

# POLICY AGAINST DISCRIMINATION, HARASSMENT, AND SEXUAL MISCONDUCT

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## I. Policy Statement

Brandeis University is committed to and strives to create an educational environment free of discrimination, harassment and sexual misconduct. Brandeis prohibits discrimination and harassment on the basis of race, color, national origin, ethnicity, sex, pregnancy, sexual orientation, gender identity/expression, including transgender identity, religion, disability, age, genetics, active military or veteran status and any other characteristics protected under applicable federal or Massachusetts law, known as “Protected Categories.” Brandeis also prohibits sexual misconduct which can include sexual assault, sexual exploitation, stalking, and relationship violence (including dating and domestic violence). Some of the state and federal laws applicable to issues of discrimination, harassment and sexual misconduct include Title VII of the 1964 Civil Rights Act, and its state counterpart, M.G.L. c. 151B; Title VI of the 1964 Civil Rights Act; Title IX of the 1972 Education Amendments; the Violence Against Women Act (VAWA); the Americans with Disability Act (ADA) and the ADA Amendments Acts (ADAAA); Section 503 and 504 of the Rehabilitation Act; and the Age Discrimination in Employment Act (ADEA). Brandeis University affirms its commitment to equal opportunity and affirmative action and does not discriminate in its educational programs or activities based on any of the Protected Categories.

Questions or concerns about this Policy should be directed to the Office of Equal Opportunity (OEO) ([oeo@brandeis.edu](mailto:oeo@brandeis.edu) 781-736-4806). OEO can be found on the upper level of the Intercultural Center (Swig Hall). The Director of the Office of Equal Opportunity, Sonia Jurado, serves as the University’s Title IX Coordinator and as the ADA/Section 504 Coordinator (781.736.4802; [sjurado@brandeis.edu](mailto:sjurado@brandeis.edu)).

Violations of this Policy are subject to disciplinary action through the [Resolution Process](#) found in this Policy. Depending on the nature of the violation, disciplinary sanctions for violations of this

Policy may include denial of privileges, disciplinary warning, disciplinary probation, suspension and dismissal for students.

Retaliation against anyone who makes a good faith report or complaint regarding a violation of this Policy, or who in any way participates in an inquiry or investigation of under this Policy is strictly prohibited. A person engaging in retaliatory conduct will be subject to disciplinary action by the University.

Brandeis reserves the right to make changes to this Policy as necessary. This Policy is maintained and revised by the Office of Equal Opportunity. The most up-to-date version of this Policy that is currently in effect at Brandeis can be found on the Office of Equal Opportunity website ([www.brandeis.edu/oeo](http://www.brandeis.edu/oeo)). If government regulations change in a way that impacts this Policy, this Policy will be construed to comply with government regulations in their most recent form.

## II. Scope of Policy/ Jurisdiction

This Policy applies to all students<sup>1</sup>. This Policy applies to conduct occurring on-campus and to off-campus Brandeis programs, activities or events (including, but not limited to any national or international University-sponsored or University-led trips). This Policy may also apply to conduct that may have occurred off-campus but that has an impact on the Brandeis community.

On occasion, the person accused of discrimination, harassment or sexual misconduct may be someone who is not affiliated with Brandeis University. Under those circumstances, the University's ability to respond to the incident may be limited. Brandeis can provide information about support resources available both on and off campus to members of the University community who experience this type of 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 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 or third party has experienced discrimination, harassment or sexual misconduct which is alleged to have been committed by a Brandeis student, 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 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@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, among other factors, what effect the off-campus conduct has on the University community and what information 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.

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<sup>1</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.

### III. Defining and Recognizing Prohibited Conduct

#### A. *Prohibited Conduct*

##### 1. Discrimination

Discrimination occurs when someone (or a group) is treated unfairly, less favorably and/or deprived access, benefits or opportunities in education or employment based on membership in a Protected Category. Protected Categories include race, color, national origin/ethnicity, sex (which includes pregnancy), sexual orientation, gender identity/expression, including transgender identity, religion, disability, age, genetics, active military or veteran status and any other characteristics protected under applicable federal or state law. When individuals are excluded from participation, are treated differently, or are otherwise adversely affected in a term or condition of their employment, education, or participation in a University program or activity based on their membership in one of these Protected Categories, it constitutes discrimination. An adverse action against an individual can include things such as giving someone a poor grade or performance review, terminating someone's employment, failing to promote an individual, excluding someone from a program or denying them admission.

Some examples of discrimination include:

- Not providing the same classroom materials to a student based on their religion.
- Excluding someone from meetings based on their race.
- Not allowing a student to go on a class field trip because they are pregnant.
- Not offering a job to a person based on their age.
- Not recommending a person for promotion based on their gender-identity

##### 2. Harassment

Harassment occurs when there is unwelcome or unwanted verbal or physical conduct directed at an individual based on their membership in a Protected Category. Protected Categories include race, color, national origin/ethnicity, sex (which includes pregnancy), sexual orientation, gender identity/expression, including transgender identity, religion, disability, age, genetics, active military or veteran status and any other characteristics protected under applicable federal or Massachusetts law.

Harassment can include offensive conduct that can be physical, verbal and visual in nature. Harassment can include things such as jokes, slurs, epithets, name-calling, threats, intimidation, ridicule, mockery, insults, put-downs, unwanted touching, offensive objects or pictures, or other conduct that may be humiliating or that interferes with a person's education or work environment. Sending someone sexually explicit photographs or recordings without their consent is also a form of harassment. Typically single, isolated incidents (unless extremely serious) will not be enough to rise to the level of harassment. The conduct is harassment when it is severe or pervasive and interferes with an individual's education or work environment or their participation in University programs or activities by creating an intimidating, hostile or offensive environment.

Conduct can also constitute sexual harassment when submission to or rejection of unwelcome advances, requests or conduct is made either explicitly or implicitly a term or condition of one's education or employment or is a basis for education or employment decisions; or

Harassment based on a Protected Category can occur between or among students and/or third parties. Harassment can occur between people of unequal power or between peers.

Some examples of conduct that could constitute harassment include:

- Making jokes about the fact that a person is an immigrant, making fun of their accent and gossiping about the food they bring in for lunch, questioning that person about the country they are from, giving this person extra work during a holiday saying “you probably don’t celebrate this anyway.”
- Sending sexually explicit text messages or images to a person, repeatedly asking them out (even after they have said no), watching sexually explicit materials in front of this person, joking about sexual behavior around this person, questioning this person’s sexual orientation because they refuse to go on a date, standing close to this person whenever they are around.
- Making jokes about the fact that a co-worker is older, asking if they remember “when the dinosaurs were around” and announcing to everyone when they have difficulty with technology, commenting that “why is this so hard for you old folks,” making jokes when this employee has a birthday saying they are “older than dirt,” excluding this person from a work outing because “you probably don’t like to hang out with younger people.”
- Complaining when a class location has to be moved to accommodate someone with a disability, making fun of the person because of how they move, complaining about accommodations the person is receiving saying they are getting an advantage over others, excluding the person from a meeting because it will “take too long for them to get here.”

Please note that Brandeis University also has a policy regarding Consensual Romantic or Sexual Relationships between Faculty, Staff and Student. This policy prohibits all employees from any relationships with undergraduate students. Relationships with graduate students or other employees are prohibited when there is an exercise of authority over that individual. For more information please see the policy on [Consensual Romantic or Sexual Relationships between Faculty, Staff and Student](#).

### 3. Sexual Misconduct

#### *a. Sexual Assault*

Sexual Assault is the act of committing unwelcome or unwanted physical contact of a sexual nature. There are many types of sexual assault, including rape. Such contact is unwelcome or unwanted when it occurs (1) without consent ([as defined below](#)), (2) when the other individual(s) involved is incapacitated or otherwise incapable of giving consent ([as defined below](#)), or (3) when it occurs with the use of force ([as defined below](#)).

Sexual assault can be committed by anyone including a stranger or an acquaintance, such as a friend, intimate partner, coworker, classmate, friend of a friend or someone you just met. The parties involved can be of any actual or perceived sex/gender, gender identity, gender expression and/or sexual orientation. Under this Policy, sexual assault includes, but is not limited to the following: (1) non-consensual sexual contact; (2) forced sexual contact; (3) non-consensual sexual intercourse; and (4) forced sexual intercourse, as discussed in more detail below.

### 1. Non-Consensual Sexual Contact is

- Any intentional sexual touching, however slight,
- By a person upon or to another person(s),
- Without [consent](#) or upon a person who is [incapacitated](#) or otherwise unable to consent

Sexual contact includes, but is not limited to: touching of a person's intimate parts, such as genitalia, groin, breast, buttocks, mouth, and/or clothing covering those parts; touching a person with one's own intimate parts; making a person touch you or another; or any intentional bodily contact in a sexual manner, even if that contact does not involve intimate body parts. If this contact occurs with the absence of consent or upon someone who is incapacitated, it is a violation of this Policy.

### 2. Forced Sexual Contact is

- Any intentional sexual touching, however slight
- By a person upon or to another person(s)
- Committed against the will of another or by [force](#)

Sexual contact includes but is not limited to: touching of another person's private parts, such as genitalia, groin, breast, buttocks, mouth, and/or clothing covering those parts; touching a person with one's own intimate parts; making a person touch you or another; or any intentional bodily contact in a sexual manner, even if that contact does not involve intimate body parts. Force includes physical violence, threats, intimidation, abuse of power, coercion, or any combination of those behaviors ([as defined below](#)).

### 3. Non-Consensual Sexual Intercourse is

- Any sexual intercourse or penetration (anal, oral or vaginal), however slight
- With any object or body part
- By a person upon or to another person(s)
- Without [consent](#) or upon a person who is [incapacitated](#) or otherwise unable to consent

Sexual intercourse includes (but is not limited to): penetration (oral, anal or vaginal), however slight with any object or body part, including (but not limited to) fingers, tongue and/or penis; or making someone penetrate another person(s). This includes but is not limited to penetration of a bodily opening or cavity and performing/receiving oral copulation (vaginal, anal or penile). If this intercourse occurs with the absence of consent or upon someone who is incapacitated, it is a violation of this Policy.

### 4. Forced Sexual Intercourse is

- Sexual intercourse or penetration (anal, oral or vaginal), however slight
- With any object or body part
- By a person upon or to another person(s)
- Committed against the will of another or by [force](#)

Sexual intercourse or penetration includes (but is not limited to): penetration (oral, anal or vaginal) with any object or body part, including (but not limited to) fingers, tongue and/or penis, or making someone penetrate another person(s). This includes but is not limited to penetration of a bodily

opening or cavity and performing/receiving oral copulation (vaginal, anal or penile). Force is not limited to physical violence, and also includes threats, intimidation, abuse of power, coercion, or any combination of those behaviors ([as defined below](#)).

### *b. Sexual Exploitation*

Sexual exploitation occurs when a person(s) takes non-consensual or abusive sexual advantage of another, for any purpose. Sexual exploitation can take many forms, including those noted below, but is not limited to just the behaviors listed here. Other forms of sexual exploitation can occur beyond the categories listed here, as determined by the Director of the Office of Equal Opportunity on a case by case basis.

#### 1. Non-Consensual Photographing/Recording Sexual Activity/Nudity or Sharing Photographs/Recordings of Sexual Activity/Nudity

Sexual Exploitation occurs when someone photographs or otherwise records someone (via audio, video or any other medium) involved in sexual activity, or in any state of undress, without their [consent](#). Even if a person consented to the sexual activity or being in a state of undress, photographing or recording someone without consent goes beyond the boundary of that original consent.

The act of sharing or disseminating photographs or recordings of someone involved in sexual activity or in a state of undress, without their consent, also constitutes sexual exploitation. Even if the images were taken with consent, it is a violation of this Policy to share those photographs or recordings without first obtaining the consent of all person(s) involved. Anyone in possession of the photographs or recordings and who is sharing those images without consent is responsible for sexual exploitation, regardless of whether that individual was the person who originally took the photographs or recording. It is a violation of the Policy to share those photographs or recordings by digitally forwarding them, posting copies of the images or otherwise sharing, or by simply showing someone else those images without relinquishing possession.

#### 2. Voyeurism

Voyeurism is the act of intentionally observing, spying on or listening to a person(s) involved in sexual activity or in any state of undress, without their consent. Voyeurism also occurs when an individual allows others to observe sexual activity or someone in any state of undress without the consent of all the person(s) involved.

#### 3. Indecent Exposure

Indecent exposure is exposing one's intimate parts, such as genitalia, groin, breast and/or buttocks to someone without their consent. This behavior is the deliberate showing of intimate parts of the body and may, but does not necessarily have to, include a sexual act. Engaging in sexual activity in public, witnessed by a non-consenting person(s), is also a form of indecent exposure.

### *c. Stalking*

Stalking is a persistent, unwanted or unwelcome, and repeated course of conduct that would cause a reasonable person to become fearful for their safety or the safety of another, or to suffer substantial emotional distress. Substantial emotional distress means mental suffering or anguish that may, but does not necessarily require, medical or other professional treatment or counseling. Stalking may also rise to the level of criminal conduct when threats are part of the behaviors.

Anyone can be stalked, regardless of sex or gender. A stalker can be a stranger, an intimate partner or former partner, classmate, roommate, a teacher, professor, coworker, or any acquaintance. An individual can be stalked for several days or many years. Stalking can happen in person, or over an electronic medium such as the internet, social media, blogs, texts message or other similar means. Examples of stalking include, but are not limited to, the following unwelcome or unwanted conduct:

- Following a person
- Appearing at a person's home, work or class
- Making frequent calls or sending frequent emails, texts or messages
- Leaving messages or objects for a person
- Vandalizing a person's property

### *d. Relationship Violence (Dating/Domestic)*

Relationship violence is any instance of violence or abuse—verbal, physical, emotional or psychological—that occurs between those who are in or who have been in a dating, domestic or other intimate partner relationship with each other. Verbal abuse is the use of language, often in the form of insults, name-calling, and criticism, designed to mock, shame, embarrass, harass, control or humiliate the other partner, which is objectively offensive and severe, persistent, or pervasive. Physical violence or abuse occurs when one intentionally or recklessly causes bodily harm, attempts to cause another bodily harm, or puts another in fear of imminent bodily harm. Emotional and psychological abuse involves a pattern or climate of dominating or controlling behavior, which can involve some type of power imbalance. The abuser's behavior is often intended to terrorize, intimidate, isolate, control or exclude a partner, through behaviors such as relentless denigration and disparagement, threatening to harm a pet or destroy sentimental possession(s), as well as financial and economic abuse and blackmail.

Relationship violence can occur in all types of sexual relationships regardless of sex, gender, gender identity, gender expression, and/or sexual orientation. To be considered a relationship for purposes of this Policy, there must be (or must have been) some romantic, sexual, and/or domestic element to the relationship. Common relationships are:

- Married Partners – two individuals who are legally married.
- Domestic Partners – two individuals who live together and who are romantically involved with one another in some manner, which can (but does not have to) include a sexual component.
- Dating Partners – individuals who are romantically involved or interested in one another, as a couple (dating exclusively) or through dating casually (i.e. “hooking up” or concurrently involved with other people). This relationship can (but does not have to) include a sexual component.

- Sexual Partners – individuals who have engaged in at least one sexual act (e.g. kissing, touching, intercourse) with one another.

#### 4. Retaliation

Retaliation is an adverse or negative action taken against an individual for reporting concerns about discrimination, harassment or sexual misconduct, participating in a resolution process or investigation or otherwise exercising their rights under this Policy. A retaliatory adverse action can include (but is not limited to):

- Hostility
- Intimidation
- Threats or verbal abuse
- Exclusion
- Different treatment
- Harassment

Retaliation against anyone who files a complaint of discrimination, harassment or sexual misconduct and/or who participates in an inquiry or investigation into those behaviors is strictly prohibited. Any person who retaliates against an individual for reporting discrimination, harassment or sexual misconduct and/or for participating in an inquiry or investigation is subject to disciplinary action up to and including dismissal from the University or termination. Brandeis has the discretion to address issues of retaliation through the [Resolution Process](#) in this Policy or through a student conduct process or human resource process. The Office of Equal Opportunity, in consultation with the Dean of Students Office and/or Human Resources, will have the discretion to decide what process will be utilized to address incidents of retaliation on a case by case basis.

### ***B. Important Definitions***

#### **1. Consent**

Consent is an affirmative, voluntary, knowing, and continuous agreement to engage in a specific form of sexual activity. Consent must be obtained before engaging in any sexual activity. Consent may be communicated verbally or physically so long as those words or actions create clear, mutually understandable permission regarding the conditions of sexual activity. Consent is an active and affirmative process. It is the responsibility of the person who wants to engage in sexual activity and/or who maybe initiating that sexual activity, to make sure that they have received consent from any other person(s) involved. If an individual is not sure if they have received consent, they have an obligation to seek additional clarification. Consent must be received for each individual sexual act that a person wishes to engage in with another person(s). Consent may not be inferred from silence or lack of resistance to sexual advances, or from prior consensual sexual contact. Relationship status is immaterial to the issue of consent. Consent may be withdrawn at any time, and consent to one sexual activity does not imply consent to any subsequent sexual activity



*a. What is Consent?*

Consent occurs when individuals willingly, unambiguously and knowingly agree to engage in sexual activity and their agreement is communicated in a clear and affirmative manner that is understood by all of the parties involved. Relying solely on non-verbal communication, which can sometimes be unclear, can lead to misunderstandings. Any lack of clarity regarding consent should be resolved through verbal communication. Individuals should be able to clearly articulate why and how they knew they had received consent and what they considered to be indications of consent before they engaged in sexual activity. Consent is often given with certain explicit or implied boundaries, such as agreeing to have sexual intercourse but only with the use of a condom. Violating the boundaries of consent by engaging in behavior beyond that which was agreed is non-consensual conduct.

It is important to remember:

- Consent to one sexual act does not constitute or imply consent to another act
- Prior consent cannot imply consent to future sexual acts
- Consent cannot be assumed based on relationship status or a sexual history together
- Consent can be withdrawn at any time before or during sexual activity by either party

*b. What is Not Consent?*

Consent may not be inferred from silence, passivity or a lack of objection. Individuals who do not physically oppose or verbally refuse sex or sexual activity are not necessarily giving consent. Silence or a failure to resist does not equal consent, as consent is an active and affirmative process. It is the responsibility of the person wanting to engage in or initiating sexual activity to make sure that they have received consent at each stage of sexual activity from all person(s) engaged in the sexual activity. If a person is not sure if they have consent, they have an obligation to seek clarity. The use of alcohol or other substances does not relieve an individual from their obligation to obtain consent before initiating and/or engaging in sexual activity (see Consent and the Use of Alcohol or Drugs below for more information).

Some behaviors and comments that do not indicate affirmative consent include (but are not limited to):

- Silence
- “I don’t know.”
- “Maybe”
- A head shake
- Lack of objection
- Not fighting back or resisting
- Ambiguous responses such as “uh huh” or “mm hmm” without more
- A verbal “no,” even if it may sound indecisive or insincere

Individuals who are unconscious or in a state of incapacity (as discussed below) cannot consent to sexual activity. Consent can never be obtained by use of force (as defined below), which includes physical force, violence, threats, intimidation, abuse of power and coercion.

*c. Consent Can Never Be Given By:*

- i. Someone who is incapacitated. A person can be incapacitated through the use of drugs, alcohol or any other intoxicating substance, or when they are unconscious, asleep or otherwise unaware the sexual activity is occurring. See the definition of Incapacity below for more information.
- ii. Someone under the legal age of consent. The legal age of consent in the Commonwealth of Massachusetts is sixteen (16). Sexual activity with a person who is under the age of consent (16) is always non-consensual, regardless of whether the underage person was a willing participant in the conduct.
- iii. Someone who is cognitively disabled or impaired. Certain cognitive disabilities or impairments can cause a person to be unable to knowingly consent to sexual activity. It is a violation of this Policy to engage in sexual activity with a person whose cognitive disability or impairment renders them incapable of giving consent and the disability/impairment is known or should have been known to the non-disabled sexual partner. Under these circumstances, the conduct is non-consensual regardless of whether or not the person appeared to be a willing participant.

*d. Consent and the Use of Alcohol or Drugs*

Engaging in sexual activity while under the influence of alcohol or drugs can impair an individual's ability to be sure they have received consent. A person who has consumed alcohol and/or drugs still has a responsibility to obtain ongoing consent for any sexual activity with another person(s). The use of alcohol and/or other drugs by the person initiating sexual activity will never be an excuse for failing to obtain consent. A person that was using alcohol and/or drugs is never responsible for being subjected to sexual misconduct. Once a person has reached the point of incapacitation by alcohol or drugs, they can no longer consent to sexual activity under this Policy (see definition of Incapacity below). Because it can be difficult to know when someone has passed from the state of intoxication to a point of incapacitation, if you have any doubt about a person's ability to consent, you should not engage in sexual contact with them.

## **2. Incapacity**

Incapacity is a state in which someone cannot make a decision because they lack the ability to fully understand what is happening. When incapacitated, an individual moves from being simply drunk or under the influence of drugs to being physically and/or mentally debilitated due to their drug or alcohol consumption. Individuals can also be incapacitated because they are unconscious or asleep. A person who is incapacitated cannot consent even if they appear to be a willing participant.

An individual who is intoxicated may be able to consent to sexual activity. However, when an individual passes from intoxication to a state of incapacitation, they no longer have the ability to give consent under this Policy. It is important to remember that it is often difficult to tell when someone has moved from being intoxicated and has become incapacitated. A person who themselves is under the influence of alcohol and/or other substances may have difficulty assessing whether someone has moved from intoxication to incapacitation. If there is any question or doubt about whether an individual has become incapacitated, it is best not to engage in sexual activity with them.

Some indications of incapacity include (but are not limited to):

- Slurred speech or other difficulty communicating
- Difficulty walking or standing
- Vomiting
- Trouble keeping eyes open
- Unconsciousness
- Confusion or lack of understanding
- Disorientation to place, time and/or location

Sometimes an individual can be incapacitated without displaying any of these signs. For instance, a person in a blackout state may appear to be conscious when they are actually incapacitated and unable to consent. Engaging in sexual activity with someone a reasonable person would know or should have known was incapacitated is a violation of this Policy. It is the responsibility of the individual who wants to engage in sexual activity, or the person who is not incapacitated, to make sure that the other individual(s) involved are able to consent.

### 3. Force

The use of force to cause or make someone engage in sexual activity they would not have otherwise agreed to, or did not want to engage in, is by definition non-consensual. Force is not limited to physical violence, but also includes threats, intimidation, abuse of power, coercion, or any combination of these behaviors. The presence of force during sexual activity can negate indications of consent.

#### *a. Physical Force*

Physical force is the use of physical power, violence or strength upon another person's body. It can also be using one's physical size or presence to restrain another. If an individual's use of physical force or, violence, or threats of physical force or violence to make another person participate in or perform a sexual activity they would not have otherwise agreed to or did not want to engage in, it is a violation of this Policy.

Physical force and violence includes (but is not limited to):

- Restraining someone
- Not allowing someone to leave
- Imposing on someone physically
- Using a weapon
- The presence or suggestion of a weapon
- Hitting or pushing someone

#### *b. Threats*

A threat occurs when someone says or implies there will be negative consequences from failing to acquiesce to or comply with sexual activity or other unwanted conduct. It is a violation of this Policy if an individual uses threats to make another person participate in or perform sexual activity they would not have agreed to engage in otherwise. Threats can be implied, veiled and/or non-verbal.

This behavior can include (but is not limited to) threats to:

- Inflict harm or injury
- Hurt or kill themselves or someone else
- Expose some secret or embarrassing information or images
- Hurt someone's reputation
- Inflict negative social consequences
- Inflict negative work or educational consequences (e.g. bad grade or poor performance review)

### *c. Intimidation or Abuse of Power*

Intimidation or abuse of power occurs when individuals use their real or perceived authority to pressure another person to submit to sexual activity or other unwanted conduct. Intimidation happens through a display of wealth, status or power that someone uses to make another do what they want them to do. Real or perceived power can come from things such as class, social status, a teaching position, supervisory role, mentorship, membership in a team or group or an individual's status within a team or group. It implies a power imbalance between the parties. When an individual uses this power/authority/control to influence another to participate in or perform a sexual activity or other unwanted conduct that they might not have agreed to engage in otherwise, they have used force in violation of this Policy.

### *d. Coercion*

Under this Policy, coercion occurs when continual pressure is used to compel someone to engage in sexual activity or other unwanted conduct. The use of this pressure violates the free will of another. Coercion can be bullying an individual into sexual activity or other conduct that they did not and/or would not have wanted to participate in but for the coercion. Coercion can be physical or verbal and often involves persistently badgering someone. Coercion can be a process that happens over a period of time, varying from hours to days to weeks. In assessing whether coercion was used, the frequency, duration and intensity of the pressure applied will be taken into consideration. When an individual uses coercion to influence another to participate in or perform sexual activity or other unwanted conduct that they might not have agreed to engage in otherwise, they have used force in violation of this Policy.

## **IV. Resolution Process**

This Resolution Process is the internal University disciplinary procedure that is available to students and, in some cases, [non-affiliated parties](#), to address violations of this Policy within the Brandeis Community. When Brandeis is notified of a possible violation of this Policy, the Office of Equal Opportunity (OEO) will attempt to communicate with the person who experienced the alleged conduct regarding that incident. OEO will inform the person who experienced the alleged conduct of available support resources and will discuss the available options for addressing the conduct. Individuals may also have the option to 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 a report of conduct has been received, the person who experienced the alleged conduct may have the option to initiate an Informal or Formal Resolution Process. When the person who experienced the alleged conduct chooses to initiate a Resolution Process, the report will then become a complaint.

There is no time limitation for the submission of a complaint under this Resolution Process alleging a violation of the Policy. A complaint may be filed at any time. If the University has jurisdiction over the accused, [as defined above](#), then that complaint can be adjudicated through a Resolution Process.

**Timing:** Through this Resolution Process, the University strives to provide a resolution process that is prompt, equitable, fair, thorough, and impartial towards all parties and witnesses involved. During the academic year, the goal is to complete the Resolution Process within 90 days from the initiation of the complaint (and not from the time of when the matter was first reported), not including any appeals. Depending on the complexity of the investigation, 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 Resolution Process, and are welcome to contact the Office of Equal Opportunity (781-736-4806; [oco@brandeis.edu](mailto:oco@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 Resolution Process.

**Parties:** Within the Resolution Process, the individual who is bringing the complaint is called the Initiating Party. The person against whom the complaint has been brought is called the Responding Party. The initiating party and responding party are considered the parties to the complaint. Under certain circumstances (discussed in more details below), the University may initiate an Administrative Complaint against an individual or group under the Resolution Process. In that type of complaint, the University will act as the Initiating Party.

**Support Person/Advisor:** The University recognizes that going through the Resolution Process can be stressful for all involved. To help support the initiating party and responding party through this process, they are each allowed to have one support person or advisor of their choice present at each meeting within this Resolution Process. Witnesses are not allowed a support person or advisor nor can they act as a support person/advisor within the Resolution Process. A support person/advisor is someone whom the initiating party/responding party trusts to provide advice and support. A support person/advisor can be any person the initiating party/responding party 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 business days prior to any meeting, an initiating party/responding party must provide 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 any meeting is to observe the proceedings and provide passive support to the initiating party/responding party, 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 initiating party/responding party solely through their presence. A support person/advisor is not allowed to speak on behalf of a party or communicate with the initiating party/responding party during those meetings, other than to offer 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.

**Disability Accommodations:** If you have a disability and feel you will need an accommodation during the Resolution Process, students must reach out to Student Accessibility Support (SAS) (781-736-3470 or [access@brandeis.edu](mailto:access@brandeis.edu)) to request an accommodation for this process. All approved accommodations must be communicated to the Office of Equal Opportunity in writing within two (2) business days in advance of any meetings where the accommodations will be needed.

### ***A. Informal Resolution Process***

An initiating party reporting an alleged violation(s) of this Policy has the option to request an Informal Resolution Process, when permissible, against a student. 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 initiating party and responding party, as well as the overall interest of the University in stopping, remedying, and preventing policy violations. When the incident involves sexual assault or violence, an informal resolution may not be appropriate and may not be an available option. In those cases, the Director of the Office of Equal Opportunity (or their designee) will make the determination regarding whether the Informal Resolution Process is an appropriate option.

This Informal Resolution Process is available to students and, in some cases, [non-affiliated parties](#). If a party wishes to pursue an informal resolution for a violation of this Policy, they would need to speak with the Office of Equal Opportunity (OEO) (781-736-4806; [oeo@brandeis.edu](mailto:oeo@brandeis.edu)) who will review the details of the alleged violations. If the situation is deemed appropriate for the Informal Resolution Process, OEO will contact the responding party to discuss whether they would be willing to participate in this process. Entering into the Informal Resolution Process is voluntary, and both the initiating party and responding party must agree to participate. If the parties agree to the Informal Resolution Process, the Office of Equal Opportunity (or an assigned designee) will attempt to facilitate a resolution that is agreeable to both the initiating party and the responding party. Either party has the option to discontinue the informal process at any time, and may also request that the Formal Resolution Process be initiated instead. The University also has the discretion to terminate the Informal Resolution Process and initiate the Formal Process as deemed appropriate. The parties should understand that information gathered during the Informal Resolution Process cannot later be used in a Formal Resolution Process without permission from the parties. At the conclusion of the Informal Resolution Process, both the initiating party and responding party will receive simultaneous written notice of the final outcome. Engaging in the Informal Resolution Process does not preclude a party from later pursuing the Formal Resolution Process. However, if the Informal Resolution Process results in a resolution agreement between the parties, the initiating party and responding party may agree that this will be the final resolution of this matter.

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

An initiating party reporting an alleged violation(s) of this Policy may have the option to pursue a Formal Resolution Process against a student. This formal process is initiated through the Office of Equal Opportunity (OEO)(781.736.4806; [oeo@brandeis.edu](mailto:oeo@brandeis.edu)). An initiating party wishing to pursue this process would need to speak with OEO who will review the details of the alleged violations to determine if that behavior falls within the scope of this Policy. Prior to initiating a Formal Resolution Process, OEO may conduct an inquiry into the allegations if necessary to understand that nature and scope of the alleged policy violation.

University Need to Proceed/ Campus Safety: The University affirms the right of the person who experienced the conduct to maintain control of the decision of whether to initiate in any process to address discrimination, harassment or sexual misconduct. When the person who experienced the conduct chooses not to move forward with a Resolution Process and/or requests that their identity not be disclosed to the accused, they should understand that the University, in respecting those wishes,

will have a limited ability to meaningfully respond to the incident. In most cases, the University cannot address concerns that have been submitted anonymously or where the person who experienced the conduct does not want their identity to be revealed. Under limited circumstances, when the conduct at issue poses a threat to campus safety (which includes, but is not limited to, the involvement of physical violence, the use of weapons, an ongoing threat, the involvement of a minors or repeat offenders/multiple victims), the University may be compelled to move forward even when the person who experienced the conduct does not wish to be involved.

## 1. Initiating a Complaint Under the Formal Resolution Process

The Formal Resolution Process against a student may be initiated in two ways – through an initiating party complaint or through a University-initiated administrative complaint. Please note that in most cases the Formal Resolution Process cannot be initiated through information submitted anonymously.

### *a. Initiating Party Complaint*

In order for an individual initiating party to commence the Formal Resolution Process against a responding party, they would need to speak with the Office of Equal Opportunity (OEO) (781-736-4806; [oeo@brandeis.edu](mailto:oeo@brandeis.edu)). To initiate this process, the initiating party would need to:

- i. Provide a statement, either written or oral, to OEO outlining the details of the incident(s), including the name of the responding party(s), the date and location of the incident(s) and any witnesses who may have information about the incident(s). The initiating party should also identify any documents that may be available regarding the incident(s), including emails, text messages, journal entries or other social media posts. The initiating party should understand that any information gathered through the course of this process will be shared with the responding party.
- ii. Review a Privacy/Non-Retaliation Acknowledgement, 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.

### *b. University-Initiated Administrative Complaint*

Brandeis has the option to independently initiate a disciplinary complaint against a student under the Formal Resolution Process, called an Administrative Complaint. 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 the conduct at issue poses a threat to campus safety (which includes but is not limited to the involvement of physical violence, the use of weapons, an ongoing threat, the involvement of minors or repeat offenders/multiple victims). This type of complaint can also be initiated when the conduct is discovered by the University (rather than through a report). The Office of Equal Opportunity has the option to initiate an Administrative Complaint when sufficient information is available regarding the incident to provide the responding party with adequate notice of the complaint. 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 complaint, the University will act as the initiating party and the complaint will follow the process outlined below. The person who experienced the alleged conduct will be considered a witness in an

Administrative Complaint and will be given the option to be as involved or as uninvolved as they wish. Despite being designated as a witness in an Administrative Complaint, the person(s) who experienced the alleged conduct will be given the option to review the Investigative Report and will have the option to receive a final written notification of the outcome of the process (as discussed below). Due to privacy considerations, reporting parties who are not the person who experienced the alleged conduct will not be given the opportunity to review the report or receive a copy of the final written notification of the outcome, but may be generally notified of the outcome of the process at the discretion of the Office of Equal Opportunity.

## 2. Notice to the Responding Party

After the complaint has been initiated, the responding party will receive a written Notice of Complaint outlining the allegations raised and providing information about the Formal Resolution Process. The Responding party will then have the opportunity to meet with the Office of Equal Opportunity to review the Notice of Complaint and discuss the Formal Resolution Process. At this point in the process, the responding party has the option to accept responsibility for the conduct outlined in the Notice of Complaint. If the responding party accepts responsibility, the complaint would be referred to the Dean of Students Office for sanctioning in accordance with the appropriate sanctioning process. If the responding party chooses to accept responsibility, such acceptance cannot be withdrawn.

If the responding party does not accept responsibility for the alleged conduct, then the Responding party:

- a. Has the option to provide a statement, either written or oral, to the Office of Equal Opportunity outlining their response to the complaint. The responding party should also identify any witnesses who may have information about the incident(s) and any documents relevant to the incident(s), including emails, text messages, journal entries or other social media posts. The responding party should understand that any information gathered through the course of this process will be shared with the initiating party.
- b. Will review a Privacy/Non-Retaliation Acknowledgement, 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.

The process will then proceed to Investigation. If additional possible policy violations are identified during the course of the process ([as discussed below](#)), responding party will be notified of those issues in writing through an Amended Notice of Complaint.

If the responding party chooses not meet with the Office of Equal Opportunity, they should understand that the Resolution Process will still continue to Investigation, which will be started without the benefit of their input. During the Investigation, the responding party will be given the opportunity to participate in an interview and provide information to the Investigator regarding the allegations of the complaint. Similarly, if a responding party chooses not to cooperate with the Investigator or participate in the Investigation, the complaint will still be adjudicated without the benefit of input from the responding party. The Investigator will reach out to the responding party to schedule these meetings. If the responding party does not respond or attend a meeting with the Investigator within 10 business days after that initial contact, the responding party's opportunity to



participate in the process will close. The responding party would then have waived their right to be heard and to participate in the process by failing to respond or attend a meeting with the Investigator.

### 3. Investigation

The Formal Resolution Process against a student does not involve a hearing. Instead, the Director of the Office of Equal Opportunity, Sonia Jurado (781.736.4802; [sjurado@brandeis.edu](mailto:sjurado@brandeis.edu)) (or their designee), will assign one Investigator to the complaint, who will be responsible for gathering information regarding the allegations raised. Brandeis reserves the right to assign additional investigators to a matter as deemed necessary by the Director of OEO (or their designee) at their discretion. The initiating party/responding party should inform the Investigator about what information they believe is relevant to the complaint and do their best to preserve any information they may have in their possession. The initiating party/responding party should understand that it is best to provide the Investigator with all of the relevant information as early in the process as possible. However, the scope of the Investigation may not be limited to information provided by the initiating party/responding party or to the allegations in the Notice of Complaint. In all cases, the Investigator will conduct a prompt, equitable, fair, thorough and impartial investigation into the allegations raised, reviewing all information deemed to be relevant by the Investigator. Investigations will be conducted by investigators who have been specially trained to address issues of discrimination, harassment and sexual misconduct.

In order for the Investigation to be conducted in a timely manner, it is important that initiating party/responding party and witnesses make themselves reasonably available to the Investigator, including over holidays and breaks. The initiating party/responding party and witnesses should know that they have an obligation to comply with instructions from University officials, including the Investigator. The initiating party/responding party and witnesses also have the obligation to provide true and complete information to the Investigator. The refusal to cooperate with the Investigator or failing to provide true and complete statements, may result in disciplinary action. In cases where an initiating party or responding party refuse to cooperate with the Investigator, a finding on the complaint will still be made without the benefit of input from that party.

During the course of the investigation, 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.

- a. *Documents:* The Investigator will review any statements provided by the initiating party/responding party. At the beginning of the Investigation, the initiating party/responding party 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 other social media communications. If they are not in possession of those documents, the initiating party/responding party 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 initiating party/responding party for comment or rebuttal during the course of the Investigation.
- b. *Initiating Party/Responding Party Interviews:* The Investigator will interview the initiating party and responding party 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. The Investigator may interview the initiating party and responding party more than once, as necessary, at the discretion of the Investigator. During this interview, the initiating party/responding party 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 initiating party and responding party to question each other directly. However, each party will have the opportunity to submit written or oral questions to the Investigator that they would like to have submitted to the other party. The Investigator will then ask those questions, as deemed appropriate by the Investigator at their discretion, of the opposite party. If additional policy or code violations have been identified by Investigator during the course of the Investigation, the parties will be notified of those issues in writing and will be given an opportunity to respond. The Investigator will reach out to the initiating party/responding party individually to schedule these meetings. If the initiating party/responding party does not respond or attend a meeting with the Investigator within 10 business days after that initial contact, the initiating party/responding party's opportunity to participate in the process may close. The initiating party/responding party waive their right to be heard and to participate in the process by failing to cooperate with the Investigator.

- c. Witnesses:* The Investigator will interview any witnesses identified by the initiating party/responding party that the Investigator deems to be relevant to the resolution of the complaint, at their discretion. Please note that character witnesses are not considered relevant to this process. The initiating party/responding party can both 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. However, the initiating party/responding party should refrain from discussing any details of the complaint with witnesses in order to preserve the integrity of the Investigation. Witnesses should not be intimidated, threatened, or improperly influenced in any way by either the initiating party or responding party 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. 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. Skype, Facetime, etc...). Witnesses will review a Privacy/Non-Retaliation Acknowledgement, 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.
- d. 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.

#### **4. Investigative Report and Review**

Once the Investigation has been completed, the Investigator will prepare a report summarizing and analyzing the relevant facts obtained through the Investigation, noting any supporting documentation or statements. The Investigator will draw conclusions regarding the credibility of statements by the initiating party, responding party, witnesses and the reliability of documentation. The Investigator will also identify any undisputed facts from the Investigation. Once the report is complete, the initiating party and responding party will each be given the opportunity to independently review the Investigative Report and any referenced supporting documentation. The manner of review (i.e. in person, electronically, otherwise) of the Investigative Report by the party will be determined by the Investigator. The Investigation Report should not be shared or circulated in any manner by the parties. If the initiating party or responding party are not responsive to the Investigator's attempt to schedule a report review for a period of more than seven (7) business days, the Investigator will assume the initiating party/responding party do not wish to review the report and the Investigation will be closed.

If the initiating party/responding party chose to review the Investigative Report, they will have the option (but are not required) to provide written comments regarding the Investigative Report within five (5) business days after they have been given access to that document. Those comments should contain the parties' thoughts and reflections on the content of the Investigative Report and 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 Investigative Report that are submitted in writing to the Investigator will be considered in the process.

After receipt of the comments from the parties (if any), Investigator has the discretion to engage in further investigation regarding that information if deemed necessary, at their discretion. The parties should note that new information raised during the report review may prolong the conclusion of the Resolution Process. Based on the submitted comments from the parties and the results of any additional investigation, the Investigator will have the option to prepare a written addendum to the report outlining that information and referencing the Investigation as relevant to the addendum. If an addendum to the report is created, the initiating party/responding party will each be provided with the opportunity to independently review the addendum, but there will be no additional opportunity to provide comments. If the initiating party/responding party are not responsive to the Investigator's attempt to schedule a review of the addendum for a period of more than ten (10) business days, the Investigator will assume the initiating party/responding party do not wish to review that document. Once the addendum has been completed and the initiating party/responding party have been notified of the opportunity to review it, the Investigation will be closed.

#### **5. Determination of Responsibility and Assignment of Sanctions**

Once the Investigation has closed, the Investigator will submit the Investigative Report, supporting documentation referenced in the report and the addendum, if any, 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 misconduct. The three panel members will be chosen at the sole discretion of the Director of the Office of Equal Opportunity (or their designee), and their names will be communicated to the initiating party and responding party during their review of the Investigative Report. If either the initiating party or responding party 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 of the Office of Equal Opportunity immediately. The Director (or their designee) then has the discretion to assign a different member to that panel. Once the Investigative Report has been submitted to the Decision-Making Panel for consideration, there will be no further opportunity to raise potential conflicts of interest.

Director of the Office of Equal Opportunity (or their designee) will consult with the Decision-Making Panel about any questions they may have about the process or the resolution of the complaint. The Decision-Making Panel can also submit questions to the Investigator as deemed necessary.

The Decision-Making Panel will review the Investigative Report and the supporting documentation and determine whether they believe the responding party violated this Policy. The Decision-Making Panel will make a finding that the responding party is either *Responsible* or *Not Responsible* for violating this Policy. The decision of the Decision-Making Panel will be made on the *preponderance of the evidence* standard -- that is whether the facts presented in the Investigative Report support a finding that it is more likely than not that Brandeis University policy was violated. The Decision-Making Panel will base its finding solely on the information presented in the Investigative Report, supporting documentation referenced in the report and the addendum, if any. The finding of the Decision-Making Panel will be made by a majority. The Decision-Making Panel will issue a written decision of their findings which will be submitted to the Director of the Office of Equal Opportunity (or their designee).

If the responding party is found Not Responsible for violating University policy, the initiating party and responding party will both be notified by the Dean of Students Office simultaneously in writing of the final outcome, the option to appeal and an explanation of when that outcome becomes final. The written final outcome will include the decision from the Decision-Making Panel.

If the responding party is a student and is found Responsible for a violation of University policy, the matter will be referred to the Dean of Students Office who will assign the appropriate sanctions or remedies. The determination regarding sanctions will include a consideration of any other disciplinary history the responding party 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, suspension, dismissal and any other sanction noted in the Rights and Responsibilities handbook. Both the initiating party and responding party will be simultaneously notified in writing of the Notice of Final Outcome (which in some cases may not include a disclosure of the assigned sanction), the option to appeal and an explanation of when that outcome becomes final. The written final outcome will include the decision from the Decision-Making Panel.

## 6. Appeals

Both the initiating party and responding party are entitled to one appeal of the Notice of Final Outcome to the complaint. If the initiating party or responding party did not participate in the Investigation, as determined by the Office of Equal Opportunity, that party will not have a right to appeal the final outcome. An appeal must be submitted in writing to the Office of Equal Opportunity (OEO ([oeo@brandeis.edu](mailto:oeo@brandeis.edu))) within five (5) business days of the receipt of the written final 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 five (5)

business days, the outcome will be considered final and the Formal Resolution Process will be permanently closed.

An appeal can only be submitted by the initiating party or responding party 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 new information. The written appeal must specifically state under which of these two grounds the appeal is being filed. The appeal is not a new fact-finding process. Although a initiating party/responding party may disagree with the finding, that alone is not a basis for appeal. Instead the appeal must set forth under which of the two grounds the appeal is filed. Appeals which do not comply with these requirements will not be considered, as determined by the Director of the Office of Equal Opportunity (or designee). 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 five (5) business days after receipt.

The two grounds for appeal are:

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

The appeal 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 misconduct. The members of the UAB will include different individuals from those who served on the original Decision-Making Panel. The three UAB panel members will be chosen at the sole discretion of the Director of the Office of Equal Opportunity (or their designee), and their names will be communicated to the initiating party and responding party. If either the initiating party or responding party believes there is a possible conflict of interest with any of the UAB members, it must be communicated to the Director of the Office of Equal Opportunity immediately. The Director (or their designee) 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.

The decision on the appeal does not involve a hearing, but instead is a paper process. In reviewing an appeal, the UAB will be given the Notice of Complaint, the Investigative Report and any supporting documentation, the addendum, if any, the Notice of Final 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 has the option to *Dismiss* the appeal as untimely, failing to state a proper ground for appeal, or by finding that the requirements for the appeal grounds chosen have not been met. The UAB also has the option to *Grant* the appeal. If the UAB grants the appeal, in student cases 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. Both parties will receive simultaneous

written notice of the outcome of the appeal. In any case, the parties will be simultaneously notified in writing of the Outcome of Appeal. During the academic year, the University strives to complete the appeal process within 15 business days from the receipt of the appeal. If additional investigation is required regarding new information, more time may be needed to complete the appeal.

### ***C. Other Considerations***

#### **1. Amnesty**

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

- Underage drinking
- 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. It is important to remember that, under this Policy, a person's use of alcohol or drugs does not excuse their behavior, including sexual misconduct. Also, a person who uses alcohol or drugs is not responsible for being subjected to conduct that violates this Policy.

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

The Investigator has the discretion to pursue information regarding any other alleged violations of University Policy that may be identified through the Resolution Process. This does not include the type of conduct where the University may grant amnesty (as discussed above). The Investigator will not be restricted to only investigating the violations alleged in the complaint, if other conduct violations are discovered in the course of the Investigation. When additional conduct concerns have been identified, the Office of Equal Opportunity (OEO) will consult with the Dean of Students Office to decide if and how such allegations will be addressed. If this conduct will be addressed through the Resolution Process, the initiating party and responding party will be notified through an Amended Notice of Complaint.

#### **3. Criminal Conduct**

Some of the behaviors addressed by this Policy may also constitute violations of criminal law. The University will conduct its own investigation and adjudication of a complaint under this Policy, 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

Investigation under the Resolution Process. At times, that cooperation may require the University to temporarily suspend its Investigation while law enforcement gathers information. The University will promptly resume its Investigation as soon as it is notified that doing so would not impede any law enforcement activities. The University reserves the right to restrict a student's access to the campus if criminal charges are filed against that individual.

#### **4. Family Notification**

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

#### **5. Maintenance of Records**

After the parties have been notified of the final written outcome of a complaint and any appeals have been decided, the Formal Resolution 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 Notice of Complaint (and any amendments), the Investigative Report and any supporting documentation, the addendum, if any, the Notice of Final Outcome, any appeal submission and any responses, the results of any additional investigation, and the Outcome of Appeal, if any. The Notice of Complaint, Notice of Final Outcome and Outcome of Appeal, if any, 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 that department. All other documentation regarding the complaint will be destroyed after the Formal Resolution Process has closed.

#### ***D. Rights***

Students involved in the Resolution Process or who report incidents of discrimination, harassment or sexual misconduct have certain rights under this Policy and applicable laws. All individuals have the right to:

1. Have disclosures of discrimination, harassment and sexual misconduct, including sexual assault, sexual exploitation, stalking, and relationship violence treated seriously by the University.
2. Seek support services such as health and counseling services, advocacy services, schedule and housing changes, academic support and/or work adjustments, as applicable.
3. Notify law enforcement of the incident and seek their involvement if applicable. They also have the option to decline to involve law enforcement.
4. Participate in a Resolution Process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard.
5. Have one support person or advisor of their choice present at all meetings with administrators in the Resolution Process.

6. Receive notification in writing of the outcome of any Resolution Process.

## V. Reporting Options and Resources

Brandeis University provides students various options for reporting discrimination, harassment and sexual misconduct. Members of the Brandeis community are encouraged to come forward with information regarding violations of this Policy to any of the reporting options listed below. The University also offers support resources to individuals who may have experience or witnessed violations of this Policy or who may be going through the Resolution Process. Support resources may include, but are not limited to, health and counseling services, advocacy services, schedule and housing changes, academic support and/or work adjustments. These resources may be available even if a person chooses not to pursue a complaint or otherwise take action regarding the conduct. The University may also put interim measures in place as deemed necessary, which may include no-contact orders, campus restrictions, and emergency suspensions/leave.

### A. *Resources and Reporting Options*

#### 1. Confidential On-Campus Reporting and Support Resources

Certain professionals on the Brandeis campus and in the community have legally recognized privilege which requires them to keep information confidential when it is disclosed to them in the course of their professional role. This means that, except under limited circumstances, they must keep what their clients tell them secret. These individuals will maintain the confidentiality of those disclosures unless (i) they are given permission to share information by the person who disclosed the information; (ii) there is an imminent threat of harm to self or others; (iii) the conduct involves suspected abuse of a minor under the age of 18; or (iv) as otherwise required or permitted by law or court order. Confidential resources include medical care providers, mental health care providers, rape crisis counselors, ordained clergy and attorneys, all of whom have privileged confidentiality that is recognized by law.

Making a disclosure to a confidential resource means that Brandeis University will not be placed on notice of the incident. Without that information, the University will not be able to address that incident in any manner. However, confidential on-campus resources can assist individuals in receiving support resources (such as counseling, housing changes and academic support) when requested and provide information about non-confidential reporting options if that person wishes to notify Brandeis of the conduct. On-campus confidential resources for students include:

- a. [\*Prevention, Advocacy and Resource Center \(PARC\)\*](#)  
781-736-3371  
781-736-3370 (24/7 hotline)  
[parc@brandeis.edu](mailto:parc@brandeis.edu)

The Prevention, Advocacy and Resource Center (PARC) provides education, empowerment and confidential support related to sexual assault, sexual harassment, dating/domestic violence and stalking through peer advocates and professional staff. Whether you personally have experienced violence, you aren't sure how to feel about an experience you had, or you are worried about a friend — PARC is available to help with information about options, advocacy on your behalf, accompaniment to resources such as the police or court, and more. Confidential advocates are



available 24/7 via the hotline and drop-ins are welcome from noon to 5 p.m. any day classes are in session. Appointments are always available with professional staff.

b. *Brandeis Counseling Center (BCC)*

781-736-3730

781-736-3785 (after hours emergency consultation)

[bcc@brandeis.edu](mailto:bcc@brandeis.edu) (non-urgent email)

The Brandeis Counseling Center (BCC) provides counseling for students in times of stress, and is experienced in dealing with deeper developmental and psychological issues ranging from trauma and depression to substance abuse and eating disorders. Treatment is available in English, Cantonese, Hebrew, Mandarin, and Spanish. All concerns are addressed with sensitivity to and respect for diversity and individuality. The BCC can provide confidential, short-term individual therapy and group therapy, also offering psychiatry and medication management. The BCC can provide referrals to off-campus resources for longer term care through the case manager. All services delivered at the BCC will be billed to insurance with no out-of-pocket expense for students.

c. *Brandeis Health Center*

781-736-3333 (for emergencies on campus - off campus call 911)

781-736-3677 (for appointments) or through the secure patient portal

781-239-1948 (for after hours consultation)

Brandeis Health Center is a resource for the campus community providing medical assessment, diagnosis, treatment, and consultation as well as preventive and wellness health promotion. The Brandeis Health Center is staffed with licensed board certified providers (MD's and Nurse Practitioners) committed to meeting health care needs. All services are respectful, inclusive, accessible and confidential. The Health Center provides confidential, non-judgmental services for diagnostic testing for STI's, emergency contraception (plan B), pregnancy testing, and referral for other support services related to sexual assault, violence, and non-consensual contact.

d. *Center for Spiritual Life*

781-736-3570

The Center for Spiritual Life at Brandeis offers counseling, support, and community to students of all faiths. The Chaplains are a confidential resource that help oversee on-campus worship and student religious life while also offering community support in times of joy and crisis. For students of all levels of spirituality, the Chaplaincy can serve as a home away from home.

e. *University Ombuds*

781-736-2265

[brandeisombuds@brandeis.edu](mailto:brandeisombuds@brandeis.edu)

The University Ombuds office is a confidential, independent, impartial, and informal resource for all members of the Brandeis Community including undergraduates and graduate students, faculty, staff, and alumni. The Ombuds support individuals by providing a safe space to confidentially talk about difficult situations. The Ombuds meets personally with individuals to actively listen to concerns and discuss options and resources for conflict resolution. The Ombuds can help individuals evaluate options to address concerns, help identify others who can help, explain University policies and procedures, facilitate communication between people, discuss ways to resolve problems informally, and explain options for taking action.

## 2. Confidential Off-Campus Reporting and Support Resources

There are numerous reporting options and support resources available off campus a few of which have been included here. For more information regarding other off-campus resources, please visit the Office of Equal Opportunity website ([www.brandeis.edu/oeo](http://www.brandeis.edu/oeo)).

- a. [Boston Area Rape Crisis Center \(BARCC\)](#)  
617-492-8306  
800-841-8371 (24/7 hotline)

BARCC provides confidential counseling, legal advice and advocacy to help individuals who have experience sexual assault or other trauma. They provide medical advocacy to support you through the evidence collection process (“rape kit”). All services are free and available to regardless of sex or gender.

- b. [Newton Wellesley Hospital](#)  
617-243-6000

The hospital can provide confidential medical treatment for injuries or other medical concerns. The hospital can also order Evidence Collection Kits (“rape kits”) if requested. These kits are usually administered by specialized Sexual Assault Nurse Examiner (SANE) nurses. The hospital will also automatically provide a Boston Area Rape Crisis Center Medical Advocate to support you through the collection kit, and have in-house programs providing additional services to victims of sexual/domestic violence. For more information about Evidence Collection Kits, visit [www.survivrape.org](http://www.survivrape.org).

## 3. Other Reporting Options and Support Resources

There are additional reporting options available to the Brandeis community. These reporting options are not confidential which means that the University will be put on notice regarding this information and the reports will be directed to the Office of Equal Opportunity ([oeo@brandeis.edu](mailto:oeo@brandeis.edu); 781-736-4806). However, any information that is reported will be handled with privacy and discretion by Brandeis. Only those administrators within the University who are responsible for addressing this conduct, can assist with support resources, or otherwise have a legitimate need to know will be informed of the disclosure. When the accused person is a student, that individual will have the option to decide whether to pursue any form of process regarding the incident they are reporting. Once Brandeis is on notice of the concern, it will strive to stop the conduct and prevent its recurrence on campus regardless of whether action is initiated. Anyone who is not listed as a confidential resource above should be considered a Responsible Reporter ([as discussed below](#)) who has an obligation to disclose information to the Office of Equal Opportunity (OEO). OEO can help facilitate other support resources on campus, such as housing changes and academic support.

- a. [Brandeis University Police](#)  
781-736-3333 (emergency)  
781-736-5000 (non-emergency)

Available 24 hours/7 days a week. You can call whenever you have concerns about your safety or well-being. Brandeis University Police conducts investigations into behavior that maybe criminal. However, simply calling University Police does not require you to file or pursue criminal charges. The

Police can provide transportation to the hospital/court (or can provide cab vouchers). The Police can help if you need immediate access to safe housing. The Police can issue no trespass orders and provide information about restraining orders and other orders of protections available through the courts

b. [Office of Equal Opportunity \(OEO\)](#)

781-736-4806

[oeo@brandeis.edu](mailto:oeo@brandeis.edu)

The Office of Equal Opportunity (OEO) is responsible for assisting students, faculty and staff with all issues of discrimination, harassment, and sexual misconduct (including sexual assault, sexual exploitation, stalking, and relationship violence). OEO can receive reports of such conduct and will provide information regarding support resources and interim restrictions, including no contact orders, housing changes and academic support. OEO can also provide information about what options may be available for taking action, including internal resolution processes and criminal action. In most cases, the decision regarding whether to initiate action will remain with the person who experienced the conduct.

c. [Department of Community Living \(DCL\)](#)

781-736-5060 or 781-736-3333 (after hours contact DCL through University Police)

[dcl@brandeis.edu](mailto:dcl@brandeis.edu)

Community Advisors (CAs), Area Coordinators (ACs) and other DCL staff are available 24 hours a day to assist individuals who may have concerns about discrimination, harassment or sexual misconduct. DCL can help connect you with support resources, including confidential reporting options. DCL can help contact Brandeis University Police if you have concerns about your safety, need transportation to the hospital or wish to file a police report. DCL can help if you need immediate access to temporary or long-term housing changes.

d. [Academic Services](#)

781-736-3470

[academicsupport@brandeis.edu](mailto:academicsupport@brandeis.edu)

The Academic Services office is available to assist students who have concerns about discrimination, harassment or sexual misconduct that is impacting their academic endeavors. Students can request academic support when they find that this conduct is negatively affecting their ability to complete their studies. Students can access academic support by working with the Office of Equal Opportunity (OEO) or the Prevention, Advocacy and Resource Center (PARC). Students can also request academic support directly through Academic Services.

e. [Online Reporting](#) (*Anonymous reporting option*)

844-635-4502

[www.brandeis.edu/studentlife/srcs/reportit.html](http://www.brandeis.edu/studentlife/srcs/reportit.html) or

[www.brandeis.ethicspoint.com](http://www.brandeis.ethicspoint.com)

To make reporting concerns about discrimination, harassment and sexual misconduct easier, Brandeis uses an independent third party company, EthicsPoint, to provide a confidential, online reporting options for members of our community. This reporting portal also provides the option to submit reports anonymously. All reports submitted through this site will be treated seriously and handled with discretion within the University. Reports made through this online reporting portal regarding

discrimination, harassment and sexual misconduct will be forwarded to the Office of Equal Opportunity (OEO) ([oeo@brandeis.edu](mailto:oeo@brandeis.edu); 781-736-4806). Anyone filing a report through EthicsPoint will be assigned a report key and will be asked to create a password at the end of the process, both of which should be written down. Individuals who chose to report anonymously should use their report key and password to check on their report by returning to [www.brandeis.ethicspoint.com](http://www.brandeis.ethicspoint.com) within 5 to 6 days. The reporting portal allows OEO to send information and ask questions of the anonymous reporter while maintaining their anonymity. Individuals who do not report anonymously can assume OEO will follow up with them directly.

- f. Dean of Students Office*  
781-736-3600  
[deanofstudentsoffice@brandeis.edu](mailto:deanofstudentsoffice@brandeis.edu)

The Dean of Students Office serves as a centralized resource to advocate for and connect students to both University and community programs, offices, and individuals. Concerns regarding any violation of Brandeis policy can be reporting to the Office of the Dean of Students.

### ***B. Responsible Reporters***

All employees of Brandeis—including faculty and staff—are considered Responsible Reporters who have a duty to report any incidents of discrimination, harassment or sexual misconduct to the University. Only employees who are part of on-campus confidential resources (including BCC, Brandeis Health Center, Center for Spiritual Life Chaplains, PARC and the University Ombuds) are relieved from this duty to report. Student employees are also Responsible Reporters when they receive information while they are working, including student with teaching responsibilities. Community Advisors (CAs) are considered a resource for students at all times with an obligation to report any information disclosed to them as they are always Responsible Reporters.

A Responsible Reporters who becomes aware of a possible incident of discrimination, harassment or sexual misconduct must report all relevant details to the Office of Equal Opportunity (781-736-4806 [oeo@brandeis.edu](mailto:oeo@brandeis.edu)). The failure to properly report such incidents may result in disciplinary action up to and including termination for an employee. A Responsible Reporter should not share information with others, including their supervisors, law enforcement (unless there is an immediate threat) or the person accused of the conduct, unless the disclosing individual specifically asks to have others be involved. OEO will be responsible for apprising any other people on campus who may need to be involved in addressing these concerns. All Responsible Reporters should make the extent of their reporting obligations clear to the disclosing individual and provide that individual with confidential reporting options and information about support resources, to the best of their ability.

### ***C. Interim Measures***

Brandeis has the discretion to use Interim Measures, such as emergency suspensions, administrative leaves and no contact orders, when alleged violations of this Policy are reported. In determining whether to issue an Interim Measures, Brandeis will consider, among other factors, whether the alleged conduct poses a safety risk to the University community.

## 1. Emergency Suspensions

The University reserves the right to issue an Emergency Suspension prior to the commencement or conclusion of a Resolution Process to (1) ensure the physical and emotional health, safety, or well-being of members of the Brandeis community; (2) prevent the disruption of, or interference with, the normal operations of the University or the Investigation (as discussed below); and/or (3) when such a restriction is deemed necessary by the University. The Dean of Students Office, in consultation with the Office of Equal Opportunity, will determine when to issue an Emergency Suspension to a student. Under most circumstances, the Emergency Suspension/Leave will be issued in person with an explanation of the terms of the restrictions and an opportunity for the individual to ask questions. A Resolution Process will follow the issuance of an Emergency Suspension or leave, and the results of that process will determine if and when the student will be allowed to return to campus. Under certain circumstances, and at the discretion of the University, an individual may be moved to a Modified Emergency Suspension or leave, which would allow a student to be on campus during the Resolution Process only to attend classes.

Within three (3) business days after the restriction is issued regarding allegations of discrimination, harassment or sexual misconduct, except during break periods or holidays, the individual will have the opportunity to speak with the Office of Equal Opportunity (OEO)(781-736-4806; [oco@brandeis.edu](mailto:oco@brandeis.edu)) regarding the status of the pending Resolution Process associated with the Interim Suspension/Leave. After that meeting, the individual has the option to request a modification of the Interim Suspension/Leave. Any request for modification must be submitted in writing within 48 hours of that meeting, on the appropriate form, which can be obtained from OEO. An individual may submit a written request for modification to OEO asking to either (1) have the Interim Suspension/Leave lifted or (2) have the Interim Suspension/Leave modified to allow the student to attend classes. If an individual fails to meet with OEO within 10 business days of the issuance of the Emergency Suspension/Leave, the opportunity to request a modification will close.

With their request for modification, the individual should submit a brief written explanation regarding why the Emergency Suspension/Leave should be lifted or modified. The request for modification may include any supporting documentation that the person believes is relevant. Please note that any information submitted in support of a request for modification will be made available to the Investigator in the Resolution Process. For students, the request for modification will be decided by the Dean of Students Office. The request for modification will be decided within three (3) business days from the receipt of the submission. The request for modification is a paper-based process and will be decided through consideration of the written submission and any information available about the alleged conduct. The individual will be notified in writing about the decision on their request for modification. Once the request for modification has been decided, there is no further opportunity to contest the issuance of an Interim Suspension/Leave. However, the University reserves the right to modify or remove an Interim Suspension/Leave at any time as it deems necessary and/or appropriate.

## 2. No Contact Orders (NCO)

A No Contact Order (NCO) restricts contact, interaction, and communication between two or more individuals, either directly or through others (e.g. friends, family members, attorneys, others, etc.). A NCO may also include restrictions regarding an individual's ability to access certain spaces on campus. When a Resolution Process is initiated (or is going to be initiated), a No Contact Order (NCO) can be put into place at the request of any party or when the University deems that a NCO is necessary.

No Contact Orders can also be put into place outside of the Resolution Process at the discretion of Dean of Students Office. No Contact Orders are issued and administered by the Dean of Students Office. On occasion, University Police, DCL or University official may issue a temporary verbal restriction on contact which will be follow up on by the Dean of Students Office on the next business day.

When a No Contact Order (NCO) is issued, the individuals involved will receive written notification of the order and a meeting will be scheduled with the Dean of Students Office who will explain the terms of the order and answer any questions. That administrator will help facilitate the terms of the NCO so that the individuals involved may attend classes and use University facilities as appropriate. The goal is for the individuals involved in an NCO to be able continue their academic and social endeavors, to the extent possible, while still avoiding contact. Violations of the terms of an NCO may result in more serious Interim Restrictions being put into place, the initiation of a conduct process to address those violations, and/or information regarding that violation being taken into consideration in any pending Resolution Process. A No Contact Order may be kept in place after the conclusion of a Resolution Process as a sanction or when deemed appropriate by the University.

### ***E. Other Information***

#### **1. External Reporting Options/ Administrative Agencies**

##### *a. Waltham Police*

[www.city.waltham.ma.us/police-department](http://www.city.waltham.ma.us/police-department)

155 Lexington St

Waltham, MA 02454

911 (emergency)

(781) 893-3700 (non-emergency)

Investigates criminal reports of Waltham-based crimes and has concurrent jurisdiction with the Brandeis Police Department for crimes that happened at Brandeis University.

##### *b. Massachusetts State Police*

[www.mass.gov/eopss/agencies/msp/](http://www.mass.gov/eopss/agencies/msp/)

General Headquarters

470 Worcester Road

Framingham, MA 01702

508-820-2300

Investigates criminal reports against campus and municipal police officers.

##### *c. U.S. Department of Education, Office for Civil Rights (OCR)*

[www2.ed.gov/about/offices/list/ocr/index.html](http://www2.ed.gov/about/offices/list/ocr/index.html)

5 Post Office Square, 8th Floor

Boston, MA 02109

617-289-0111

Works to end discrimination in schools and investigates grievances.

*d. Massachusetts Commission Against Discrimination (MCAD)*

[www.mass.gov/mcad](http://www.mass.gov/mcad)  
 John McCormack Building  
 One Ashburton Place  
 Sixth Floor, Room 601  
 Boston, MA 02108  
 617-994-6000

Works to end discrimination in employment in Massachusetts and investigates grievances.

*e. Equal Employment Opportunity Commission (EEOC)*

[www.eeoc.gov](http://www.eeoc.gov)  
 JFK Federal Building  
 475 Government Center  
 Boston, MA 02203  
 800-669-4000

Works to end discrimination federally in employment and investigates grievances.

## 2. Selected Massachusetts State Definitions<sup>2</sup>

*a. Rape:*

Under Chapter 265, Section 22, of the Massachusetts General Laws, Rape is defined as: having sexual intercourse or unnatural sexual intercourse with a person and compelling such person to submit by force and against his or her will, or compelling such person to submit by threat of bodily injury. See Massachusetts General Laws Section 265 Chapter 22.

*b. Domestic abuse:*

Abuse from an adult or minor family or household member.

Abuse is the occurrence of one or more of the following acts between family or household members:

- attempting to cause or causing physical harm;
- placing another in fear of imminent serious physical harm;
- causing another to engage involuntarily in sexual relations by force, threat or duress.

Family or household members are persons who:

- are or were married to one another;
  - are or were residing together in the same household;
  - are or were related by blood or marriage;
  - have a child in common regardless of whether they have ever married or lived together;
- or

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<sup>2</sup> These Massachusetts definitions for criminal conduct are provided for informational purposes only and may differ from the definitions used in this Policy. These definitions are current as of July 2019. These definitions are provided to convey general information and do not constitute legal advice.

- are or have been in a substantive dating or engagement relationship, which shall be adjudged by district, probate or Boston municipal courts consideration of the following factors: (1) the length of time of the relationship; (2) the type of relationship; (3) the frequency of interaction between the parties; and (4) if the relationship has been terminated by either person, the length of time elapsed since the termination of the relationship.

See Massachusetts General Laws Chapter 209A

*c. Stalking:*

Under Massachusetts law, Massachusetts General Law Chapter 265 Section 43, an individual engages in stalking if they:

- 1) willfully and maliciously engages in a knowing pattern of conduct or series of acts over a period of time directed at a specific person which seriously alarms or annoys that person and would cause a reasonable person to suffer substantial emotional distress; and
- 2) makes a threat with the intent to place the person in imminent fear of death or bodily injury.

See Massachusetts General Laws Chapter 265 Section 43

*d. Consent:*

There is currently no state statutory definition of consent.