Sexual Misconduct Policy

Overview of Policy

Members of the Becker College community, guests and visitors have the right to be free from sexual violence. All members of the campus community are expected to conduct themselves in a manner that does not infringe upon the rights of others. Becker College believes in a zero tolerance policy for sexual misconduct. When an allegation of sexual misconduct is brought to an appropriate administrator’s attention, and a respondent is found to have violated this policy, serious sanctions will be used to reasonably ensure that such actions are never 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.

Definitions

Sexual Misconduct is a broad term encompassing any non-consensual physical contact of a sexual nature that varies in severity and consists of a range of behaviors or attempted behaviors.

Prohibited Sexual Misconduct includes:

1. **Sexual Harassment** – unwelcome sexual advances, requests for sexual favors, and other verbal, non-verbal, or physical conduct of a sexual nature that is, sufficiently severe, persistent or pervasive or that unreasonably interferes with, denies or limits someone’s ability to participate in a College course, program or activity, or is based on power differentials (quid pro quo), the creation of a hostile environment, or retaliation.

2. **Non-Consensual Sexual Contact** - any intentional sexual touching, however slight, with any object or body part, by one person upon another, without consent or by force. Sexual touching includes any contact of a sexual nature (as determined using a “reasonable-person” standard) with the breasts, buttocks, groin, genitals, mouth, or body part of another. Sexual touching also includes an individual making someone else touch him or her with, or on, any of these body parts.

3. **Non-Consensual Sexual Intercourse** - any sexual intercourse (anal, oral or vaginal), including sexual intercourse with an object or body part, however slight, by one person upon another without consent or by force. Sexual intercourse includes vaginal and/or anal penetration by a penis, object, tongue or finger, and oral copulation (mouth to genital contact or genital to mouth contact).

4. **Sexual Exploitation** - when an individual takes non-consensual, unjust or abusive sexual advantage of another for his/her own pleasure, advantage or benefit, or to pleasure, benefit or advantage anyone other than the one being exploited, and that does not otherwise constitute one of the other sexual misconduct offenses. Examples include, but are not limited to: exposure of genitals or inducing another to expose their genitals; invasions of sexual privacy including non-consensual video or audio-taping of sexual activity or voyeurism;
intentional transmission of HIV or another STD; or aiding in the commission of sexual misconduct as an accomplice.

5. **Domestic Violence** – felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of jurisdiction, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.

6. **Dating Violence** – violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors: the length of the relationship; the type of relationship; type of relationship; and, the frequency of interaction between the persons involved in the relationship.

7. **Stalking** – 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 suffer substantial emotional distress.

**Consent** - clear, knowing, and voluntary words or actions given by a person indicating a willingness to engage in mutually agreed-upon sexual activity. Consent is active, and not passive. Silence, in and of itself, cannot be interpreted as consent. Mutually understandable Consent must be obtained by both parties throughout the sexual interaction. In other words, consent to any one form of sexual activity cannot automatically imply consent to any other form of sexual activity. Previous sexual relationships and/or a current relationship may not be taken to imply consent. In addition, consent cannot be implied or inferred by attire, time or place (e.g. being invited to a person’s residence at a certain time of night). Consent to sexual activity may be revoked at any time, as long as the revocation is communicated clearly, at which point sexual activity must cease immediately. Consent cannot be given by minors (Massachusetts those yet not sixteen (16) years old), mentally disabled individuals or incapacitated persons. Because consent may never be provided by an incapacitated person, one must assume consent has been withdrawn should an individual become incapacitated at any point during a sexual act or encounter. Consent cannot be obtained through the use of fraud or force (actual or implied).

**Incapacitated** - any state where one cannot make a rational, reasonable decision because they lack the ability to understand the who, what, when, where, or how of their sexual interaction. This includes but is not limited to persons incapacitated based on their voluntary or involuntary use of drugs or alcohol, unconsciousness, blackout or sleep. Evidence of incapacity can also be detected by a reasonable person from one or an accumulation of context clues, which can include but are not limited to the following: knowledge regarding how much alcohol another person has consumed or whether some other drug has been ingested; slurred speech; bloodshot eyes; shaky equilibrium or inability to walk; vomiting; outrageous or unusual behavior; or unawareness of surroundings.

**Force** - use of physical violence (such as pushing, hitting, pinning down), threats (direct or indirect expressions of harm to self or others), intimidation (implied or indirect threats), and/or
Reporting Procedures and Confidentiality

Becker College encourages those who have experienced any form of sexual misconduct to immediately seek available assistance and report the incident promptly to the Title IX Coordinator: Michelle Fatcheric, Assistant to the Vice President for Student Affairs. She can be reached at 774.354.0462 or michelle.fatcheric@becker.edu or in Campus Center West, Student Affairs Suite, 964 Main St., Leicester, MA 01524.

It is important to know that different people on campus have different reporting responsibilities and different abilities to maintain confidentiality, depending on their roles.

**Reporting to Responsible Employees**- The College has adopted the policy that defines all employees as mandatory reporters. This means that once any employee receives a report of sexual misconduct, it is considered official notice to the College, which must be reported to the Title IX Coordinator. When reporting to employees, it can be expected that reports will be taken seriously and that they will be investigated and properly resolved. Unreasonable delay in reporting may impede the College’s ability to conduct an investigation and/or effect appropriate remedial action. Formal reporting means that only people who need to know will be told and information will be shared only as necessary with investigators, witnesses, and the accused individuals.

While Campus Police is required to forward reports of harassment including sexual assault to the Title IX Coordinator, the College and Campus Police operate independently from one another in regard to investigations. The complainant may pursue any appropriate internal complaints (with the College) and/or external charges (Worcester or Leicester Police Departments) against the offender.

**Confidential Reporting**- Some resources can offer you confidentiality, sharing options and advice without any obligation to identify you unless you want them to.

1. **Counselors and Doctors**- Massachusetts law provides that communication between a patient and their mental health or medical provider or counselor is confidential. This includes confidential communication with either an on or off campus mental health counselor or health service providers or off-campus rape crisis center.

2. **Clergy**- Massachusetts law provides that communications between the clergy and any individual consulting with him or her for the purpose of seeking spiritual advice in the clergy’s professional capacity is considered privileged, and the person making the
communication has a privilege to refuse to disclose and prevent the clergy member from disclosing the confidential communication. Under the law, a “clergyman” is a minister, priest, rabbi, accredited Christian Science practitioner, or other similar functionary of a religious organization or an individual reasonably believed so to be by the person consulting him. Any employee at Becker College who may become engaged in a personal or spiritual discussion with a student should not assume that the conversation or information falls within this legal protection.

If unsure about someone’s duties and ability to maintain privacy, a complainant should ask them before talking to them. The employee should be able to explain and help make a decision about who can best help. Pursuant to the Clery Act, as explained below, some employees, such as RAs, should be instructed to share incident reports with their supervisors, without sharing any personally identifiable information about the report.

Federal Reporting and Timely Warnings- Under the Federal Clery Act, certain campus officials have a duty to report Non-Consensual Sexual Contact, Non-Consensual Sexual Intercourse, incest, or statutory rape. While personally-identifiable information may be kept confidential, statistical information must be passed along to Becker College Campus Police Department regarding the date and time of the incident, the type of incident and its general location (on or off-campus, in the surrounding area, but no addresses are given) for publication in the annual Campus Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety. Mandated federal reporters are any officials of an institution who have significant responsibility for student and campus activities. An official is defined as any person who has the authority and the duty to take action or respond to particular issues on behalf of the institution. This includes but is not limited to Directors within Student Affairs, Athletic Director and Coaches, and Title IX Coordinators. Anyone else, including Counselor, Doctors, or Clergy, may be but are not obligated to provide such information.

Additionally, the Becker College Campus Police Department must issue immediate timely warnings for incidents of sexual misconduct reported to them that are confirmed to pose a substantial threat of bodily harm or danger to members of the campus community. The College will make every effort to ensure that a victim’s name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the danger. The reporters for timely warning purposes are exactly the same as detailed above.

Immunity for Complainant and Other Reporters- The College encourages the reporting of sexual misconduct. Sometimes, victims are hesitant to report to college officials because they fear that they may be charged with policy violations, such as underage drinking at the time of the incident. To encourage reporting of sexual misconduct, the College, where possible, pursues a
policy of offering victims limited immunity from being charged with policy violations related to the particular incident. While violations to policy cannot be completely overlooked, the College may provide education options rather than other consequences, in such cases. This applies equally to other reporters, who witness and/or offer assistance to others in need. Moreover, any other rule violations will be addressed pursuant to the appropriate code of conduct.

**Investigation/Resolution**

**Intake**- A complaint alleging sexual misconduct can be made to an employee or directly to the Title IX Coordinator. Upon receipt of such notice, the Title IX Coordinator (or his/her designee) will first schedule an individual intake meeting with the complainant to provide complainant with a general understanding of this policy and to identify forms of support or immediate interventions available to the complainant (no contact orders, etc.).

During the intake meeting the Title IX Coordinator (or his/her designee) will determine how the complainant wishes to proceed (either with an informal resolution or with a formal investigation). It is important to note that the law may require the College to investigate even when a complainant does not wish to pursue informal resolution or formal investigation. The Coordinator (or his/her designee) will take care in these instances to protect the complainant’s personal information as far as possible, although he/she cannot guarantee confidentiality. Moreover, the ability of the College to investigate the complaint may be limited when the complainant refuses to participate in the investigation or wishes to remain anonymous. As necessary, the College reserves the right to initiate an investigation without a formal complaint by the victim or complainant.

**Initial Assessment**- After receiving a complaint, the Title IX Coordinator (individually or in consultation with his/her designee) will make an initial assessment to determine if there is reasonable cause to believe the sexual misconduct policy has been violated. If so, the Coordinator (individually or through his/her designee) will initiate a prompt, thorough, and impartial resolution or investigation.

**Informal Complaint and Resolution**- Before pursuing a formal complaint, a complainant may wish to informally resolve the issue. An informal resolution might take the form of the Title IX Coordinator, appropriate supervisor/administrator, or complainant discussing the issues with the responding party in order to establish the kind of behavior that may be deemed objectionable and securing the cessation of such behavior; it might also take the form of informal mediation between the parties. When valid complaints are resolved informally, the offending party should be cautioned that repetition of such conduct could lead to formal complaint or investigation.

The use of an informal complaint and resolution procedure is optional. Nothing in this informal complaint process is meant to discourage an individual from filing a formal complaint. In instances where parties involved do not wish to engage in the informal procedure, where informal resolution is not appropriate (e.g. sexual assault), or in situations where attempts at the
informal procedure are unsuccessful, the formal procedure may be followed. Written notice of
the outcomes of any informal procedure will be given to complainant by the Title IX Coordinator
within two weeks of the determined outcomes.

**Formal Complaint**- The person who wishes to file a formal complaint is encouraged to submit a
brief, written statement of facts to the Title IX Coordinator. If the complainant does not submit a
written statement, the Title IX Coordinator or the Deputy Coordinators will prepare a statement
that is approved by the complainant, which may address the following:

1. Identification of the respondent and relationship to the College;

2. Description of the incident(s), including dates, locations, and the presence (and identity)
of any witnesses or others who might have been subject to the same or similar
misconduct;

3. The impact of the respondent’s actions on the complainant;

4. Any other information that complainant believes to be relevant including supporting
documents or other evidence.

**Investigation**- Upon receipt of the statement, the Title IX Coordinator will open a formal case
file and begin the investigation by providing the respondent notice of the complaint.

As permitted, an investigation shall include, but is not limited to, allowing the respondent to
respond in writing and/or orally in order to state his/her position, interviewing complainant,
respondent, and key witnesses in order to gather relevant information; maintain appropriate
documentation; provide status updates; and disclose appropriate information to others only on a
need-to-know basis consistent with applicable law. While the amount of time needed to conduct
the investigation will vary on the nature of allegations and the evidence to be investigated, the
investigation will normally be concluded within 60 (sixty) days of the receipt of the formal
complaint.

**Cooperation with Law Enforcement**- The College will comply with law enforcement request
for cooperation and such cooperation may require the College to temporarily suspend the fact-
finding aspect of the investigation while the law enforcement agency is in the process of
gathering evidence. The College will promptly resume its investigation two weeks after
receiving the request from law enforcement or as soon as notified that law enforcement has
completed the evidence gathering process, whichever is earlier.

**Findings and Decision**- Upon conclusion of the investigation, the investigator will make written
findings regarding whether a violation occurred, based on a preponderance of the evidence
(whether a policy violation is more likely than not). The investigator and/or Title IX Coordinator
will present those findings to the accused and complainant. If both parties accept the findings,
the appropriate administrator will impose sanctions for the violation, after consultation with the
Title IX Coordinator. If either party rejects the findings, the appropriate administrators identified above will determine whether it is more likely than not that the accused individual violated the policy. If it is, he/she will impose sanctions for the violations, after consultation with the Title IX Coordinator. The findings of the investigation will be considered and given great deference by the administrator, but are not binding on the administrator’s decision.

**Remedies**- Anyone who violates this policy will be subject to appropriate disciplinary action as sanctions set forth in the Becker College Student Code of Conduct may also be involved.

Disciplinary measures available to remedy harassment or retaliation include, but are not limited to, the following: verbal warning/reprimand; written warning/reprimand in employee or student files; requirement of verbal and/or written apology to victim; mandatory education and training on harassment by means of reading assignments, videos, classes or other presentations; referral for psychological assessment or treatment; alternate placement, suspension, probation or termination; or other action Becker College deems appropriate under the circumstance.

In determining what disciplinary or corrective action is appropriate, the College shall consider the totality of the circumstances, including but not limited to: number of victims and offenders involved; student positions or status of the victims and offenders; relevant portions of prior disciplinary record of the offender; threateneed or actual harm caused by the misconduct; frequency and/or severity of the misconduct.

**Notifications**- When a determination is reached regarding findings and sanctions, the appropriate administrator identified above will provide both complainant and respondent with written notice of the same within five (5) business days. The notice will also include information regarding the parties’ right to appeal.

**Appeal Process**

Either party may appeal the findings or sanctions imposed by filing a written appeal to the Vice President for Student Affairs within three (3) working days of the above notification. In the event that an accused individual accepts the findings of the investigation, those findings cannot be appealed. The ONLY grounds for appeals are as follows:

1. A procedural [or substantive error] occurred that significantly impacted the outcome of the investigation (e.g. established bias or material deviation from established procedure);
2. To consider new evidence unavailable during investigation that could substantially impact the original finding or sanction. A summary of the new evidence must be included along with a valid reason it was not available earlier;
3. The sanctions imposed are substantially outside the parameters of guidelines set by the institution.
After receiving an appeal, the Vice President for Student Affairs will share the appeal with the Title IX Coordinator, who will determine if there are sufficient grounds for appeal. If there are, the opposing party will be notified of the appeal and have an opportunity to file a response. They will have three (3) business days to do so. Additionally, the deciding administrator will also be notified of the appeal.

The original findings, appeal, and any responses will be considered jointly by the two administrators mentioned above. If they cannot agree on a decision or need to recuse themselves for any reasons, the College's Senior Vice President will consider the appeal. Their finding, which will be in writing and provided to both parties, will be final and cannot be appealed.

The procedure governing the consideration of appeals includes the following:

1. If it is determined that an appeal should be granted, it should make every effort to return the appeal to the original administrator for reconsideration (remand) where appropriate. In such cases, the decision made on remand by the original administrator is not appealable.

2. Appeals are not intended to be full reinvestigation of the complaint. Instead, in most cases, they are confined to a review of the written documents.

3. Appeals are not an opportunity for the appealing officer committee to substitute their judgment for that of the original administrator merely because they disagree with his/her findings and/or sanctions. Instead, they are to be deferential making changes only where there is clear error or compelling justification;

4. Sanctions imposed are implemented immediately unless the original administrator stays their implementation in extraordinary circumstances, pending the outcome of appeal.

**Record Keeping**

The Title IX Coordinator will register each request for assistance in resolving a case involving charges of sexual misconduct, whether formal or informal, and will review and retain copies of all reports generated as a result of investigations. These records will be kept confidential to the extent permitted by law.

**Retaliation**

Any person who files a complaint, or participates in a resolution process as a witness, has the right to freedom from intimidation and retaliation. Retaliation includes threats, intimidation, or reprisals. The College strictly prohibits retaliation by any community member against a person who makes a report of sexual misconduct, assists someone with a report, or participates in any
aspect of the investigation or resolution of a report. Any violation of this non-retaliation policy will face serious disciplinary consequences.

Students who are dissatisfied with the College’s handling of cases involving sexual assault or harassment may notify the Office of Civil Rights, U.S.Dept.of Education, 33 Arch Street, Suite 900, Boston, MA 02110-1491, or email: OCR.Boston@ed.gov.