certain college facilities or activities as part of the no contact order.

In addition or in the alternative, affected individuals may also file a formal complaint with the appropriate government agencies. Students may submit complaints of discrimination or sexual harassment to the U.S. Department of Education: Office for Civil Rights, 5 Post Office Square, 8th Floor, Suite 900, Boston, MA 02109-3921, 617-289-0111 (Statute of Limitations: 180 days). College employees may submit complaints of discrimination or sexual harassment to the Equal Employment Opportunity Commission, JFK Building, Room 475, 15 New Sudbury Street, Boston, MA 02203, 617-565-3200 (Statute of Limitations: 300 days) or the Massachusetts Commission Against Discrimination, One Ashburton Place, Boston, MA 02108, 617-727-3990 (Statute of Limitations: 300 days).

VII. Academic Freedom

This policy is not intended to restrict teaching methods or freedom of expression, nor will it be permitted to do so. Offensiveness of conduct, on its own, is not sufficient for the conduct to constitute a violation of this policy. The conduct must be sufficiently serious to interfere with an individual’s ability to participate in employment or an educational program and activities from both a subjective and objective perspective.

VIII. False Allegations

The college will not tolerate false reporting of incidents and may discipline members of the community who bring false complaints of misconduct prohibited by this policy. No complaint will be considered “false,” however, solely because it cannot be corroborated.

IX. Policy Administration and Enforcement

The following individuals and offices are responsible for the implementation of this policy and the Equity Complaint Process:

Title IX Coordinator: Dr. Christopher Kandus-Fisher, Chief Equity Officer and Associate Vice President of Student Affairs 921 Boylston Street, 617-747-2330, ckandusfisher@berklee.edu.

Deputy for Advocacy and Support: Toni Blackwell, Associate Dean, Student Health and Wellness, 921 Boylston Street, 617-747-2462, tblackwell@berklee.edu.

Deputy for Prevention and Education: Kevin Johnson, Director for the Office of Diversity and Inclusion, 921 Boylston Street, 617-747-8273, mjohnson2@berklee.edu.

Deputy for Student Investigations: Michelle Quinones, Director of Community Standards, 921 Boylston Street, 617-747-2849, mmquinones@berklee.edu.

Deputy for Employee Investigations: Eileen Alviti, Director, Employee Relations & Staffing, 855 Boylston Street, Human Resources, 4th Floor, 617-747-2305, ealviti@berklee.edu.

Deputy for Advisors: Josh Crary, Diversity Programs Advisor, 921 Boylston Street, Diversity and Inclusion Office, 617-747-3193, mjcrary@berklee.edu.

Deputy for Appeals, Christine Connors, Vice President for Human Resources, Diversity and Inclusion, 855 Boylston Street, Human Resources, 4th Floor, 617-747-2089, cconnors@berklee.edu,

Valencia Deputy: Maria Iturriaga, Associate Executive Director/Dean of Admissions - Valencia, 617-266-1400 x3412, mmiturriaga@berklee.edu.

X. Designation of Authority

Any person assigned a role pursuant to this policy may designate his/her authority to another appropriate person to avoid conflicts of interest or in other circumstances, as deemed necessary.

EQUITY COMPLAINT PROCESS

I. Introduction

This policy provides procedures for the investigation and adjudication of violations of the Equity Policy. Complaints of discrimination, harassment, sexual harassment, sexual exploitation, sexual assault, domestic violence, dating violence, and stalking will be handled internally through the Equity Complaint Process outlined below.

The process described below will apply to all complaints involving students, faculty, administrators, or staff. Complaints against any Berklee community member made to the college by third parties are also subject to this process. While the college may choose to pursue complaints by a Berklee community member against third parties or former community members, disciplinary action can generally only be taken against an individual as long as he or she is enrolled, employed, or otherwise involved with the college. Nothing in this Policy or Process alters or modifies the at-will employment relationship.

To the extent any collective bargaining agreement applicable to complainant or respondent provides for alternate procedures for the resolution of harassment or discrimination complaints, such procedures will be followed and read in the context of this policy and procedure, and any additional rights provided in the collective bargaining agreement will be applied equally to both complainant and respondent. Notwithstanding the foregoing, this policy and procedure shall supersede any provisions of a collective bargaining agreement that conflict with the law.

II. Complaint Intake and Interim Remedial Actions

Following receipt of notice of a violation or of a complaint, the Chief Equity Officer/Title IX Coordinator will contact the complainant and provide information regarding rights, options, how to get immediate confidential help, and, in appropriate circumstances, will notify the Deputy of Advocacy and Support.

An initial determination is made by the Chief Equity Officer/Title IX Coordinator as to whether a policy violation may have occurred or whether mediation or alternative resolution might be appropriate. If the complaint does not appear to allege a policy violation, if mediation is agreed to by the involved parties and appears appropriate given the nature of the alleged behavior, or alternative resolution is appropriate under the circumstances, then the complaint does not proceed to full investigation. In making a decision as to whether to proceed to

investigation, the Chief Equity Officer/Title IX Coordinator also considers the wishes of the complainant. A full investigation will almost always be pursued if there is evidence of a pattern of misconduct or a perceived threat of further harm to the community or any of its members.

At this stage and during any resulting investigation, the Deputy of Advocacy and Support, in consultation with the Chief Equity Officer/Title IX Coordinator, will also put appropriate interim measures in place, including but not limited to: Avoidance of Contact orders, changes to class assignments, changes to housing or working assignments, temporary interim removal of the respondent from housing, classes, or workplace, counseling, assistance with court-ordered restraining orders, academic support, delays in project or examination due dates, campus No Trespass orders, administrative leave, and any other measures that may be necessary to protect the safety and well-being of the Berklee community. Some of these measures may be available under certain circumstances even if one decides to seek only confidential support. The college will treat any protective measures with confidentiality to the extent that maintaining such confidentiality would not impair the ability of the college to provide the protective measure.

III. Investigation

Investigator

In cases where the Chief Equity Officer/Title IX Coordinator determines that a complaint appears to allege a policy violation, and a complainant wishes to pursue a formal complaint, or the Chief Equity Officer/Title IX Coordinator decides that the college, based on a potential policy violation, wishes to pursue a formal complaint, then the Chief Equity Officer/Title IX Coordinator appoints an individual to conduct the investigation.

A single investigator will be assigned to each case and this individual will be referred to as “the investigator.” The investigator assigned to resolve a case is based on the status of the respondent as set forth below:

- Student Respondent: Deputy for Student Investigations, Director of Community Standards, or designee
- Staff or Faculty Respondent: Deputy for Employee Investigations, Director of Employee Relations, or designee

In certain circumstances, the Chief Equity Officer/Title IX Coordinator may appoint a neutral third-party or other investigator trained in investigations and

familiar with college policies. Any such third-party investigator may serve as a single investigator or as a co-investigator with one of the investigators identified above.

Initiating Investigation and Communications

The investigator is responsible for communications with the parties³ regarding the initiation and progress of the investigation. Prior to initiating the investigation, the investigator will meet separately with complainant and respondent to review applicable policy, procedures, rights, and other expectations related to the investigation. At this meeting, the parties must separately complete and sign the Investigative Procedures Checklist.

Allegations to be investigated and charge letters to respondents are determined and issued as follows:

The investigator and the Chief Equity Officer/Title IX Coordinator will together determine all potential charges/violations, and will inform the respondent of her or his right to review and comment on all evidence, offer witnesses and evidence, and be accompanied by an advisor of choice. The investigator will provide the respondent with written notice of all charges and allegations, in a charge letter and/or written complaint, prior to the initial interview.

If new information comes to light that results in the need to charge the respondent with additional violations, then the respondent should be provided with an updated, written, letter setting forth the new allegations.

Advisor of Choice

Both the respondent and the complainant may be advised by one (1) advisor of their choice. Advisors serve as a support person for the parties during investigative meetings. If requested, the Deputy for Advisors will work with the complainant and the respondent to connect each with a faculty or staff member who can act as an advisor. Advisors are not permitted to interfere with or obstruct the investigation or to testify in place of a party during any proceeding. Individuals who are witnesses to the incident or are otherwise involved in the matter cannot serve as advisors. The college reserves the right to remove an advisor from any proceeding should these expectations and guidelines be violated. The advisor's name and relationship to a party (e.g., student, faculty member, family member,

³ The term "parties" in this section refers to the respondent(s), and if applicable any individual complainant(s). The college may bring charges even when there is no individual who wishes to formally pursue a complaint.

attorney, etc.) should be disclosed to the investigator at least two days prior to any meeting. Although proceedings are not generally delayed or rescheduled due to an advisor's schedule or availability, the investigator will consider reasonable requests made to delay or reschedule a meeting or other proceedings and will make the final determination with respect to that request. These procedures will not be applied in a manner which conflicts with an employee's *Weingarten* rights, when applicable.

Evidence Collection

The investigator will interview the parties, as well as all relevant witnesses, and gather any relevant evidence (such as texts, social media postings, surveillance video, photos), and consider all relevant evidence. Although formal rules of evidence will not apply, the investigator will not consider character evidence, incidents not directly related to the possible violation unless they tend to show a pattern, past sexual history, or sexual character of either party, unless such information is determined to be highly relevant by the Chief Equity Officer/Title IX coordinator. The investigation will be thorough, impartial, and fair, and all individuals will be treated with appropriate sensitivity and respect.

During the investigation, the complainant and the respondent will have an equal opportunity to share information and request that witnesses be interviewed. The complainant and respondent will **not** be interviewed together or be required to meet. The investigator(s) retains discretion to determine how to conduct the investigation and what information is necessary and relevant.

In most cases, the investigator will prepare a written summary of the evidence to be considered at the conclusion of an investigation. Before a determination is made, the participating complainant and respondent will be given the opportunity to review their own statements and, to the extent appropriate to honor privacy considerations, the participating complainant and respondent may also be provided with a written or oral summary of other information collected during the investigation. A complainant or respondent must submit any comments about their own statement, or on any investigation summary that might be provided, to the investigator within five (5) calendar days after that statement or summary was provided.

Determination

The investigator will then come to a conclusion as to whether or not there were policy violations by reviewing all relevant evidence and making a determination as to whether or not, by a preponderance of evidence, there is sufficient credible

evidence to support each allegation. The investigator will then determine whether the respondent violated the policies with which she/he was charged, and prepare a confidential summary report, including rationale and conclusions, for review by the Chief Equity Officer/Title IX Coordinator.

The Chief Equity Officer/Title IX Coordinator will oversee each investigation and ensure sufficiency of evidence gathered, that the facts gathered support the findings and findings support the conclusion, that best practices are followed, and that each allegation is answered in the investigator's determination and summary.

If no violation is found, both parties are notified, in writing, on the same day. Such notice will include a rationale for the outcome and information concerning appeal procedures.

IV. Sanctions

If there is a finding of a policy violation, a sanction(s) must be determined. Sanctions are designed to end the conduct, and prevent its recurrence.

Determination of Sanctions

Factors considered when determining a sanction may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation;
- An individual's or organization's previous disciplinary history;
- Previous acts of similar conduct;
- The need for sanctions to bring an end to the discrimination, harassment, and/or retaliation;
- The need for sanctions to prevent the future recurrence of discrimination, harassment, and/or retaliation;
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the complainant and the community; or
- Any other factors deemed relevant.

Sanctions are determined as follows:

- Student cases: Investigator meets with Chief Equity Officer/Title IX Coordinator, and together they determine the sanction. The Deputy of Investigations may also participate in making the decision.

- Staff cases: Investigator meets with the Chief Equity Officer/Title IX Coordinator, and together they determine the sanction. The Deputy of Investigations may also participate in making the decision.
- Faculty cases: Investigator meets with a Dean or other individual designated by the Provost (“Provost’s designee for sanctioning”) and the Chief Equity Officer/Title IX Coordinator. The investigator and Chief Equity Officer/Title IX Coordinator make the decision, with the Dean or Provost’s designee serving in an advisory or consultative capacity.

Notification

Parties are notified in writing on the same day. The notification gives a summary of the investigative report and sanctioning determination, as well as information on how to file any appeal.

Possible Sanctions

Sanctions may range from mandated education, formal warning, probation, suspension, dismissal (for students), or corrective action up to and including termination (for employees).⁴

Sanctions may also include, but are not limited to, requirements that existing interim measures and accommodations stay in place for a prescribed period of time, and new remedies such as Avoidance of Orders, housing placement, or academic accommodations, based upon the investigation and adjudication of the case.

Below is a list of potential sanctions. While these represent sanctions generally assessed, the college may take other remedial measures not mentioned here, depending on the particular circumstances of a case.

For student respondents:

- a. Disciplinary Warning
- b. Disciplinary Probation
- c. Residential Probation
- d. Residential Suspension
- e. Suspension
- f. Expulsion

⁴ Criminal complaints are governed by applicable criminal laws and sanctions for the alleged assailant may include any applicable criminal sanctions, up to and including incarceration. The college will cooperate in all criminal investigations and support individuals throughout the process.

- g. Fines
- h. Restriction of Privileges
- i. Behavioral Agreements
- j. Deferred Housing Removal
- k. No-Contact Orders
- l. Interim Suspension
- m. Letter of Apology
- n. Check-in/Success Meeting
- o. Reflection/Research Papers
- p. Community Restitution

For Staff or Faculty:

- a. No contact orders
- b. Mandated counseling, education and/or training
- c. Verbal warning
- d. Written warning
- e. Final written warning
- f. Suspension
- g. Involuntary termination

V. Timeframe

The college will conduct a timely review of all complaints, and endeavors to complete review and resolution within sixty (60) calendar days from receipt of the complaint.

The preliminary review of all complaints, including any necessary interviews to be conducted and any necessary interim measures to be put in place, will usually be completed within fifteen (15) days of receipt of the complaint.

The subsequent comprehensive review and investigation of the complaint, including interviews with involved parties and gathering of evidence, is usually completed within forty-five (45) days of receipt of the complaint.

Final outcomes are typically issued within sixty (60) days of receipt of the complaint. The finding and outcome will be simultaneously communicated in writing to both the accused and the accuser.

Investigation of complaints brought directly by those alleging harm will be completed as expeditiously as possible. Investigations may take longer when (among other things) initial complaints fail to provide direct firsthand information or when the college is not in session. The college may, but shall not be obligated to, delay its processes when criminal charges on the basis of the same behaviors that invoke this process are being investigated. College action will not be altered or precluded on the grounds that civil or criminal charges involving the same incident have been filed or that charges have been dismissed or reduced.

VI. Withdrawal With Charges Pending

If a student respondent withdraws from the college while an investigation under this policy is pending, and before any findings have been made, the respondent's transcript will reflect that the student withdrew pending an investigation of disciplinary charges. If a student respondent withdraws after an investigation found him or her responsible for violating the policy, but before a sanction was implemented, the student's transcript will reflect that the student withdrew pending disciplinary sanctions. Should a student decide to withdraw and not participate in the investigation, the college may opt to proceed without the student to a reasonable resolution and the student will not be permitted to return to the college unless all sanctions have been satisfied.

Should an employee respondent decide to resign and not participate in the investigation, the college may opt to proceed without the employee to a reasonable resolution and the employee may not be permitted to reapply for employment if a policy violation is found.

VII. Alternative Resolution

In cases where the alleged violations are minor (and possible sanctions are thus also minor, such as disciplinary warning for students, or verbal warning for an employee) the Chief Equity Officer/Title IX Coordinator may request that an appropriate administrator or investigator make a decision as to responsibility using a preponderance of the evidence standard and implement a sanction, with a brief statement of the rationale for the sanction provided to the parties. A complainant or respondent dissatisfied with the sanction may request reconsideration in writing within five days of notification of the sanction to the Chief Equity Officer/Title IX Coordinator, who will determine whether to uphold or modify the sanction.

Alternative resolution will not be used to address complaints of sexual assault or violent behavior of any kind or in other cases of serious violations of policy.

VIII. Mediation

Conflict resolution is often used for less serious, yet inappropriate, behaviors and is an alternative to the formal investigation procedure outlined above. The Chief Equity Officer/Title IX Coordinator will determine if conflict resolution is appropriate based on the willingness of the parties, the nature of the conduct at issue, and the susceptibility of the conduct to mediation. In a conflict resolution meeting, an individual designated by the Chief Equity Officer/Title IX Coordinator will facilitate a dialogue with the parties to an effective resolution, if possible. Sanctions are not possible as the result of a conflict resolution process, though the parties may agree to appropriate remedies, in which case the complaint is resolved. The Chief Equity Officer/Title IX Coordinator will keep records of any resolution that is reached, and failure to abide by the accord can result in appropriate responsive actions. **Mediation will not be used to address complaints of sexual assault or violent behavior of any kind or in other cases of serious violations of policy.** It is not necessary to pursue mediation first in order to make a formal complaint, and anyone participating in conflict resolution can stop that process at any time and request a formal process. The results of conflict resolution are not subject to appeal.

XI. Appeals

Both parties, the complainant and the respondent, have equal rights to an impartial appeal.

For cases against students or staff:

Both parties will have five (5) business days from written notification of an outcome to submit a written appeal to the Deputy, Appeals.

Appeals will be heard solely on the following grounds –

- i. New evidence available that was not available prior to the original investigation and finding, which may have a material effect on the case;
- ii. The investigation process was not adhered to, and such non-adherence may have had a material impact.

Upon receipt of the appeal request, the Deputy, Appeals shall evaluate the request and decide whether an appeal meets any of the above grounds.

Absent unusual circumstances, the parties will be notified within ten (10) calendar days whether the appeal has been granted or rejected. If granted, the appeal will be decided by an appeal panel composed of the three Vice Presidents (Provost, VP for Student Affairs, and VP for HR, Diversity and Inclusion) together. In the event a panel member is unable to participate, he or she will designate a member of his or her department (who played no role in the underlying investigation) to serve on the panel.

For cases filed against a member of the faculty subject to the collective bargaining agreement:

Both parties will have fifteen (15) calendar days from written notification of an outcome to submit a written appeal to the Provost or the Deputy, Appeals, acting as the Provost's designee.

The only issue subject to appeal is the level of discipline, or lack thereof. Appeals will follow the terms of Article XI of the Faculty Contract.

The appeal will be decided by the Provost, who will make the final decision in consultation with the other Vice Presidents (Student Affairs, Human Resources).

Any non-faculty complainant shall have the same rights as a faculty respondent as set forth in the Faculty Contract, including the right to meet with the Provost.

In all cases, appeals are documentary in nature, and do not include a hearing. Once an appeal is received, the Deputy, Appeals will forward that appeal, in its entirety, to the other party for review and comment. That party will then have ten (10) days in which to review the appeal and respond. This is a right, but not a requirement. The decision not to respond to an appeal does not indicate agreement with the appeal as filed.

The panel will exclude from consideration any evidence it deems inadmissible by college policy, including but not limited to character evidence. The appeals panel will not substitute its opinion on credibility in place of the judgment of the investigator who saw and heard the witnesses, and will not make new findings of fact. If there is substantial evidence in light of the whole record to support a finding of fact, the panel will not reweigh the evidence but will defer to those findings. Where the findings of fact are upheld, the conclusions of the investigator as to policy violations will be changed only if not supported by the findings.

The panel may, at its discretion, require that the case be re-heard in whole or in part by the original investigator(s).

Appeal panel decisions are final.

XII. Designation of Authority

Any person assigned a role pursuant to this policy may designate his/her authority to another appropriate person to avoid conflicts of interest or in other circumstances, as deemed necessary.

XIII. Prevention and Education

Through its educational programming and security measures, the college attempts to help community members reduce their risk of being subject to harassment or discrimination. In line with its mission of cultivating a supportive learning environment the college strives to actively promote a climate of respect for personal and cultural differences by offering a range of services and activities to support the needs of the entire community, composed of people from all around the world. An integral part of this objective is comprehensive educational programming, prevention, and security measures designed to help community members reduce their risk of being subject to harassment or discrimination. In addition, the college has developed a strategic plan to educate the community with regard to sexual and gender-based violence in particular, and offers a number of training, education, and awareness programs each year.

For more information about the college's available prevention and education offerings please contact:

Kevin Johnson
Deputy for Prevention and Education
Director for the Office of Diversity and Inclusion
855 Boylston Street, 4th Floor
(617-747-8273)
kjohnson2@berklee.edu

ATTACHMENT A

Some of the conduct prohibited by this policy may also constitute violations of the law, in addition to or beyond the scope of this policy and Berklee's disciplinary measures.

The following is a summary of the federal and state definitions applicable to certain offenses (domestic violence, dating violence, sexual offenses, and stalking).

“Domestic Violence”

“*Domestic violence*” means a felony or misdemeanor crime of violence committed by any of the following individuals: a current or former spouse of the victim; a person with whom the victim shares a child in common; a person who is cohabitating with or has cohabitated with the victim as a spouse; a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies; or 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. *See* 42 U.S.C. 13925(a).

Under state law, “*domestic abuse*” is defined to be the occurrence of one or more of the following acts between family or household members: attempting to cause or causing physical harm, placing another in fear of imminent serious physical harm; and causing another to engage involuntarily in sexual relations by force, threat, or duress. Under this law, family or household members include people who are or were married, residing in the same household, related by blood or marriage, have a child together, or have a substantive dating or engagement relationship. *See* M.G.L. c. 209A, § 1.

“Dating Violence”

“*Dating violence*” means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. Violence includes, but is not limited to, sexual or physical abuse *or* the threat of such abuse. The existence of a social relationship of a romantic or intimate nature with the victim is determined based on the length of the relationship; the type of the relationship; and the frequency of interaction between the persons involved in the relationship. The term dating violence does not include acts covered under the federal definition of “domestic violence.” *See* 42 U.S.C. 13925(a).

Massachusetts law has no statutory definition of “*dating violence*,” but that crime is covered under the definition of “domestic violence.”

“Stalking”

“*Stalking*” is defined under federal law as engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or to suffer substantial emotional distress. *See* 42 U.S.C. 13925(a). For purpose of this definition:

- The term “*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.
- The term “*substantial emotional distress*” means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
- The term “*reasonable person*” means a reasonable person under similar circumstances and with similar identities to the victim.

Under Massachusetts law, M.G.L., c. 265, §43, an individual engages in stalking if she/he: 1) willfully and maliciously engages in a knowing pattern of conduct or series of acts over a period of time directed at a specific person which seriously alarms or annoys that person and would cause a reasonable person to suffer substantial emotional distress; and 2) makes a threat with the intent to place the person in imminent fear of death or bodily injury.

“Sexual Offenses”

“*Sexual offenses*” means any sexual act directed against another person, without the consent of that person, including instances when the person is unable to give consent. Sexual offenses including the following:

- “Rape,” which is defined as the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. Under state law, rape occurs when the offender has “sexual intercourse or unnatural

sexual intercourse with a person and compels such person to submit by force and against his/her will, or compels such person to submit by threat of bodily injury.” *See* M.G.L. c. 265, § 22. A sexual assault that does not meet the legal definition of rape may constitute “indecent assault and battery,” which occurs when the offender, without the victim’s consent, intentionally has physical contact of a sexual nature with the victim. *See* M.G.L. c. 265, § 13H.

- “Fondling,” which is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical incapacity.
- “Non-Forcible Sex Offenses,” which is defined as unlawful, non-forcible sexual intercourse, including:
 - “Incest,” which is defined as the non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; and
 - “Statutory rape,” which is defined as non-forcible sexual intercourse with a person who is under the statutory age of consent. In Massachusetts the statutory age of consent is 16 years of age. *See* M.G.L., c. 265, §23.

“Consent”

Relevant federal law does not include a definition of the term “consent.” *See* Violence Against Women Act (Final Rule), 79 Fed. Reg. 62,572 (Oct. 20, 2014) (codified 34 C.F.R. 668). There is currently no state statutory definition of consent. The college’s policy definition of consent is to be applied in cases of alleged sexual assault.