

Panel Member Policies and Processes

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Update - New OEO Policy and Processes

- Policy Against Discrimination, Harassment & Sexual Violence
- Formal Complaint Process
- Title IX Grievance Process

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Policy Against Discrimination, Harassment & Sexual Violence

1. Discrimination Based on a Protected Category
2. Harassment Based on a Protected Category
3. Sexual Exploitation
4. Title IX Sexual Harassment/Violence
5. Sexual Violence (Non-Title IX)
6. Retaliation

Some Categories Have Not Changed

1. **Discrimination Based on a Protected Category**
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
2. **Harassment Based on a Protected Category**
Unwelcome or unwanted verbal or physical conduct which is objectively offensive and severe, persistent, or pervasive and is directed at an individual based on their membership in a protected category
3. **Sexual Exploitation**
Taking non-consensual or abusive sexual advantage of another for any purpose (photographing/sharing without consent, voyeurism, indecent exposure)
6. **Retaliation**
An adverse or negative action against an individual for reporting concerns, participating in a process or otherwise exercising their rights under the Policy

Title IX Sexual Harassment

1. **Title IX Quid Pro Quo Sexual Harassment By An Employee**
When a University employee makes submission to, or rejection of, unwelcome sexual conduct an explicit or implicit term or condition of one's education or employment or uses that as the basis for education or employment decisions

There also can be Quid Pro Quo by students -- not covered by Title IX, but is under Harassment Based on a Protected Category
2. **Title IX Sexual Harassment**
Unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies them equal access to the University's education program or activity.

When conduct is objectively offensive and severe, persistent, or pervasive it is not a violation of Title IX but is under Harassment Based on a Protected Category

Is it Title IX Sexual Harassment or Harassment Based on a Protected Category?

Kai and Alex are colleagues who share a work space. From the time that Kai started, Alex has always paid extra attention to Kai. It started with Alex making generalized comments about what Kai was wearing ("nice shirt"). But then moved into comments that were more about Kai's body ("your butt looks great in those pants"). Alex also likes to speculate about Kai's social life, wondering "who are you doing tonight" or commenting "you must have lots of hot dates." Kai has tried to ignore Alex but Alex is undeterred.

Now Alex has started touching Kai, grabbing Kai's elbow when they are talking, coming up behind Kai to rub Kai's shoulders or insisting on hugs whenever Kai is leaving. Alex also stands really close to Kai whenever possible and comments on how Kai smells. Kai is having a hard time getting their work done because they are so worried about where Alex is and what Alex might do next.

Title IX = severe, pervasive, and objectively offensive (3 things)

Harassment = objectively offensive and severe, persistent, or pervasive (2 things)

Sexual Violence

(Title IX and Non-Title IX)

- **Sexual Assault**
 - o any sexual touching, oral sex or penetration through the use of force, without consent and/or where an individual is incapable of giving consent
- **Dating & Domestic Violence**
 - o verbal, physical, emotional or psychological abuse towards a partner in a romantic or intimate relationship
- **Stalking**
 - o A course of conduct that causes someone fear for their safety or to suffer substantial emotional distress

Resolution Processes

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Supportive Measures & Resources

- Available at any time regardless of whether a process has been (or will be) initiated
- Are meant to help an individual to continue to be part of our community – not punitive
- Can include things like counseling services, change of schedule, housing changes, academic support, no contact orders
- Can work with OEO, PARC, Dean of Students Office or Human Resources to request

Four Processes for Panel Members

1. Title IX Resolution Process *(new)*
2. Formal Resolution Process
3. Student Conduct Board Hearing
4. University Appeal Board

Title IX Grievance Process & Formal Resolution Process

Formal Complaint Process

FORMAL COMPLAINT INITIATED

Complainant provides information to OEO and a written complaint is created. University can also initiate an administrative complaint



NOTICE TO RESPONDENT

Respondent receives written Notice of Formal Complaint. Will then have the opportunity to meet with OEO to discuss process.

Respondent can provide a statement in response to the complaint.

OR

Respondent can accept charges and proceed to question of sanctions.

Formal Complaint Process (cont'd)

INFORMAL RESOLUTION PROCESS (optional)

Complainant and Respondent can voluntarily agree to engage in an informal process to reach a resolution. Can result in a final Resolution Agreement that end the process



INVESTIGATIVE PROCEDURE

An OEO assigned investigator acts as a neutral fact-finder who investigates the allegations in the Formal Complaint. The investigator will work with the parties to identify relevant information, interview parties and witnesses, and review documents. At the conclusion, an Investigative Report will be prepared. Both parties can review and comment on the report before it is final.

Formal Complaint Process (cont'd)

PROCESS DETERMINATION

Based on the information in the report, OEO will determine which process will be used for the adjudication of the Formal Complaint. Two options

Title IX Grievance Process

Used when the conduct falls into the definition of Title IX Sexual Harassment/ Violence AND meet 3 jurisdictional requirements: (1) occurred in U.S., (2) occurred in a University program or activity, and (3) the complainant is participating in University program.

OR

Formal Resolution Process

Used when the conduct does not fall into the definition of Title IX Sexual Harassment/ Violence OR does not meet the 3 jurisdictional requirements, but still may be a violation of policy in University program.

Title IX Grievance Process

- Investigative Report goes to a Decision-Making Panel of three people
 - Two panel members and one person hired from outside University to act as Hearing Chair
 - Student and employee matters
- Pre-Hearing conference with Hearing Chair
 - Decisions on relevance (can ask to bring in things excluded from report)
 - Pre-approve questions to be asked
- Live Hearing is held – over video-conference (unless parties want in person)
 - Investigator presents Investigative Report and can ask questions
 - Parties and Witnesses can be called if Panel has questions
 - Parties can also call and question parties and witnesses
 - Only through their support person/advisor
 - Only questions approved as relevant by Chair
- Decision-Making Panel makes finding of responsibility after Hearing
 - Decision based on report and information from hearing
 - Still preponderance of the evidence

Formal Resolution Process

- Investigative Report goes to a Decision-Making Panel three Panel Members
 - Student matters only - different process for employees (supervisor and HR)
 - The Investigative Report is only information presented to Panel
- The Panel reviews the Investigative Report and supporting materials to make their decision (no hearing)
 - Still Preponderance of Evidence
- Panel makes the finding of responsibility – was the Policy violated

In Both the Title IX and Formal Resolution Process

- Panel decides whether the Respondent violated Brandeis policy
- If responsible, sanctions decided by:
 - Students - by the Dean of Students Office
 - Employees - by their supervisor or dean with Human Resources
- Both parties notified of the outcome in writing
- Both parties have a limited right of appeal
 - New evidence
 - Procedural error
 - Bias or conflict of interest (only Title IX)

Student Conduct Hearing Board

- One or two Panel members are part of the Hearing Board with two to three students – a student is chair
- Board receives a report or debrief prior to the live hearing of the issues and the gathered information
- Live hearing is held with parties and witnesses – all panel members can ask questions
- Based on the report and information from the hearing, the Board decides if there is a violation of Rights and Responsibilities and decides what sanction should be assigned

University Appeals Board (UAB)

- Must be filed within 5 business days after notice of outcome
- 3 Panel Members on UAB decide whether to *grant* or *deny* the appeal – based on review of documents (investigative report, appeal submissions, hearing transcript)
- Limited basis for appeal:
 - 1. Procedural Error**
 - To grant, need to find (1) The Formal Complaint Process was not followed and (2) it had an adverse impact on the outcome
 - 2. New Information** - subsequent to the Final Investigative Report, new information became available which could have impacted the outcome.
 - To grant, need to find (1) there is new information, (2) it was unavailable earlier; and (3) the new information could have altered the outcome
 - 3. Bias (only in Title IX Process)**– Alleges that the Director, Investigator, or a member of the Panel had a conflict of interest or bias.
 - To grant, need to find (1) there was a specific conflict of interest or bias and (2) the conflict of interest or bias had an adverse impact on the outcome

Panel Experiences



Incapacity

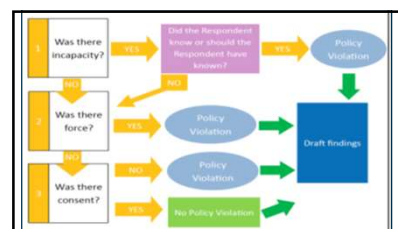
A state where someone cannot consent to sexual activity because they cannot fully understand what is happening

- When someone moves from being drunk or under the influence of drugs to being physically and mentally compromised
 - The presence of alcohol or drug use alone is not enough
- Some indications of incapacity might include slurred speech or other difficulty communicating, difficulty walking or standing, vomiting, trouble keeping eyes open, unconsciousness, confusion or lack of understanding, disorientation to time or place, lack of memory next day
- Knew or should have known was incapacitated is a violation of policy
- The person initiating sexual activity (and who is not incapacitated) is responsible for making sure the other person is able to consent

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 but - if unclear, clarify through verbal
- Consent is required for every individual act
- The person initiating sexual activity is responsible for making sure they have consent for every sexual act
- When asked to look at whether person had consent, the question is what did they see or hear before the activity that made them believe it was okay
 - Mostly likely there will be 2 versions – what else is there to support one version over another?



Asking Questions & Sanctioning

Questions?



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