



# Brandeis

UNIVERSITY

## **FORMAL COMPLAINT PROCESS:** **Policy Against Discrimination, Harassment & Sexual Violence**

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The Formal Complaint Process (Process) includes the process and procedures that are available to students, employees (staff and faculty) and, in some cases, third-parties who believe they have experienced a violation of the Policy Against Discrimination, Harassment & Sexual Violence (Policy). When Brandeis is notified of a possible violation of the Policy, the Office of Equal Opportunity (OEO) will attempt to communicate with the person who experienced the alleged conduct regarding

that incident.<sup>1</sup> OEO will inform the person who experienced the alleged conduct of supportive measures and resources, which are available (without fee or charge) regardless of whether a formal complaint has been filed or a process is being pursued. OEO will also inform the person who experienced the alleged conduct of the available options for addressing the conduct within the University. Individuals may also have the option to concurrently pursue separate legal remedies outside of the University, including filing criminal charges with the police, filing a civil legal action and/or filing an administrative complaint (i.e. Office for Civil Rights, Massachusetts Commission Against Discrimination). When the University receives notice of a report of conduct that may violate the Policy, the person who experienced the alleged conduct may have the option to file a Formal Complaint and may choose to initiate the Investigative Procedure and/or the Informal Resolution Process. In cases where the person accused of the alleged conduct is a University employee, the Institution may have to pursue a Formal Complaint even if the person who experienced the alleged conduct does not want to pursue action. If the Investigative Procedure is initiated, a determination as to whether the Policy was violated will be made regarding the alleged conduct through the Formal Resolution Process or Title IX Grievance Process, as applicable.

## **I. Jurisdiction**

The Policy Against Discrimination, Harassment & Sexual Violence (Policy) applies to all students<sup>2</sup>, employees (staff and faculty)<sup>3</sup> and any other individuals who participate in the University's programs or activities or who are otherwise on campus. This Formal Complaint Process (Process) is applicable to discrimination, harassment and/or sexual violence that occurred on-campus and/or in off-campus Brandeis programs, activities or events (including, but not limited to, any national or international University-sponsored or University-led trips). This Process may also apply to discrimination, harassment and/or sexual violence that occurred off-campus but that has an impact on the Brandeis community. There is no time limitation for the submission of a Formal Complaint alleging a violation of the Policy. Matters will be adjudicated under the Process in effect at the time the complaint is initiated, subject to the time constraints in the Title IX Grievance Process

The University has jurisdiction over the person accused of the alleged conduct so long as they continue to be affiliated with Brandeis as a student or employee (staff or faculty). On occasion, the person accused of discrimination, harassment, or sexual violence may be someone who is not affiliated with, or is no longer affiliated with, Brandeis University. Under those circumstances, the University's ability to respond to the incident may be limited. Brandeis can provide information about supportive measures & resources available, both on and off campus, to members of the University community who experienced the alleged conduct. The University can also provide information regarding any off-campus options that may be available to address the conduct, including referring the matter to law

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<sup>1</sup> The Director of the Office of Equal Opportunity serves as the Title IX Coordinator for Brandeis University ([oco@brandeis.edu](mailto:oco@brandeis.edu) or 781-736-4806).

<sup>2</sup> The term student includes any person enrolled in any (undergraduate or graduate) academic program or course at Brandeis University, including Brandeis-sponsored distance or Internet-based courses, up to and including the student's commencement day or the last day of evaluation for non-degree students.

<sup>3</sup> "Employees" refers to anyone employed by Brandeis in any capacity including faculty and staff.

enforcement or another institution. When appropriate, Brandeis has the discretion to restrict a non-affiliated person's access to campus or other Brandeis property.

There may also be occasions where a non-affiliated person, a formerly affiliated person or a third party has experienced discrimination, harassment or sexual violence which is alleged to have been committed by a Brandeis student or employee, which may or may not have occurred on campus or at a University program, activity or event. When the person who experienced the conduct is not (or no longer is) a University affiliate, Brandeis maintains the option to exercise discretionary jurisdiction over that incident under certain circumstances. Concerns that are raised by a non-affiliated person or third party should be referred to the Office of Equal Opportunity (OEO) ([oeo@brandeis.edu](mailto:oeo@brandeis.edu); 781-736-4806) for a determination regarding whether Brandeis will exercise discretionary jurisdiction over a non-affiliate complaint. In determining whether to exercise discretionary jurisdiction over these types of matters, Brandeis will consider many factors, including any impact the conduct may have on the University community and the information that may be available regarding the alleged conduct. The University reserves the right to conduct an inquiry into the allegations before making a determination regarding whether to exercise discretionary jurisdiction over the matter.

## **II. Initial Assessment**

When notified of an alleged violation of the Policy Against Discrimination, Harassment & Sexual Violence, the Office of Equal Opportunity (or their designee) (OEO) may conduct a review and assessment of those allegations. This assessment is a means of informally gathering information to initially determine whether the alleged conduct could be a violation of the Policy and/or whether the Formal Complaint Process (Process) is an available option to address the reported concerns. The decision regarding whether to initiate the Process will be made by OEO, at their discretion, based on the available information and in consultation with the Office of General Counsel, and the Office of Human Resources in matters involving employees. In situations where the available information at that time regarding the alleged conduct suggests it does not rise to the level of a Policy violation, but it is still something of concern to the University, OEO has the option to meet with the individual accused of the alleged conduct to discuss the concerns. This conversation is meant to alert the accused individual to the concerns that were reported and to give them an opportunity to respond to those items. In situations where the accused individual is an employee (staff or faculty), their supervisor or dean may also participate in this conversation. The purpose of this conversation is to educate the accused individual about the Policy and to provide them with an opportunity to make any changes necessary to avoid violating the Policy in the future. This conversation is meant to be educational in nature and will be the only response to the reported concerns at that time. During the conversation, the accused individuals will be reminded about the prohibition against retaliation. A record of the conversation will be maintained by OEO and may be taken into consideration should future concerns of a similar nature be reported. If additional information regarding these allegations is reported to OEO, additional steps may be taken regarding that conduct in the future, including the initiation of a Formal Complaint, as appropriate.

## **III. Initiating a Formal Complaint**

In order to pursue action for conduct alleged to have violated the Policy Against Discrimination, Harassment & Sexual Violence (Policy), the person who experienced the alleged conduct (student, staff or faculty) will need to initiate a Formal Complaint. Once the Formal Complaint has been filed, that individual can then access the Informal Resolution Process and/or the Investigative Procedure. The person who experienced the alleged conduct, and who is initiating the Formal Complaint, will be referred to as the *Complainant*. The person against whom the Formal Complaint is filed will be referred to as the *Respondent*. At the conclusion of the Investigative Procedure, a determination will be made regarding whether the adjudication of the alleged conduct will be made through the Formal Resolution Process or the Title IX Grievance Process.

## **A. Support Person/Advisor**

The University recognizes that going through the Formal Complaint Process can be stressful for all involved (students, staff and faculty). To help support the Complainant and Respondent through this process, each is allowed to have one support person or advisor of their choice present at each meeting with OEO and in the Informal Resolution Process, the Investigative Procedure, the Formal Resolution Process and/or the Title IX Grievance Process, as applicable. Witnesses are not allowed to serve as a support person or advisor nor can they act as a support person/advisor within these processes. A support person/advisor is someone whom the Complainant/Respondent trusts to provide advice and support. A support person/advisor can be any person the Complainant/Respondent feels comfortable confiding in, and need not be affiliated with the University (e.g. a friend, a family member, a person from a support or advocacy agency, legal counsel, etc.). Within two (2) business days prior to any meeting under this Process, a Complainant/Respondent must provide the Director of the Office of Equal Opportunity (or their designee) (Director) and/or the Investigator with the identity and contact information (e-mail and telephone) of the support person/advisor who will be accompanying them to that meeting.

The support person/advisor's role in this Process is to observe the proceedings and provide passive support to the Complainant/Respondent, but not to participate. A support person/advisor does not join in any of the conversations that are the subject of that meeting, but instead provides support to the Complainant/Respondent solely through their presence. A support person/advisor is not allowed to speak on behalf of the Complainant/Respondent during those meetings, and is present primarily to provide emotional support. If at any point a support person/advisor becomes disruptive or is otherwise unable to comport themselves within the parameters of the support person/advisor role, they will be asked to leave the meeting. Employees subject to a collective-bargaining agreement may have additional rights with respect to the role of the support person/advisor.

## **B. Complainant-Initiated Formal Complaint**

Whether the Complainant chooses to initiate an Informal Resolution Process or the Investigative Procedure, they will need to submit a *Formal Complaint*. The Formal Complaint is a document that is created by the Office of Equal Opportunity (OEO) from information provided by the Complainant. The Formal Complaint must be submitted to OEO ([oeo@brandeis.edu](mailto:oeo@brandeis.edu) 781- 736-4806) in person, by

mail, or through email. OEO will conduct an initial assessment of the submitted information to determine whether the alleged conduct could be a violation of the Policy and/or whether the Formal Complaint Process (Process) is an available option to address the reported concerns. The decision regarding whether to initiate the Process will be made by OEO, at their discretion and in consultation with the Office of General Counsel, and the Office of Human Resources in matters involving employees.

1. Statement: The Complainant must provide a statement (written or oral) to OEO outlining the details of the alleged incident(s) that is believed to have violated the Policy, including the name of the Respondent(s) and the date(s) (or approximate dates) and location(s) of the incident(s). From the information provided by the Complainant, a written Formal Complaint will be created. The Formal Complaint must be signed by the Complainant, or otherwise indicate the Complainant is initiating the complaint. If the Formal Complaint is submitted in a form that does not meet these requirements, OEO will work with the Complainant to correct any deficiencies.
2. Witnesses and Documents: With the Formal Complaint, the Complainant should provide OEO with the names and contact information for any witnesses who may have relevant information about the alleged incident(s). The Complainant should include a brief description of what information a witness might have related to the alleged conduct. The Complainant should also identify to OEO any documents that may be available regarding the incident(s), including emails, text messages, journal entries or social media posts. Both parties should understand that any information gathered through the course of this Formal Complaint Process will be shared with the other party.
3. Review Privacy / Non-Retaliation Requirements: Each Party (and witness) will review a document containing information about the requirements of the Process regarding privacy and non-retaliation. Through a review of this document, the parties and witnesses should understand that while parties are not restricted from discussing the allegations in order to be able to gather information relevant to the Formal Complaint, they have been advised that there is a prohibition against retaliation and that they have been advised about the importance of maintaining discretion and privacy regarding the complaint to protect the integrity of the Process.

### **C. University-Initiated Administrative Formal Complaint**

Brandeis has the option to independently initiate an Administrative Formal Complaint against a student or employee (staff or faculty) under the Formal Complaint Process. This type of complaint may be initiated in situations where the person(s) who experienced the alleged conduct is unable or uninterested in initiating the process (or continuing the process once initiated), and the University has an institutional interest in independently pursuing a complaint, as determined by the Director in consultation with the Office of the General Counsel, and the Office of Human Resources in matters involving employees. This type of complaint can also be initiated when the conduct is discovered by the University (rather than through a report), or when the allegations are made by a non-affiliate (including a former affiliate) or third-party. Most alleged violations of the Policy by employees will be

addressed through an Administrative Formal Complaint, at the discretion of OEO. OEO has the option to initiate an Administrative Formal Complaint when sufficient information is available regarding the incident to provide the Respondent with adequate notice (as discussed below). To obtain sufficient information about the incident, usually an account of the incident from the person(s) who experienced the alleged conduct will be required.

In this type of complaint, the University will act as the Complainant, and the Administrative Formal Complaint will be signed by the Director of OEO (or their designee) (Director) physically or electronically. The person who experienced the alleged conduct will be considered the complaining witness in an Administrative Formal Complaint. For Administrative Formal Complaints involving alleged Title IX Sexual Harassment/Violence under the Policy, the complaining witness may still have the rights of a party to the complaint, as decided at the discretion of the Director.

#### **IV. Notice to the Respondent**

After a Formal Complaint has been initiated, the Respondent (student, staff or faculty) will receive a written Notice of Formal Complaint. This Notice will also be shared with the Complainant. The Notice of Formal Complaint will include the identities of the parties involved (if known), the specific section(s) of the Policy Against Discrimination, Harassment & Sexual Violence (Policy) alleged to have been violated, a brief description of the alleged conduct, and the date(s) (or approximate dates) and location(s) of the alleged conduct. The Respondent will then have the opportunity to meet with the Office of Equal Opportunity (OEO) to review the Notice of Formal Complaint and to discuss the Informal Resolution Process, Investigative Procedure, Formal Resolution Process and Title IX Grievance Process.

At this point in the process, the Respondent has the option to accept responsibility for the conduct outlined in the Notice of Formal Complaint. Such acceptance of responsibility must be submitted to OEO in writing. If the Respondent accepts responsibility, the Formal Complaint would be referred to the Dean of Students Office for students or Human Resources for employees (who will work with the employee's supervisor, academic deans, or the Provost as appropriate), for sanctioning in accordance with the appropriate sanctioning process. If the Respondent chooses to accept responsibility, such acceptance cannot be withdrawn.

There is no presumption in any process that the Respondent is responsible for the alleged conduct. Instead, the Investigative Procedure (as discussed below) is meant to gather relevant information about the alleged conduct to assist the decision-maker in making a determination of whether the Policy was violated at the conclusion of the Formal Resolution Process or Title IX Grievance Process, as applicable. If additional possible Policy violations are identified at any point during the Investigative Procedure, the Respondent will be notified of those additional allegations in writing through an Amended Notice of Formal Complaint.

If the Respondent does not accept responsibility for the alleged conduct, then:

1. Statement: The Respondent has the option to provide a statement (written or oral) to OEO outlining their response to the Notice of Formal Complaint. This statement must be

submitted to OEO within ten (10) business days after receipt of the Notice of Formal Complaint. The Investigative Procedure may be started before the Respondent submits their statement.

2. **Witnesses and Documents:** The Respondent should provide OEO with the name and contact information of any witnesses who may have relevant information about the alleged incident(s). The Respondent should include a brief description of what information a witness might have related to the alleged conduct. The Respondent should also identify to OEO any documents that may be available regarding the incident(s), including emails, text messages, journal entries or social media posts. This information should be submitted to OEO within fifteen (15) business days after the receipt of the Formal Notice of Complaint. The Investigative Procedure may be started before the Respondent submits their witnesses and documents. Both parties should understand that any information gathered through the course of the Formal Complaint Process will be shared with the other party.
3. **Review Privacy /Non-Retaliation Requirements:** Each Party (and witness) will review a document containing information about the requirements of the Process regarding privacy and non-retaliation. Through a review of this document, the parties and witnesses should understand that while parties are not restricted from discussing the allegations in order to be able to gather information relevant to the Formal Complaint, they have been advised that there is a prohibition against retaliation and that they have been advised about the importance of maintaining discretion and privacy regarding the complaint to protect the integrity of the Process.

## **V. Informal Resolution Process**

This Informal Resolution Process is available to students, staff, faculty and, in some cases, non-affiliated parties. Before an Informal Resolution Process can be used for a violation of the Policy Against Discrimination, Harassment & Sexual Violence (Policy), a Formal Complaint must be initiated (as discussed above). The Complainant and Respondent to a Formal Complaint both have the option to request an Informal Resolution Process. Such informal resolutions can be used prior to, instead of, or during, the Investigative Procedure. The Director of the Office of Equal Opportunity (or their designee) (Director) will decide whether to start, delay, continue or stop the Investigative Procedure during the Informal Resolution Process, at their discretion. Informal methods of resolution may include, but are not limited to, conflict resolution, mediation, restorative justice, facilitated conversations, counseling, training and/or educational conversations or projects. Any informal resolution must adequately address the concerns of the Complainant and Respondent, as well as the overall interest of the University in stopping, remedying, and preventing Policy violations. The Director will make the determination regarding whether the Informal Resolution Process will be an option in a pending matter based on a review and assessment of the allegations, the available information, and the interests of the parties. The Informal Resolution Process is not available for matters where an employee (faculty or staff) allegedly engaged in Title IX Sexual Harassment/Violence against a student.

Entering into the Informal Resolution Process is voluntary, and both the Complainant and Respondent must agree to participate. If the parties agree to the Informal Resolution Process, OEO (or an assigned designee) will attempt to facilitate a resolution that is agreeable to both the Complainant and the Respondent. Either party has the option to discontinue the informal process at any time, and may also request that the Investigative Procedure be started or continued to conclusion. The University also has the discretion to terminate the Informal Resolution Process and continue with the Investigative Procedure or initiate the Formal Resolution Process or Title IX Grievance Process as deemed appropriate by the Director. The parties should understand that information gathered during the Informal Resolution Process cannot later be used in another Process without permission from all parties.

At the conclusion of the Informal Resolution Process, a Resolution Agreement between the parties will be created which may include an acknowledgement that the Resolution Agreement will be the final resolution of the pending matter. If a Resolution Agreement is reached between the parties, both the Complainant and Respondent will receive a written copy of that final Agreement. When a Resolution Agreement has been entered where the parties acknowledge that the Agreement is the final resolution of the pending matter, the Formal Complaint will be dismissed, and the pending matter will be considered closed. The Formal Complaint Process may not subsequently be initiated with respect to any of the allegations in the Formal Complaint that is the subject of the Resolution Agreement. If the Resolution Agreement is violated or the terms are not followed/completed by one of the parties, that violation will be addressed for students as a conduct matter through the Department of Student Rights and Community Service and for employees by Human Resources, the Academic Deans and/or the Provost (or their designee), as appropriate.

## **VI. Investigative Procedure**

Once a Formal Complaint has been initiated, the Director of the Office of Equal Opportunity (or their designee) (Director), will assign one Investigator who will be responsible for gathering information regarding the allegations raised in the Formal Complaint. The assigned Investigator may be an employee of the University or someone from outside the University, at the discretion of the Director. The Director will assign an Investigator who does not have a conflict of interest or bias for or against complainants or respondents generally, and who has no conflict or bias against any of the parties to the Formal Complaint. The assigned Investigator will have annual training and experience on issues of relevance, as well as discrimination, harassment, and sexual violence (sexual assault, dating violence, domestic violence and stalking), and will be able to create an Investigative Report that fairly summarizes relevant evidence in the pending matter. Brandeis reserves the right to assign more than one investigator or a note taker in addition to the Investigator to a matter as deemed necessary by the Director at their discretion. In all cases, the Investigator will conduct a prompt, equitable, fair, thorough and impartial investigation into the allegations raised.

### **A. Timing**

Through this Investigative Procedure, the University strives to provide a process that is prompt, equitable, fair, thorough, and impartial towards all parties and witnesses involved (student, staff and



faculty). During the academic year, the goal is to complete the Formal Resolution Process within a reasonably prompt timeframe after the initiation of the Formal Complaint (and not from the time of when the matter was first reported), including any appeals. Depending on the complexity of the investigation and whether the Formal Resolution Process or Title IX Grievance Process is used, more or less time may be required to complete the process. The parties will be kept informed, in writing, at least every 30 days, regarding the progress of the Investigative Procedure, and are welcome to contact OEO (781-736-4806; oeo@brandeis.edu) at any time for information regarding the status of the complaint. It should be noted that, while complaints will be processed to the best of the University's ability during break periods, including the summer and holidays, the availability of witnesses, parties and/or University officials during these times can often require additional time for the completion of the Investigative Procedure. If a student Respondent is scheduled to graduate prior to the resolution of a Formal Complaint, a hold may be placed on their graduation and/or official transcripts until the complaint is fully resolved (including any appeal).

## **B. Cooperation**

In order for the Investigation to be conducted in a timely manner, it is important that parties and witnesses make themselves reasonably available to the Investigator, including over holidays and breaks. The Complainant/Respondent and witnesses should know that they have an obligation to comply with instructions from University officials, including the Investigator, and are expected to cooperate with the Investigator throughout the Investigative Procedure.<sup>4</sup> The Complainant/Respondent and witnesses should also know that they are prohibited from knowingly making false statements and/or knowingly submitting false information to the Investigator.<sup>5</sup> Knowingly providing false information at any point in the Process may result in a separate disciplinary action.

The Complainant will have to meet with OEO to initiate the Formal Complaint. If the Respondent chooses not to meet with OEO or the Investigator, they should understand that the Investigative Procedure will still continue without the benefit of their input. The Formal Complaint may still be adjudicated through the Formal Resolution Process or Title IX Grievance Process without the benefit of input from a non-cooperative party. The Investigator will reach out to the Complainant/Respondent to schedule these meetings. If a party does not respond to the Investigator within ten (10) business days after that initial contact or fails to make themselves reasonably available to meet with the Investigator, the party's opportunity to participate in the Investigation or any subsequent Process may be waived. The party would then have waived their right to be heard and to participate in the Investigative Procedure and any subsequent Process by failing to respond to, or attend a meeting with, the Investigator.

## **C. Disability Accommodations**

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<sup>4</sup> Students see [Rights & Responsibilities](#), Section 2. Employees are expected to cooperate with administrators as part of their employment responsibilities.

<sup>5</sup> Students under the [Rights and Responsibilities](#) Section 1.2 and employees under the [Conduct Standards and Corrective Action Policy](#).

A party or witness (student or employee) who has a disability that may require an accommodation in the Formal Complaint Process, should work with the appropriate office to determine what reasonable accommodations may be available. Students should work with Student Accessibility Support (SAS) (781-736-3470 or [access@brandeis.edu](mailto:access@brandeis.edu)) to request an accommodation for the Process. Employees (staff and faculty) needing an accommodation during the Processes should work with Human Resources (HR) (781-736-4474 or [humanresources@brandeis.edu](mailto:humanresources@brandeis.edu)). All approved disability accommodations must be communicated to the OEO (781-736-4806 or [oeo@brandeis.edu](mailto:oeo@brandeis.edu)) in writing at least two (2) business days in advance of any meetings or hearings where the accommodations will be needed. Only accommodations approved by SAS or HR will be implemented during the Process.

## **D. Providing Information**

In the Investigative Procedure, both the Complainant and Respondent have the equal opportunity to present and suggest witnesses and to submit all information (inculpatory and exculpatory) they believe is relevant to the resolution of the pending matter. The parties should understand that it is best to provide the Investigator with all of the relevant information as early in the Investigation as possible, in accordance with any timelines set in the Investigative Procedure or by the Investigator. While the parties are encouraged to share any information they believe is relevant, it is the responsibility of the Investigator to gather all relevant and available information in the pending Investigation. However, the scope of the Investigation will not be limited to information provided by the Complainant or Respondent or to the allegations in the Notice of Formal Complaint. If additional possible Policy violations are identified at any point during the Investigative Procedure, the Respondent will be notified of those allegations in writing through an Amended Notice of Formal Complaint.

The parties must provide the Investigator with all information relevant to the Formal Complaint that is known and available during the Investigative Procedure. Relevant Information that was known and available but was not shared during this Investigation will be presumptively inadmissible in the subsequent Formal Resolution Process or Title IX Grievance Process, as applicable. If a party refuses to participate in Investigation or provide all information available to them at time of Investigation, that information cannot be presented for the first time in the Formal Resolution Process or Title IX Grievance Process barring exceptional circumstances, as determined by the Director (or their designee).

## **E. Scope of Investigation**

The Investigator is responsible for conducting an objective review of the information from the Investigation and will be responsible for deciding what information is relevant for inclusion in the Investigative Report. The burden of proof in any process always remains with the University. There is no presumption in the Investigation that the Respondent is responsible for alleged conduct. Instead, it is the Investigator's role to gather relevant information about the alleged conduct to assist the decision-maker in making a determination as to whether the Policy was violated at the conclusion of the Formal Resolution Process or Title IX Grievance Process, as applicable.

During the course of the Investigative Procedure, the Investigator may utilize some or all of the following information or procedures, at their discretion, and in whatever order the Investigator deems most appropriate.

1. *Documents:* The Investigator will review any statements provided by the Complainant/ Respondent. At the beginning of the Investigation, the Complainant/ Respondent should also identify all documents which they believe may be relevant to the complaint, including both paper and digital items, such as text messages, journal entries, e-mails and social media communications. If they are not in possession of those documents, the Complainant/ Respondent should identify who may have those materials. It will be the responsibility of the Investigator to try, to the best of their ability, to gather the identified information outside the possession of the parties. As determined by the Investigator, any documents or information deemed to be material to the complaint and that will be used in the Investigative Report will be disclosed to both the Complainant and Respondent for comment or rebuttal during the course of the Investigation. All documents obtained through the course of the Investigation, regardless of whether they are included in the Investigative Report, will be shared with the parties for review and comment during the Investigative Report Review.
2. *Complainant/ Respondent Interviews:* The Investigator will interview the Complainant and Respondent separately. This meeting is an opportunity for the party to discuss their recollection of the event(s) in question, supplement any statements previously submitted, voice any concerns, and to work with the Investigator to determine what additional information may be helpful in the Investigation of the allegations in the Formal Complaint. Each party will receive written notice of the request for an interview by the Investigator with sufficient time to prepare before the interview, as determined by the Investigator. The Investigator may interview the Complainant and Respondent more than once, as necessary, at the discretion of the Investigator. During this interview, the Complainant/ Respondent will have the opportunity to learn about the evidence gathered in the Investigation to date and the Investigator will provide them with an opportunity to comment or respond to that information. There will be no opportunity for the Complainant and Respondent to question each other directly during the Investigative Procedure. However, each party will have the opportunity to submit written or oral questions to the Investigator to be asked of the other party or witnesses. The Investigator will then ask those questions, as deemed appropriate by the Investigator at their discretion, of the opposite party or witnesses. The Investigator will contact the Complainant/ Respondent individually to schedule these meetings. If the Complainant/ Respondent does not respond or attend a meeting with the Investigator within ten (10) business days after that initial contact, the Complainant/ Respondent's opportunity to participate in the Investigation and any subsequent process may close. The Complainant/Respondent may waive their right to be heard and to participate in the Investigation by failing to cooperate with the Investigator. If a party refuses to participate in the Investigation or provide all relevant information known and available to them at time of Investigation, that information cannot be presented for the first time in the Formal Resolution Process or Title IX Grievance Process barring exceptional circumstances, as determined by the Director.

3. *Witnesses:* The Investigator will interview any witnesses identified by the Complainant/Respondent that the Investigator deems to be relevant to the resolution of the Formal Complaint, at their discretion. Please note that character witnesses are not considered relevant to the Process. The Complainant/Respondent both have an equal opportunity to identify witnesses for the Investigator and can tell a person they have been identified as witnesses and that they may be contacted by the Investigator. Witnesses should not be intimidated, threatened, or improperly influenced in any way by either the Complainant or Respondent or through others (e.g. friends, family members, attorneys, etc.). Any attempt to threaten, intimidate or the otherwise improperly influence the testimony of a witness may result in a separate disciplinary action by the University. The Investigator may also interview any other person(s) that they believe may have information relevant to this matter, at their discretion. The Investigator will employ best efforts to interview relevant witnesses who are no longer on campus or in the Boston area, attempting to contact them by phone or internet (i.e. Zoom, Google Meet, etc.). Witnesses will review the Privacy/Non-Retaliation Requirements, acknowledging that they have been advised about the prohibition against retaliation and that they have been advised about the importance maintaining discretion and privacy regarding the complaint to protect the integrity of the process and the privacy interests of the parties.
4. *Expert Witnesses:* The Investigator reserves the right, at their discretion, to consult with any experts which they deem necessary to the determination of the facts of this case. An expert witness may be consulted to review or provide a professional opinion regarding information discovered in the Investigation including, but not limited to, rape kits and toxicology reports.

## **F. Recording Interviews**

Through the Investigative Procedure, the Investigator may elect to audio and/or video record an interview with any party or witnesses. Only the Investigator may record that proceeding, and it will only be recorded with the knowledge and consent of the party or witness. Any audio or video recording of any meeting with OEO by any party, witness or support person/advisor is expressly prohibited at all times during the Formal Complaint Process and could result in a separate disciplinary action. If a recording is transcribed, the original recording of the interview will be destroyed at the conclusion of the Investigative Procedure, but the transcript of that interview will be maintained in compliance with the maintenance of records section of this Policy (as discussed below).

## **G. Investigative Report and Review**

Once the Investigation has been completed, the Investigator will prepare a draft Investigative Report summarizing the relevant facts obtained through the Investigative Procedure. The Investigator may draw conclusions regarding the credibility of statements by the Complainant, Respondent, witnesses and the reliability of documentation. The Investigator will also identify any undisputed facts from the Investigation. Once the draft report is complete, the Complainant and Respondent (student, staff or faculty) will each be given the opportunity to independently review the draft Investigative Report and

any exhibits to that report. The parties will also be given access to all of the interviews and documentation gathered through the Investigative Procedure regardless of whether it was included in the draft Investigative Report (“gathered information”). The review of the draft Investigative Report and gathered information is expected to be done electronically, barring exceptional circumstances, as determined by the Director. At the written request of a party, the draft Investigative Report and gathered information may also be shared with their support person/advisor. The draft Investigative Report and the gathered information should not be shared, copied, downloaded, photographed, or circulated in any manner by the parties and/or their support person/advisor.

The Complainant/Respondent will be given access to the draft Investigative Report and gathered information for ten (10) business days. The Complainant and Respondent will have the option (but are not required) to provide written comments regarding the draft Investigative Report and the gathered information within that ten (10) business days period. Those comments should contain a party’s substantive comments on the content of the draft Investigative Report and gathered materials. The Investigative Report Review period is not the appropriate time for the submission of substantive information not previously disclosed in the Investigation, and such information will not be considered unless the Party provides a reasonable explanation as to why it was not submitted during the investigation. Such new information may or may not be included in the Final Investigative Report, at the Investigator’s discretion.

All submitted comments should be written by the parties (submissions by third parties, such as friends, family, advisors or attorneys may not be considered). Only comments to the draft Investigative Report that are submitted in writing to the Investigator within the ten (10) business day period will be considered in the Formal Complaint Process.

After receipt of the comments from the parties (if any), the Investigator will address those comments as they deem appropriate, at their discretion. The Investigator has the option to engage in further investigation if the Investigator deems it necessary to review any new or additional information included by a party through their written comments. The parties should note that new information raised for the first time during the report review may prolong the conclusion of the Investigative Procedure.

Based on the submitted comments from the parties and the results of any additional investigation, the Investigator will create the Final Investigative Report. The Investigator may include or address any comments submitted by the parties in that Final Investigative Report or create an addendum to the report to address any comments, at their discretion. Once the Final Investigative Report has been created, the Complainant/Respondent will each be given access for ten (10) business days to the report, but there will be no additional opportunity to provide comments. At the written request of a party, the Final Investigative Report may also be shared with their support person/advisor. The Final Investigative Report should not be shared, copied, downloaded, photographed, or circulated in any manner by the parties and/or their support person/advisor. Once the Final Investigative Report has been completed and it has been shared with the parties, the Investigative Procedure will be closed.

## **H. Resolution of Formal Administrative Complaints**

When the University initiates a Formal Administrative Complaint, the University is considered the complainant in the Process. The Administrative Formal Complaint will follow the processes outlined in the Formal Complaint Process, but without a Complainant. The person who experienced the alleged conduct will be the complaining witness in an Administrative Formal Complaint. As a complaining witness, that individual will typically not have the option to review and comment on the draft Investigative Report, the exhibits to that report or the gathered information. At the discretion of the Director, limited information may be shared with the complaining witness as deemed appropriate. Due to privacy considerations, the complaining witness will typically not receive written notification of the outcome of any Process or information about any assigned sanctions, but may be generally notified of the outcome of the Process at the discretion of the Director. For Administrative Formal Complaints involving alleged Title IX Sexual Harassment/Violence under the Policy, the complaining witness may still have the rights of a party to the complaint, as decided at the discretion of the Director.

## **VII. Process Determination/Dismissal**

At the conclusion of the Investigative Procedure, the Director of the Office of Equal Opportunity (or their designee) (Director) will make a determination regarding whether the adjudication of the Formal Complaint will be made through the Formal Resolution Process or the Title IX Grievance Process. The Formal Resolution Process (Non-Title IX) will be used when the Formal Complaint contains allegations of conduct that occurred before August 14, 2020 and that falls within a provision of the Policy Against Discrimination, Harassment & Sexual Violence (Policy) outside of Title IX Sexual Harassment/Violence. If the Formal Complaint contains allegations that fall within the definition of Title IX Sexual Harassment/Violence of the Policy (Section III, D), the Director will conduct an analysis of whether the alleged conduct occurred after August 13, 2020 and meets the four jurisdictional requirements under the Title IX Grievance Process (see the Title IX Grievance Process). If those requirements are met, then the allegations in the Formal Complaint will be adjudicated through the Title IX Grievance Process. If not, pursuant to Title IX requirements, the allegations of Title IX Sexual Harassment/Violence will be dismissed and both parties will be notified of that dismissal in writing. The Director also has the discretion to dismiss any allegations of Title IX Sexual Harassment/Violence before the conclusion of the Investigative Procedure if it becomes apparent that the incident occurred before August 13, 2020 or the four jurisdictional requirements cannot be met. If the allegations under Title IX Sexual Harassment/Violence are dismissed, the Director will determine if the Formal Complaint can be adjudicated through the Formal Resolution Process (Non-Title IX), under another provision of the Policy.

The Director may also, at their discretion, dismiss any allegations of Title IX Sexual Harassment/Violence in the Formal Complaint if (1) the Complainant submits a request in writing to withdraw all or part of the Formal Complaint, (2) the Respondent is no longer enrolled or employed by the University or (3) there are specific circumstances that prevent the University from gathering evidence sufficient to make a finding on the Formal Complaint. If a Formal Complaint is dismissed because a Respondent leaves the University as a student or employee while a Formal Complaint is pending, the University has the discretion to bar the Respondent from University property and/or

events, and/or to make the Respondent ineligible to re-enroll or for rehire, either temporarily or permanently.

If the Formal Complaint cannot be adjudicated under the Title IX Grievance Process, the Director will determine whether the remaining allegation(s) in the Formal Complaint may constitute a violation of the Policy (or any other University policy), outside Title IX Sexual Harassment/Violence. If other provisions of the Policy may have been violated by the alleged conduct outside of Title IX Sexual Harassment/Violence, then the Formal Complaint will be referred to the Formal Resolution Process for adjudication. If another University policy may have been violated by the alleged conduct, the matter may be referred to the appropriate process.

## **VIII. Formal Resolution Process (Non-Title IX)**

The Formal Resolution Process involves a review of the Final Investigative Report and any supporting materials by those who will determine if the Respondent violated the Policy Against Discrimination, Harassment & Sexual Violence (Policy) based on the conduct alleged in the Formal Complaint. The process for that determination and for assigning sanctions depends on whether the Respondent is a student or an employee (staff or faculty). In situations where the Respondent is both a student and an employee of the University, the Director of the Office of Equal Opportunity (OEO)(or their designee) (Director), at their discretion, will decide which process will govern based on the role the Respondent was serving in at the time of the alleged incident.

### **A. Student Formal Resolution Process**

Once the Investigative Procedure has closed, the Director will submit the Final Investigative Report and supporting documentation referenced in the report to a Decision-Making Panel of three people. The Decision-Making Panel will consist of three University employees (staff or faculty) who have been trained in the resolution of issues of discrimination, harassment and sexual violence. The three panel members will be chosen at the sole discretion of the Director, and their names will be communicated to the Complainant and Respondent once the Process Determination has been made. If either the Complainant or Respondent believes there is a possible conflict of interest with any of the members of the Decision-Making Panel, it must be communicated to the Director immediately. The Director then has the discretion to assign a different member to that panel. Once the Final Investigative Report has been submitted to the Decision-Making Panel for consideration, there will be no further opportunity to raise potential conflicts of interest.

The Director will consult with the Decision-Making Panel about any questions they may have regarding the Formal Complaint Process or the resolution of the Formal Complaint. The Decision-Making Panel can also submit questions to the Investigator as they deem necessary.

The Decision-Making Panel will review the Final Investigative Report and any supporting documentation referenced in the report to determine whether they believe the Respondent is responsible for violating the Policy. The decision of the Decision-Making Panel will be made based on the *preponderance of the evidence* standard -- that is, whether the facts presented in the Final

Investigative Report support a finding that it is more likely than not that the Policy was violated. The Decision-Making Panel will base the findings solely on the information presented in the Final Investigative Report and any supporting documentation referenced in the report. The finding of the Decision-Making Panel will be made by a majority. The Decision-Making Panel will issue their written findings on the Formal Complaint to the Director. That finding will then be referred to the Dean of Students Office who will issue the Notice of Outcome in the pending matter.

If the Respondent is found *Not Responsible* for violating the Policy, the Complainant and Respondent will both be notified by the Dean of Students Office (DOSO) reasonably simultaneously in writing of the outcome, the option to appeal, an explanation of when that outcome becomes final and the findings from the Decision-Making Panel. The Notice of Outcome will be issued to the parties within seven (7) business days after the findings have been made by the Decision-Making Panel.

If the Respondent is found *Responsible* for a violation of the Policy, the Dean of Students Office will determine and assign the appropriate sanctions or remedies. The determination regarding sanctions will include a consideration of any other disciplinary history the Respondent may have with the University as outlined in the [Rights & Responsibilities](#) Handbook, Section 20. Sanctions for a *Responsible* finding may include, but are not limited to, denial of privileges, disciplinary warning, disciplinary probation, educational sanctions, suspension, dismissal and any other sanction noted in the Rights and Responsibilities handbook. Both the Complainant and Respondent will be reasonably simultaneously notified in writing of the Notice of Outcome which includes the assigned sanction, the option to appeal, an explanation of when that outcome becomes final and the findings from the Decision-Making Panel. The Notice of Outcome will be issued to the parties within seven (7) business days of the assignment of the sanction. Due to privacy consideration, the Complainant may not be notified of the assigned sanctions, unless they relate to the Complainant (such as a No Contact Order as the sanction). At this time, the Director will again give the Respondent access to the Final Investigative Report. At the Director's discretion, and in response to a written request from the Respondent, they may also be given access to review any supporting documentation and/or gathered information.

## **B. Employee Formal Resolution Process**

Once the Investigative Procedure has closed, the Director will submit the Final Investigative Report and any supporting documentation referenced in the report to Decision-Makers. The Decision-Makers will consist of two individuals, appropriately trained, including the Respondent's supervisor, academic dean, or the Provost (or their designee) and a representative from Human Resources. The names of the Decision-Makers will be communicated to the Complainant and Respondent once the Process Determination has been made. If either the Complainant or Respondent believes there is a possible conflict of interest with any of the Decision-Makers, it must be communicated to the Director immediately. The Director then has the discretion to assign a different Decision-Maker. Once the Final Investigative Report has been submitted to the Decision-Makers for consideration, there will be no further opportunity to raise potential conflicts of interest.

The Decision-Makers will review the Final Investigative Report and any supporting documentation referenced in the report and determine whether they believe the Respondent is responsible for



violating the Policy. The decision of the Decision-Makers will be made based on the *preponderance of the evidence* standard -- that is, whether the facts presented in the Final Investigative Report support a finding that it is more likely than not that the Policy was violated. The Decision-Makers will base their findings solely on the information presented in the Final Investigative Report and any supporting documentation referenced in the report.

The Director may consult with the Decision-Makers if they have questions about the Formal Complaint Process or the resolution of the Formal Complaint. The Decision-Makers may also submit questions to the Investigator as they deem necessary.

If the Respondent is found *Not Responsible* for violating the Policy, the Complainant and Respondent will be notified by the Decision-Makers in writing of the outcome, the option to appeal and an explanation of when that outcome becomes final. The written outcome will include the findings from the Decision-Makers. The written Notice of Outcome will be issued to the Respondent (and Complainant as appropriate) within seven (7) business days after the finding has been made.

If the Respondent is found *Responsible* for a violation of the Policy, the Decision-Makers will also decide the appropriate sanctions or remedies based on that finding. The determination regarding sanctions will include a consideration of any other disciplinary history the Respondent may have with the University. Sanctions for a *Responsible* finding may include, but are not limited to, warnings (verbal or written), censures, training or other educational responses, final warnings, reassignment, demotions, suspensions, referral to the tenure revocation process, and termination,. The Respondent will be notified by the Decision-Makers, in writing, of the Notice of Outcome which includes the assigned sanction, the option to appeal, an explanation of when that outcome becomes final and the findings from the Decision-Making Panel. The Director will again give the Respondent access to the Investigative Report. The written Notice of Outcome will be issued to the Respondent (and Complainant as discussed below) within seven (7) business days of the assignment of the sanction. At the Director's discretion, and in response to a written request from the Respondent, they may also be given access to review any supporting documentation and/or gathered information. If there is a Complainant, they will also be notified by Human Resources of the outcome in writing, the option to appeal, an explanation of when the outcome becomes final and the findings from the Decision-Making Panel. Due to privacy consideration, the Complainant will not be notified of the assigned sanctions, unless they relate to the Complainant (such as a No Contact Order as the sanction). If there is a complaining witness, some information about the outcome may be shared with that witness at the discretion of the Director.

For employees, the University reserves the right to issue disciplinary action with respect to conduct that it deems inappropriate regardless of whether it rises to the level of a violation of the Policy or the law.

### **C. Appeals**

Both the Complainant and Respondent (student, staff or faculty) are entitled to one appeal of the outcome to the Formal Complaint. The filing of an appeal will not stay imposition of any assigned sanction. If the Complainant or Respondent did not participate in the Investigative Procedure, as

determined by OEO, that party will not have a right to appeal the final outcome. An appeal must be submitted in writing to OEO ([oeo@brandeis.edu](mailto:oeo@brandeis.edu)) within seven (7) business days of the receipt of the written outcome. The individual who files an appeal is known as the *appellant*. The appellant must submit an Appeal Form with their appeal which is available from OEO. If an appeal is not received within seven (7) business days, the outcome will be considered final and the Formal Resolution Process will be closed.

An appeal can only be submitted by the Complainant or Respondent in writing. Appeals submitted by third parties (e.g. friends, family, attorneys) will not be considered.

There are only two grounds on which an appeal can be filed – procedural error and the availability of new information. The written appeal must specifically state under which of these two grounds the appeal is being filed and how the requirements for that basis of appeal (noted below) are met by the appeal. The appeal is not a new fact-finding process. Although a Complainant/Respondent may disagree with the finding or the sanction, that alone is not a basis for appeal. Factual disputes are not a basis for appeal. Appeals that do not comply with these requirements, including failing to state proper grounds for appeal or being untimely, will be dismissed. The non-appealing party will be given a copy of the appeal and will have an opportunity to respond to the assertions made by the appellant, in writing, within seven (7) business days after receipt. The non-appealing party may also request access again to the Final Investigative Report, supporting documentation, and/or gathered information for purposes of responding to the appeal. Submissions after the seven (7) business day period will not be considered, as determined by the Director (or their designee).

The two grounds for appeal are:

1. Procedural Error: The appellant alleges that (i) the procedural requirements of the Formal Complaint Process were not followed, *and* (ii) that deviation from the process had an adverse impact on the outcome of the Formal Complaint against the appellant.
2. New Information: The appellant alleges that, subsequent to the issuing of the Final Investigative Report, new information became available which could have impacted the outcome of the Formal Complaint. The appellant must: (i) present the new information; (ii) show why it was unavailable prior to the Final Investigative Report; *and* (iii) show that the new information could have altered the outcome of the complaint. If new information is presented, the University Appeal Board (UAB) has the option to ask the Investigator to reopen the Investigation regarding that information.

Appeals will be decided by a University Appeals Board (UAB) of three people. The UAB will consist of three staff or faculty who have been trained in the resolution of issues of discrimination, harassment and sexual violence. The members of the UAB will include different individuals from those who served as the Decision-Makers or the Decision-Making Panel. The three UAB panel members will be chosen at the sole discretion of the Director (or their designee), who will communicate those names to the appellant and the non-appealing party, if they responded to the appeal. If either party believes there is a possible conflict of interest with any of the UAB members, they must communicate that to the Director immediately. The Director then has the discretion to assign a different member to the UAB. Once the appeal has been submitted to the UAB for consideration, there will be no further opportunity to raise potential conflicts of interest.

In reviewing an appeal, the UAB will be given the Final Investigative Report and any supporting documentation referenced therein, the written outcome, the appeal submission and any response, and the results of any additional investigation. The UAB will make its finding based on their review of these documents. The UAB will also receive a written recommendation from the Director, prepared in consultation with the Office of the General Counsel, regarding whether the appeal states the proper grounds for appeal. Appeals that do not state a proper grounds for appeal as determined by the UAB shall be dismissed. The UAB may also submit questions to or request information from the Investigator or the parties if needed to make their determination on the appeal. The UAB has the option to *Dismiss* the appeal as (1) untimely, (2) failing to state a proper ground for appeal, or (3) by finding that the requirements for the appeal grounds chosen have not been met. The UAB also has the option to *Grant* the appeal when it finds that the requirements for the appeal grounds chosen have been met.

If the UAB grants the appeal for a student appellant, the matter will be referred to the Dean of Students Office who will decide whether to uphold or modify the final outcome on the complaint based on the findings of the UAB, and in consultation with the Decision-Making Panel, as appropriate. If the UAB dismisses the appeal for a student appellant, the Dean of Students Office will issue a Notice of Outcome of Appeal with the UAB's finding. If the UAB grants the appeal for an employee appellant, the matter will be referred to the Vice-President of Human Resources who will decide whether to uphold or modify the final outcome on the complaint based on the findings of the UAB, and in consultation with the Decision-Makers or the Provost, as appropriate. If the UAB dismisses the appeal for an employee appellant, the Vice-President for Human Resources will issue a Notice of Outcome of Appeal with the UAB's finding. The parties will be reasonably simultaneously notified in writing of the Outcome of Appeal. Certain employees may have additional appeal rights outside the Formal Complaint Process.

## **IX. Other Considerations**

### **A. Amnesty**

The University recognizes that someone may be concerned about reporting discrimination, harassment or sexual violence believing that other behavior they were engaged in might have violated Brandeis policy and could subject them to disciplinary action. While the University does not condone any type of policy violation, when incidents of discrimination, harassment or sexual violence are reported, witnesses and parties should be assured that the focus is on the reported behavior, not on other infractions such as someone using alcohol or drugs at the time. In situations involving allegations of discrimination, harassment or sexual violence, the University will, to the extent allowed by applicable laws and University policy, seek to make the allegations of discrimination, harassment or sexual violence the focus of any investigation or disciplinary action. In such circumstances, the University may give amnesty regarding other minor conduct violations such as:

- underage drinking or other alcohol infractions
- individual drug use

- unregistered party

The decision regarding whether to grant amnesty will be made by the Office of Equal Opportunity (OEO), in consultation with the Dean of Student Office, Human Resources, the academic deans, and/or the Provost, as applicable.

## **B. Right to Investigate and Decide Other Conduct Violations**

OEO has the discretion to pursue information regarding any other alleged violations of University Policy that may be identified through the Formal Complaint Process. The Investigator will not be restricted to only investigating the violations alleged in the Formal Complaint, if other conduct violations are discovered in the course of the Investigative Procedure. When additional conduct concerns have been identified, OEO will consult with the Dean of Students Office, Human Resources, the academic deans, or the Provost, as applicable, to decide if and how such allegations will be addressed. OEO has the discretion to address the additional conduct through any pending Process. If this conduct will be addressed through the Formal Resolution Process, the Complainant and Respondent will be notified through an Amended Notice of Formal Complaint. If the alleged conduct may violate another University policy, that conduct may also be referred to another process for resolution.

## **C. Criminal Conduct**

Some of the behaviors addressed by the Policy Against Discrimination, Harassment & Sexual Violence (Policy) may also constitute violations of criminal law. The University will conduct its own investigation and adjudication of conduct alleged in Formal Complaint Process, regardless of whether the alleged conduct is also being pursued through the civil or criminal justice system. The University will comply with any law enforcement requests for cooperation regarding its Investigative Procedure, Formal Resolution Process, or Title IX Grievance Process. At times, that cooperation may require the University to temporarily suspend its Process while law enforcement gathers information. The University will promptly resume the Process as soon as it is notified that doing so would not impede or interfere with any law enforcement activities. The University reserves the right to restrict a student's or employee's access to the campus if criminal charges are filed against that individual.

## **D. Family Notification**

The University views employees and students of legal age as adults. As such, parent(s), guardian(s) and/or spouse(s) will not be notified when a Formal Complaint is filed against or by a student or employee under the Process. Students and employees are encouraged to inform their family if they are involved in a Formal Complaint if that may be a source of support. Parent(s), guardian(s) and/or spouse(s) of students or employees with questions about a pending complaint should understand that information may only be shared consistent with the Family Educational Rights and Privacy Act (FERPA) and applicable employee privacy provisions. All communication regarding the Process will

only be directed to the student or employee involved and not to third parties, including family members, support persons/advisors, or attorneys.

## **E. Maintenance of Records**

After the parties have been notified of the final written outcome of a Formal Complaint and any appeals have been decided, the Formal Complaint Process will be considered closed. At the close of the process, the Office of Equal Opportunity (OEO) will maintain its investigative files which will include, but is not limited to, the Final Investigative Report and any supporting documentation, the information gathered in the Investigative Procedure, the final written outcome, any appeal submission and any response, the results of any additional investigation, and the Outcome of Appeal, if any. Some of this information may also be kept in an individual's student conduct records or personnel file as appropriate and in accordance with the record retention policies or practices of the applicable department. All other documentation regarding the complaint will be destroyed after the close of the Formal Complaint Process, including investigator notes and any recordings that were later transcribed (the transcript will be retained).

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