

# Board/Panel Training

PART I

November 2023



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# Office of Equal Opportunity (OEO)

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# Introductions



# What we will discuss today

1. OEO Policies
2. OEO Process
3. Making a Finding
4. Case Study

**Trigger warning** – *This presentation includes the discussion of issues of sexual violence. If you need to leave the room to take care of yourself, please feel free to do so at any time.*

# OEO Policies

# What Are The Laws?

- **Title VII/ 151B** – discrimination and harassment involving *employees*
- **Title VI** – *race, color, or national origin* discrimination and harassment involving *students*
- **Title IX** – *sex and gender* discrimination or harassment involving *students and employees*.
- **ADA/Section 504 (Title II)** – *disability accommodations* and protection for students, employees and the community
- **MA Campus Sexual Violence Act**

# Protected Categories

- Sex/Gender
- Gender Identity/  
Expression
- Transgender Identity
- Sexual Orientation
- Religion
- Age
- Disability
- Caste

- Race
- Color
- Ethnicity
- National Origin
- Veteran Status
- Active Military Status
- Genetics
- Pregnancy
- Retaliation\*



POLICY AGAINST DISCRIMINATION,  
HARASSMENT, AND SEXUAL MISCONDUCT

**Types of Conduct**

# Discrimination

***Taking an adverse action or treating an employee or student differently in the terms or conditions of their employment or education on the basis of their membership in a protected category.***

- A preference or animosity towards one group in work or educational activities.
- *Examples:*
  - ◆ Not providing the same classroom materials and resources to a student based on their religion
  - ◆ Not offering an opportunity to someone based on their national origin
  - ◆ Not allowing a student to go on a class field trip because they are pregnant (“benevolent sexism”)

# Discrimination - Applying Definition

Kai is a practicing Muslim, and a student in Ben's class in Contemporary Literature. In Kai's first assignment, she writes an essay about the immorality inherent in depictions of sexual relationships in 20th century American fiction. For the next assignment, Ben assigns Kai to read *The Old Man and the Sea*, but assigns the rest of the class to read *The Sun Also Rises*.

## Is this discrimination?

What if Ben assigns *The Old Man and the Sea* to half of the class, including Kai?

- What other information would be helpful to know?

An adverse action or treating an employee or student differently in the terms or conditions of their employment or education on the basis of their membership in a protected category.

# Harassment

***Unwelcome verbal or physical conduct directed at an individual based on their membership in a protected category that has the purpose or effect of unreasonably interfering with a person's educational or work environment***

- Jokes, slurs, name-calling, intimidation, ridicule, put-downs, generalizations
- Interferes with a person's education or work environment
- May be verbal, non-verbal, visual or physical in nature (hugs, touching)

# Harassment - Applying Definition

Reed and Shai are both members of an LGBTQ+ student group. Reed starts calling Shai “Butch,” and making jokes about being a “self-loathing queer.” During Pride, the student group hands out rainbow pins to its members. Reed sees Shai in the cafeteria, and yells across the room, “Where is your pin? Did you leave it in the closet?” Shai stops going to the group’s meetings and events.

## Is this harassment?

What if Shai responds to Reed by laughing and calling Reed “Femme” and “Rainbow Reed”?

**Unwelcome verbal or physical conduct directed at an individual based on their membership in a protected category that unreasonably interferes with a person's educational or work environment**

# Sexual Harassment

*Two types:*

## 1. Hostile Environment

*Severe and/or pervasive, offensive or unwelcome conduct that unreasonably interferes with an individual's education or work environment.*

- Creates an intimidating, hostile, humiliating or offensive educational or work environment - usually repeated behavior.

## 2. Quid Pro Quo Harassment

*submission to or rejection of advances is made a term or condition of an individual's employment or education*

- Often involves a power dynamic (i.e. professor and student, supervisor & employee)

# Title IX Sexual Harassment

**ONLY APPLIES TO ON-CAMPUS CONDUCT  
OR CONDUCT IN  
UNIVERSITY-SPONSORED PROGRAMS OR  
ACTIVITIES**

- *For hostile environment:*
  - *Must be severe, pervasive AND objectively offensive*
- *For quid pro quo:*
  - *By an employee only*

Se

# Female NYU Professor Suspended For Sexually Harassing Male Student

BY BEN YAKAS IN NEWS ON AUG. 14, 2018 5:01 PM



Avital Ronell (via [European Graduate School Lecture Series](#)); Nimrod Reitman (via Facebook)

A celebrated female professor of German and Comparative Literature at NYU has been suspended for the coming academic year after an 11-month Title IX investigation found that she had sexually harassed, both physically and verbally, one of her former male students.

The NY Times reported on the story of [Prof. Avital Ronell](#), 66, a star academic in the philosophy world. Former NYU graduate student [Nimrod Reitman](#), 34, filed a Title IX complaint against

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graduate student refuses to grade his similar terms of they sleep in the bars.

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- unwelcome individual's
- Quid Pro Quo term or con
- Title IX? - C persistent A



# Sexual Violence

1. Sexual Assault
2. Sexual Exploitation
3. Stalking
4. Relationship Violence

# Sexual Violence - Title IX

**ONLY APPLIES TO ON-CAMPUS CONDUCT or  
CONDUCT IN UNIVERSITY-SPONSORED  
PROGRAMS OR ACTIVITIES**

- Includes sexual assault, relationship violence, stalking
- Does **NOT** include sexual exploitation\*

\*sexual exploitation *may* be Title IX sexual harassment

# Sexual Misconduct

## Three Important Definitions

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# 1. Consent

*An affirmative, voluntary, knowing, and continuous agreement to engage in a specific form of sexual activity*

- Must be obtained **before** engaging sexual activity
- Can be verbal or physical
- Cannot be inferred from silence or a lack of resistance
- Is required for every individual act
- Is the responsibility of the person initiating
- Can be withdrawn at any time

## 2. Incapacity

***A state where someone cannot consent to sexual activity because they cannot fully understand what is happening***

- When someone moves from being drunk or under the influence of drugs to being physically and mentally compromised
- An incapacitated person cannot make or communicate a decision
- Also happens when someone is asleep or unconscious
- Engaging in sexual activity with someone you ***knew*** or ***should have known*** was incapacitated is a violation of policy (and MA law)
- The person initiating sexual activity is responsible for making sure the other person is able to consent

# 3. Force

*Used to make someone engage in sexual activity they would not have otherwise agreed to or did not want to engage in*

*Four types:*

- **Physical** - using physical power, violence or strength upon another person's body to cause them to engage in sexual activity
- **Threats** - saying or implying there will be negative consequences from failing to acquiesce to sexual activity
- **Intimidation/abuse of power** – use their real or perceived authority to pressure another person to submit to sexual activity
- **Coercion** – using continual pressure to compel someone to engage in sexual activity

# Sexual Violence

## **Sexual Assault**

**Any sexual act directed against an individual through the use of force, without consent and/or in instances where the Complainant is incapable of giving consent. Includes:**

- Penetration - *of the genitals or anus with any body part or object; oral penetration by the sex organ of another person*
- Oral or sexual intercourse
- Touching of private body parts - *another person's buttocks, groin, breasts*
- Sexual intercourse between persons who are related to each other - *if their marriage would be prohibited under MA law*

# Sexual Violence

## Dating/Domestic Violence

Violence committed by a person who is, or has been, in a romantic or intimate relationship with the Complainant. Can include verbal, physical, emotional, or psychological abuse.

- Domestic Violence: spouse or similar relationship; child in common; cohabitation as intimate partner (not roommates)
- Dating Violence: Existence of relationship determined by length of relationship, type of relationship, frequency of interaction



# Sexual Violence

## Stalking

**A course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or to suffer substantial emotional distress**

- Two or more acts (direct, indirect, or through 3rd parties)
- Substantial emotional distress = significant mental suffering or anguish that may, but does not necessarily require, medical or other professional treatment or counseling

# Sexual Violence

## Sexual Exploitation

**Taking non-consensual or abusive sexual advantage of another**

- Non-Consensual Photographing/Recording Sexual Activity/Nudity
- Non-Consensual Sharing Photographs/Recordings of Sexual Activity/Nudity
- Voyeurism - *intentionally observing or allows others to observe*
- Indecent Exposure - *deliberate showing of intimate body parts*

# Retaliation

**An adverse or negative action taken against someone for reporting concerns, participating in a resolution process or otherwise exercising their rights under University policies**

- Violates multiple Brandeis policies
- Is a separate and distinct violation which will result in its own disciplinary action
- Process to address it is discretionary

# Resolution Processes



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# Informal Resolution Process

- No Investigation, but there may be an inquiry
- Can involve educational conversations, conflict resolution, mediation, restorative justice, facilitated conversations, counseling, training and/or projects
- Must achieve goal of stopping, remedying, and preventing the conduct
- OEO determines if appropriate for Informal Resolution
- Both parties need to agree to participate
- May result in an informal resolution agreement

# Formal Resolution Process

- OEO does **NOT** conduct face-to-face meetings between parties
  - TIX cases may involve a hearing, conducted by Zoom
- Both Parties can have an advisor at every meeting.
  - TIX cases require an advisor
- OEO Investigator acts as a neutral fact gatherer, interviewing parties and witnesses and preparing an investigative report
- A panel decides whether the responding party violated Brandeis policy
  - If responsible, DOSO or HR assigns the sanction
- All parties can appeal the decision on only 2 grounds - *procedural error or new information*
- Handled with as much privacy and discretion as possible.

# Process Flowchart

## INITIATING PARTY INITIATES COMPLAINT

The Initiating Party provides a statement, either written or oral, and asks for process.

OR

## UNIVERSITY INITIATES AN ADMINISTRATIVE COMPLAINT

The University has the option to initiate an Administrative Complaint.

## RESPONDING PARTY NOTIFIED OF COMPLAINT

Responding Party receives written Notice of Complaint. The Responding party then has the opportunity to meet with OEO to review the Notice of Complaint and discuss Formal Resolution Process. Responding party can respond in writing, or can accept responsibility and proceed to sanctions.

# Process Flowchart (cont'd)

## FACT-FINDING INVESTIGATION

The OEO assigned **Investigator** will conduct an investigation into the allegations raised, working with the parties to identify relevant information, interviewing parties and witnesses, and reviewing documents. The Investigator then prepares an *Investigation Report*. Parties can review and comment on the report before it is finalized.

- Parties will have access all information the investigator gathered, including interview records





# Process Flowchart (cont'd)

## PROCESS DETERMINATION

OEO will determine which process will be used for the adjudication of the Formal Complaint based on information from the investigation. Two options:

### Title IX Grievance Process

- For cases that occur within TIX jurisdiction, and meet definitions of Title IX Sexual Harassment/Violence
- Includes a hearing where the Panel and the parties can ask questions of each other and witnesses (through an advisor)

OR

### Formal Resolution Process

- For cases outside of TIX jurisdiction, or outside definition of Title IX Sexual Harassment/Violence
- Panel reviews investigative report and supporting materials (no hearing)

# Process Flowchart (cont'd)

## IN BOTH PROCESSES

- Panel decides whether the Respondent violated Brandeis policy.
- If responsible, sanction decided by Dean of Students Office or an employee's supervisor or dean with HR.
- Both parties notified of outcome in writing.



## APPEAL

(FILED WITHIN 7 BUSINESS DAYS)

Either party can appeal a panel's decision on 1) Procedural error or 2) New evidence

# **Making a Finding**

## **Nuts & Bolts**

# Terminology

## - **Event**

- Alleged Incident
- Alleged Violation

## - **People**

- Reporting Party
- Complainant
- Respondent (not perpetrator)
- Witness

- **Information** (not evidence)

- **Process** (not adjudication)

## - **Findings**

- Violations of policy (not law)
- Responsible
- Not Responsible

- **Sanctions**

- **Decision-Making Panel**

# FERPA and Confidentiality

**Family Educational Rights and Privacy Act (FERPA)** - federal law protects the privacy of education records - cannot be disclosed without consent from the student

- SRCS and OEO cases are considered education records
- Cannot share *any* information learned in the process with anyone
- Even the fact that you are involved in a process cannot be disclosed

# Preponderance Of The Evidence

## What does that mean?

- More likely than not that a fact is true or that policy was violated
- > 50% of the information brings you to the conclusion a fact is true or policy was violated.
- If you are at 50-50, that means not responsible
- The greater *weight* of the information, but not necessarily *volume* of information

# Making a Finding

What are you deciding?

Two things:

1. **Facts** – resolving the relevant factual disputes in the case.
2. **Policy Violation** – deciding if the facts, when reviewed in light of the policy definitions, constitute a violation of that policy.

# CASE STUDY





# Questions?



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# Types of Information

Categories of types of information:

- Direct Information
- Documentary Information
- Circumstantial Information
- Hearsay Information
- “Expert” Information
- Character Information

# Direct Information

**A first person observation of an event or incident**

*Example: A police officer observed the event and wrote a report, and is present at the hearing to state what they witnessed*

## **Strengths:**

- ❑ Drawn from direct observation
- ❑ The person who saw it answers questions of the event

## **Weaknesses:**

- ❑ Subject to observer's accuracy and/or interpretation
- ❑ Subject to bias based on relationships to parties

# Documentary Information

**A written description of an incident - can include an official report, a written statement from a party or even a text message to a friend relaying what happened the night before**

*Example: A CA writes a report regarding conduct they observed*

## **Strengths**

- Drawn from initial reporting or fresher recollection
- Serves as a basis to develop questions

## **Weaknesses**

- Document cannot answer questions about its contents
- Subject to bias based on relationships to parties involved
- No guarantee of veracity

# Circumstantial Information

**A reported observation that offers inferences about the facts**

*Example:* A witness states that a student had glassy, bloodshot eyes, smelled of alcohol, was slurring their words and seemed to be having a hard time maintaining their balance

*Example:* A postal worker came to my house today to deliver mail

## **Strengths**

- Can be drawn from direct observation and/or initial reporting
- Multiple pieces of circumstantial information more reliable
- Serves as a basis from questions can be developed

## **Weaknesses**

- Pieces of information may be subject to multiple interpretations
- Requires application of personal knowledge to fill in the blanks

# Hearsay

**Information that is reported through another party (second hand information) and offered to prove the matter asserted**

*Example:* Witness A says that within moments of the fire alarm sounding, Student B told them they saw Student C pull the alarm (offered to prove Student C is the one who pulled the alarm)

## **Strengths**

- Can be useful as mean to determine what a party said or did following an event

## **Weaknesses**

- Inferior information
- Unreliable - game of telephone
- Subject to bias based on relationships to parties involved

Should not be part of the process with some exceptions:  
\*statements against interest - excited utterance\*

# Expert Information

**Information that is shared from a person who has expertise**

*Example:* A student submits lab reports about their intoxication levels and an expert is brought into explain what the lab results mean

## **Strengths**

- Can assist understanding technical information
- Can aid in assigning appropriate weight to the information

## **Weaknesses**

- Need to vet the expert's training and/or experience
- Opinions can sometimes be couched as information

**Not Commonly Used**

# Character Information

**Information about the responding party's past, most often used to assure a person is of good character and judgment (lack of propensity)**

*Example:* Witness A is a lifelong friend of the Responding Party and states that they could not have stolen anything because they have never stolen anything before and stealing is outside of their value system

## **Strengths**

- Can provide a more holistic view of an individual

## **Weaknesses**

- Does not inform whether the incident happened.
- Is biased information in its nature

**Not part of process**



# Factors to Consider

## Persuasiveness

- Is it believable?
- Is it consistent - even when challenged?
- Does it establish a dependable narrative?
- Not about volume - quality is more important than the quantity

## Relevance

- Actually relate to the incident being reviewed
- Helpful to make a finding of fact
- Relates directly to the incident in question, and not just to incidents similar to the incident

## Reliability

- Credible - honest recollections, substantively consistent and does not conflict with other information
- Source is honest about limitations of their memories or point of view