Policy Against Discrimination, Harassment & Sexual Violence

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).

4. Title IX Sexual Harassment/Violence

5. Sexual Violence (Non-Title IX)

6. Retaliation

Some Categories Have Not Changed

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

1. Sexual Harassment
   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

2. Dating & Domestic Violence
   o Verbal, physical, emotional or psychological abuse towards a partner in a romantic or intimate relationship

3. Stalking
   o A course of conduct that causes someone fear for their safety or to suffer substantial emotional distress

Sexual Violence

1. 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

2. Dating & Domestic Violence
   o Verbal, physical, emotional or psychological abuse towards a partner in a romantic or intimate relationship

3. Stalking
   o A course of conduct that causes someone fear for their safety or to suffer substantial emotional distress

Resolution Processes
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

Supportive Measures & Resources

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

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.

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 ends the process.

Formal Resolution Process

Investigative Report goes to a Decision-Making Panel of three people:
• Student and employee matters
• Two panel members and one person hired from outside University to act as Hearing Chair

Pre-Hearing conference with Hearing Chair:
• Decisions on relevance (can ask to bring in things excluded from report)
• Decisions on supplementation of report and can ask questions
• Parties and Witnesses can be called to give live testimony
• Parties can receive and comment on the report before it is final

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 to give live testimony
• Parties can receive and comment on the report before it is final

Panel makes the finding of responsibility after hearing:
• Still preponderance of the evidence

In Both the Title IX and Formal Resolution Process

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 (investigation report, appeal submissions, hearing transcript)
- Limit for standard appeals:
  - Procedure: Error
  - To grant, need to find (1) the Formal Complaint Process was not followed and (2) it had an adverse impact on the outcome
  - New Information: Subsequent to the Final Investigative Report, new information surface available which could have impacted the outcome
  - 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 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 indicators 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 in time or place, lack of memory, or a change in behavior or ability to reason or to understand the nature or quality of the activity
- 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 – consider, qualify 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 say or do before the activity that indicated they believed it was okay
- Mostly likely there will be 2 versions – what else is there to support one version over another?

Questions?

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- www.brandeis.edu/student-rights-community-standards