



TITLE IX GRIEVANCE PROCESS

- I. JURISDICTIONAL REQUIREMENTS2**
 - A. Person in the United States.....2
 - B. University Program or Activity.....2
 - C. Complainant Is Participating or Attempting to Participate.....3
 - D. Within Definition of Title IX Sexual Harassment/Violence:.....3
 - E. Title IX Quid Pro Quo Sexual Harassment By An Employee.....3
 - F. Title IX Sexual Harassment.....3
 - G. Title IX Sexual Violence.....3
- II. PRIOR TO THE GRIEVANCE PROCESS HEARING.....5**
 - A. Timing.....5
 - B. Hearing Coordinator.....5
 - C. Decision- Making Panel.....5
 - D. Notice of Grievance Process Hearing.....6
 - E. Support Person/Advisor.....6
 - F. Disability Accommodations.....7
 - G. Findings of Relevance.....7
 - H. Witnesses.....7
 - I. Pre-Hearing Conference.....8
- III. GRIEVANCE PROCESS HEARING9**
 - A. Conducted Over Technology.....9
 - B. New Information.....9
 - C. Access to Report and Information from Investigative Procedure.....10
 - D. Presence at Hearing.....10
 - E. Recording.....10
 - F. Questions by Decision-Making Panel.....10
 - G. Investigator.....10
 - H. Questions by Party at the Hearing.....11
 - I. Hearing Rules.....11
- IV. PANEL FINDING..... 12**
 - A. Student Respondent Notice of Outcome.....12
 - B. Employee Respondent Notice of Outcome.....12
- V. APPEAL..... 13**

The Title IX Grievance Process (Process) is only applicable to student or employee (staff or faculty) conduct that meets the four jurisdictional requirements noted herein. The Process is also only applicable to conduct that occurred after August 13, 2020. For conduct that may violate the [Policy](#)

[Against Discrimination, Harassment & Sexual Violence](#) (Policy) but that occurred prior to August 14, 2020, please see the Formal Resolution Process (Non-Title IX). If the Formal Complaint contains allegations of Title IX Sexual Harassment/Violence under the Policy (Section III, C), the Director of the Office of Equal Opportunity¹ (or their designee) (Director) will conduct an analysis at the conclusion of the Investigative Procedure in the [Formal Complaint Process](#) to determine whether the alleged conduct meets the four jurisdictional requirements noted below and occurred after August 13, 2020. If those requirements are met, the allegations in the Formal Complaint will be adjudicated through this Process. If not, the allegations of Title IX Sexual Harassment/Violence will be dismissed and both parties will be notified of that dismissal in writing. If it is possible that the alleged conduct in the Formal Complaint may be a violation of another section of the Policy outside Title IX Sexual Harassment/Violence or occurred before August 14, 2020, then the Formal Complaint will be referred to the Formal Resolution Process (Non-Title IX) for adjudication. The Director also has the discretion to dismiss any allegations of Title IX Sexual Harassment/Violence before the conclusion of the Investigative Procedure if it becomes apparent that the four jurisdictional requirements cannot be met. If the Formal Complaint is dismissed under this Process, the Director will determine whether the remaining allegation(s) in the Formal Complaint could still constitute a violation the Policy outside of Title IX Sexual Harassment/Violence which can be adjudicated through the Formal Resolution Process (Non-Title IX).

I. Jurisdictional Requirements

Only conduct that happened after August 13, 2020, and falls within these jurisdictional requirements and definitions will be considered Title IX Sexual Harassment/Violence subject to the Title IX Grievance Process (Process) for final resolution. To be eligible for the Process, the conduct *must* meet all four (4) of the following requirements. If the alleged conduct does not meet all four requirements or happened before August 13, 2020, but could constitute a violation of another section of the Policy, the matter will be referred back to the Formal Complaint Process for consideration by the Director as to whether it may be adjudicated through the Formal Resolution Process (Non-Title IX) (see the Formal Complaint Process for more information).

A. Person in the United States

The alleged conduct must have happened against a person (student, staff, faculty) while in the United States. If the conduct happened outside of the U.S., it does not meet this jurisdictional requirements and the claim will be dismissed under the Process.

B. University Program or Activity

The alleged conduct must have occurred in a Brandeis University program or activity. This means the alleged conduct occurred in a location, event, or circumstance over which the University exercised substantial control over both the Respondent and the context in which the alleged conduct occurred. Examples of a University location, program or activity would include, but are not limited to, a Brandeis

¹ The Director of the Office of Equal Opportunity serves as the Title IX Coordinator for Brandeis University (oco@brandeis.edu or 781-736-4806).

residence hall or an off-campus trip managed and sponsored by the University. If the conduct happened outside of a University program or activity, it does not meet this jurisdictional requirements and the claim will be dismissed under the Process.

C. Complainant Is Participating or Attempting to Participate

At the time that the Formal Complaint was filed, the Complainant must be participating in or attempting to participate in the educational program or activity of Brandeis University. A student who has been admitted to Brandeis is attempting to participate in a University educational program or activity. A person who is actively employed by the University is participating in an activity of Brandeis. If the Complainant is not participating or attempting to participate in a University educational program or activity, their claim does not meet this jurisdictional requirements and will be dismissed under the Process.

D. Within Definition of Title IX Sexual Harassment/Violence:

If the alleged conduct met the three previous jurisdictional requirements, it must also fall within one of the definitions of Title IX Sexual Harassment/Violence under the Policy. If the alleged conduct does not fall within one of these definitions, it does not meet this jurisdictional requirements and the claim will be dismissed under the Process.

E. Title IX Quid Pro Quo Sexual Harassment By An Employee

Title IX Quid Pro Quo Sexual Harassment by An Employee occurs when a University employee makes submission to or rejection of unwelcome sexual conduct an explicit or implicit term or condition of one's education or employment or uses that as the basis for education or employment decisions. In other words, this occurs when an employee of the University conditions the provision of an aid, benefit, or service of Brandeis on an individual's participation in unwelcome sexual conduct.

F. Title IX Sexual Harassment

Title IX Sexual Harassment is unwelcome conduct that a reasonable person would find to be so severe, pervasive, *and* objectively offensive that it effectively denies them equal access to the recipient's education program or activity. A reasonable person is defined as a reasonable person under similar circumstances and with similar identities. When conduct that is defined as Sexual Exploitation under the Policy also meets the three criteria under this section, it will be addressed as Title IX Sexual Harassment. If the conduct does not meet all three criteria (severe, pervasive, *and* objectively offensive) *or* does not meet the three previous jurisdictional requirements, it does not fall within the definition of Title IX Sexual Harassment, but may still constitute Harassment Based on a Protected Category or Sexual Exploitation under the Policy.

G. Title IX Sexual Violence

Conduct is Title IX Sexual Violence when it falls into the definition of Sexual Assault, Dating Violence, Domestic Violence or Stalking (as defined below) *and* meets the three previous jurisdictional requirements. If the conduct does not meet the three previous requirements but falls into one of the definitions below, it is not Title IX Sexual Violence, but may still constitute Sexual Violence (Non-Title IX) under the Policy.

a. Sexual Assault

Sexual Assault is any sexual act directed against an individual through the use of force, without consent and/or in instances where the Complainant is incapable of giving consent.² This definition includes the following conduct:

- Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, through the use of force, without consent and/or where a person is incapable of giving consent.
- Oral or anal sexual intercourse committed through the use of force, without consent and/or where a person is incapable of giving consent.
- Penetration with an object or instrument, however slight, of the genital or anal opening of the body of another person, through the use of force, without consent and/or where a person is incapable of giving consent.
- Touching of the private body parts of another person (buttocks, groin, breasts) for the purpose of sexual gratification, through the use of force, without consent and/or where a person is incapable of giving consent.
- Sexual intercourse between persons who are related to each other to a degree where marriage would be prohibited by Massachusetts law.

b. Dating Violence

Domestic Violence is violence committed by a person who is, or has been, in a romantic or intimate relationship with the Complainant. Dating Violence can include verbal, physical, emotional or psychological abuse. The existence of such a relationship shall be determined based on consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

c. Domestic Violence

Domestic Violence is violence committed by a person who has one of the following relationships with the Complainant:

- Current or former spouse or intimate partner of the Complainant
- Person with whom the Complainant shares a child in common
- Person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner (not just a roommate)
- Person similarly situated to a spouse of the Complainant

Domestic Violence can include verbal, physical, emotional or psychological abuse.

² See the Policy Against Discrimination, Harassment & Sexual Violence for the definitions of consent, incapacity and force.

d. Stalking

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

- A course of conduct means two or more acts, including, but not limited to, acts in which an individual directly, indirectly, or through third parties, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property, by any method, device, or means.
- Reasonable person means a reasonable person under similar circumstances and with similar identities.
- Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily require, medical or other professional treatment or counseling

II. Prior to the Grievance Process Hearing

The Title IX Grievance Process (Process) involves a live Grievance Process Hearing (Hearing) for the resolution of a Formal Complaint. Once a determination has been made that the alleged conduct in the Formal Complaint meets the requirements for the Process, preparations for the Hearing will begin.

A. Timing

Once a matter is deemed eligible for the Process, the Hearing will be scheduled in a reasonably prompt timeframe. If the Process is started near or after the end of an academic term or the Hearing cannot be completed prior to the end of term, the Hearing will be held as soon as practical. This will typically be immediately after the end of the term, during a break or over the summer, depending on the availability of the parties, witnesses and University officials. If the Respondent is scheduled to graduate prior to the resolution of a Formal Complaint under this Process, a hold may be placed on their graduation and/or official transcripts until the complaint is fully resolved (including any appeal).

B. Hearing Coordinator

The Office of Equal Opportunity (OEO) will act as the coordinator for the Hearing under the Process. OEO will be responsible for scheduling the Hearing, providing notifications to parties and witnesses, distributing any information from the Investigative Procedure, recording the Hearing, and any other administrative task necessary for the implementation of this Process. The Director of OEO (or their designee) (Director) will attend all meetings, conferences and hearings in this Process.

C. Decision- Making Panel

The decision of whether the Respondent is *Responsible* or *Not Responsible* for violating the Policy Against Discrimination, Harassment & Sexual Violence (Policy) based on the conduct alleged in the Formal Complaint will be made by the Decision-Making Panel. The Decision-Making Panel will consist of three individuals who have been trained on discrimination, harassment, and sexual violence, how to conduct a hearing, issues of relevance, impartiality and any technology that will be used during the Hearing. The three panel members may be University employees (staff or faculty) or someone from

outside of the University, or a combination thereof. The members of the Decision-Making Panel will be selected at the sole discretion of the Director. The names of the members of the Decision-Making Panel will be communicated to the Complainant and Respondent prior to the Pre-Hearing Conference. If either the Complainant or Respondent believes there is a possible conflict of interest with any of the members of the Decision-Making Panel, it must be communicated to the Director within five (5) business days after notice. The Director then has the discretion to assign a different member to that panel. Once five (5) business days have passed since the Complainant/Respondent was notified of the names of the members of the Decision-Making Panel, the Panel will become final, and there will be no further opportunity to raise potential conflicts of interest. One member of the Decision-Making Panel will be named as the Hearing Chair, at the sole discretion of the Director. Throughout this Process, the Chair will have the ability to consult with the Director as necessary.

D. Notice of Grievance Process Hearing

After the Investigative Procedure has closed and a determination has been made that the Process applies to the Formal Complaint, the parties will receive a Notice of Grievance Process Hearing from the Director. This Notice will be provided at least ten (10) business days prior to the proposed date for the Hearing. The Notice will include names of the members of the Decision-Making Panel, will identify the Hearing Chair, and will propose a date for the Pre-Hearing Conference. With the Notice, the parties will again be given access to the Investigative Report, supporting documentation, and the gathered information, all of which was previously shared with the parties in the Investigative Procedure.

E. Support Person/Advisor

To fully participate in the Hearing, the Respondent and Complainant *must* each have a support person/advisor. During the Hearing, the parties each have the right to submit questions to another party or witnesses regarding their statements. However, a party may not question another party or witness directly during the Hearing. Instead, all questions from a party must be asked by their support person/advisor. If a party does not have a support person/advisor, the University will provide the party with a support person/advisor, of the University's choice, at no expense to the party. The University provided support person/advisor may be a staff or faculty member who is trained to act in this capacity or may be someone from outside the University. The Director, at their sole discretion, will make the decision regarding who the University-assigned support person/advisor will be. The expectation is that any support person/advisor will be reasonably available for all meetings, the Pre-Hearing Conference and the Hearing, and will not cause a delay in the Process based on their lack of availability.

At least two (2) business days prior to any meeting in the Process, the Pre-Hearing Conference or the Hearing, a Complainant/Respondent must provide the Director with the identity and contact information (e-mail and telephone) of the individual who will be serving as their support person/advisor. A party is not required to use the same support person/advisor they used in the Investigative Procedure so long as they provide the Director with timely notice of the change.

A support person/advisor does not make any presentations or represent the party during the Process other than to question the other party and witnesses. Their primary role in the Process is to provide support to the party. The support person/advisor may not speak on behalf of the party during the

Process except when they are allowed to ask questions of the other party or witnesses, subject to the Hearing Rules (as discussed below). If at any point a support person/advisor becomes disruptive or is otherwise unable to abide by the requirements of the support person/advisor role or the Hearing Rules, they will be asked to leave the Process.

F. Disability Accommodations

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

G. Findings of Relevance

Only information that is deemed relevant by the Decision-Making Panel will be admissible in the Grievance Process Hearing. The final decision regarding whether information is relevant to a Formal Complaint will be made by the Hearing Chair, at their discretion. The Chair may consult with the other members of the Decision-Making Panel and the Director prior to making a decision as to relevance. The Chair will document and share their rationale for any finding of non-relevance throughout the Process.

The following information is not considered relevant during the Process or Hearing (except as noted):

1. Information about incidents not directly related to alleged conduct in the Formal Complaint, unless it may show a pattern of behavior, as determined by the Chair.
2. Character witnesses.
3. Information about the Complainant's sexual predisposition or prior sexual behavior, except where information about the Complainant's prior sexual behavior is offered to prove that someone other than the Respondent committed the alleged conduct, or the information concerns specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

H. Witnesses

Prior to the Pre-Hearing Conference, the names of those individuals that the Decision-Making Panel plans to invite to appear at the Hearing will be shared with the parties. That list will include all the parties and the names of the witnesses the Panel considers relevant to the resolution of the pending Formal Complaint. Within five (5) business days of receipt of the Panel's witness list, the parties must provide, in writing, any objection they have to the inclusion of any witness at the Hearing. Within that same timeframe, the parties must also provide in writing the names of any additional witnesses

they would like to have appear at the Hearing. These submissions will be addressed by the Chair during the Pre-Hearing Conference. Please note that only individuals who were interviewed as part of the Investigative Procedure can appear at the Hearing. A party cannot present new witnesses or information that was previously available for the first time at the Hearing (see below regarding New Information at Hearing).

I. Pre-Hearing Conference

At least ten (10) business days prior to the Hearing, the Hearing Chair will schedule a time to meet with the Respondent and Complainant separately, with their respective support person/advisor, for a Pre-Hearing Conference. This conference may be conducted in person, over meeting technology or may be conducted in writing over email or other correspondence, at the discretion of the Chair. During this conference, the Chair will review with the parties the information that the Decision-Making Panel considers to be relevant to the resolution of the Formal Complaint and that will be discussed at the Hearing. The Chair will also review any submissions by the parties regarding witnesses. At this time, a party should share with the Chair any concerns they have about whether certain information is relevant or not relevant, and the information they believe should be included or excluded from the Hearing. The Chair has the option to confer with the other Decision-Making Panel members and the Director before making a decision as to relevance. The final decision regarding relevance will be made by the Chair, at their discretion.

If there is additional information a party wishes to include at the Hearing, beyond what has been outlined by the Chair, the party must present that information to the Chair for consideration during the Pre-Hearing Conference. As discussed below, information that was not presented during the Investigative Process may not be included in the Hearing. The Chair will make a finding as to whether the information presented by the party is relevant to the resolution of the Formal Complaint. The Chair has the discretion to confer with the other Decision-Making Panel members and the Director, but the final decision regarding relevance will be made by the Chair, at their discretion. During the Hearing, a party may ask the Chair to reconsider their finding regarding the relevance of certain information from the Pre-Hearing Conference based on the information offered at the Hearing. Again the final decision regarding relevance at the Hearing will be made by the Chair, at their discretion. The Chair will document and share their rationale for their finding of non-relevance during the Pre-Hearing Conference and at the Hearing.

During the Pre-Hearing Conference, the parties may agree (through the Chair), that the statements of a witness can be adequately addressed through the information in the Investigative Report, in the gathered information, or through questioning the Investigator at the Hearing. In that situation, the witness would not need to appear for the Hearing, but the Decision-Making Panel would still be able to consider their statements when making their finding.

During the Pre-Hearing Conference, the parties will have the option to submit questions they would like to pose to a party or witness during the Hearing (See [Questions by Party at the Hearing](#) below). The Chair will then make a finding as to the relevance of any submitted questions and will approve questions in advance of the Hearing that a party will be allowed to ask. If a party chooses not to submit questions in advance of the Hearing or has additional questions that arise during the Hearing beyond those presented in the Pre-Hearing Conference, the Chair will make a finding on the relevance of each of those questions at the Hearing pursuant to Process.

III. Grievance Process Hearing

The Title IX Grievance Process involves a live hearing which includes a review of the Final Investigative Report and any supporting materials, and questioning of the Investigator, the parties, and any witnesses. All relevant information presented in the Hearing will be considered by the Panel in determining if the Respondent is *Responsible* or *Not Responsible* for violating the Policy Against Discrimination, Harassment & Sexual Violence (Policy) based on the conduct alleged in the Formal Complaint. The determination regarding what is relevant to the resolution of the Formal Complaint will be made by the Hearing Chair, at their discretion. Any questions regarding the Process during the Hearing will be addressed by the Hearing Chair or the Director of the Office of Equal Opportunity (or their designee) (Director).

A. Conducted Over Technology

The expectation is that the Hearing will be conducted over video conferencing technology (Zoom, Google Meet, etc.). Every participant in the Hearing is expected to participate from a private location, with no one else present who can hear or see the Hearing. The only exception is that either party may participate in the Hearing with their support person/advisor present in the same location. The Decision-Making Panel also will have the option to conduct the Hearing with all the Panel members in the same location. Any witnesses participating in the Hearing can either appear on their own (in a private location with no one else able to hear or see the Hearing) or in the same location as the Decision-Making Panel. All participants in the Hearing, must identify themselves on the recording and appear at the Hearing over video (barring any technical complications). The presence of anyone not authorized to participate in the Hearing or who has not identified themselves at the Hearing is expressly prohibited at all times and would be in violation of University policy. If any of the hearing participants do not have access to a suitably private location, the Director can make arrangements to provide access to a private location on-campus for the hearing, as appropriate. As discussed below, all participants in the Hearing are expressly prohibited from recording any meetings in the Process, including the Pre-Hearing Conference and the Hearing. A party has the option to request, in writing, that the Hearing be conducted in person. A Hearing will be conducted in person only if both parties agree to an in-person hearing.

B. New Information

The expectation is that all of the information relevant to the Formal Complaint and that a party intends to present at the Hearing will have been shared and considered in the Investigative Procedure. The parties will have been given ample opportunity to share all available information with the Investigator during the Investigation. The Hearing Chair has the discretion to exclude from the Hearing any information that was available, but not previously shared in the Investigative Procedure. The Hearing Chair also has the discretion to confer with the Investigator and/or Director about the scope of the Investigative Procedure and whether the information was available during the Investigative Procedure. Under rare circumstances, and typically when it appears that the information may not have been available earlier, the Hearing Chair has the discretion to either allow the information at the Hearing or to re-open the Investigative Procedure so that the Investigator may fully review and consider the new information. If the Investigation is re-opened, the Investigator has the option, at their discretion, to create a new Investigative Report and to again offer the parties the opportunity to review and comment on the new report as outlined in the Investigative Procedure.

C. Access to Report and Information from Investigative Procedure

At least ten (10) business days before the Hearing, the parties will again be given access to the Investigative Report, supporting documentation and the gathered information previously shared with the parties during the Investigative Procedure.

D. Presence at Hearing

All parties and witnesses will be given notice of the Hearing and an opportunity to participate in that Hearing. All parties and witnesses in the Hearing must agree to submit to questioning by both the Decision-Making Panel and the support person/advisor for one or both parties. If a party or witness does not appear at the Hearing or does not agree to be questioned by both the Panel and the support person/advisor of a party, the Hearing may be held in their absence. However, any statements given by a party or witness prior to the Hearing, who then does not participate in questioning at the Hearing, cannot be considered by the Decision-Making Panel when making their finding. During the Pre-Hearing Conference, the parties can agree to the use of statements of a witness or party without questioning at the Hearing. The Decision-Making Panel will draw no inferences from a party's decision not to participate in the Hearing or questioning. If the statements of a party who does not participate in questioning at the Hearing are the subject of the alleged conduct in the Formal Complaint (for example – verbal harassment), then those statements would not be excluded from the Hearing and can be considered by the Decision-Making Panel when making their finding.

E. Recording

The Hearing will be recorded, either as an audio or video recording (or both) at the discretion of the Director. OEO will be responsible for recording the Hearing. Any audio or video recording of the Hearing by anyone other than OEO (party, witness, support person/advisor, other individual) is expressly prohibited at all times during the Pre-Hearing Conference and Hearing, and would be a violation of University policy. The Pre-Hearing Conference and the deliberations of the Decision-Making Panel will not be recorded. After the Hearing, OEO will be responsible for maintaining the recording in accordance with the maintenance of records provisions of the Policy. A party seeking access to the recording after the Hearing or a transcript of the Hearing (if created at OEO's discretion) should submit a written request to OEO.

F. Questions by Decision-Making Panel

The Decision-Making Panel will have the first opportunity to question the Investigator and any party or witness regarding the information they deem relevant to the Formal Complaint from the Final Investigative Report and the information gathered through the Investigative Procedure.

G. Investigator

The Investigator will be present at the Hearing as the first witness to present the Final Investigative Report and to answer any questions the Decision-Making Panel may have regarding the information gathered in the course of the Investigative Procedure. The Investigator will not provide a recommended finding from their Investigation or make any findings of fact at the Hearing, as those are findings to be made by the Decision-Making Panel at the conclusion of the Hearing.

H. Questions by Party at the Hearing

The parties each have the right to question, through their support person/advisor, the Investigator, the other party(s), and any witnesses who appear at the Hearing. A party has the option to submit questions in advance at the Pre-Hearing Conference for a finding of relevance by the Chair. Any pre-approved questions may be asked by the support person/advisor for that party at the Hearing in compliance with the Hearing Rules. If a party has questions that have not been pre-approved by the Chair or if a party has additional questions at the Hearing beyond those that have been pre-approved, a finding of relevance must be made for each question by the Chair before the question may be asked at the Hearing.

For questions that have not been pre-approved by the Chair during the Pre-Hearing Conference, a party's support person/advisor will have to indicate to the Chair that they have a question for a party or witness. The Chair will then remove the party or witness to be questioned from the Hearing. The support person/advisor will then present the question to the Chair who will make a finding as to whether the proposed question is relevant to the Formal Complaint. Questions that are repetitive of information already presented to the Panel or that are abusive or badgering of a party or witness will be deemed irrelevant. The Chair will note on the recording their rationale for their finding of non-relevance for any specific question.

If a question is deemed to be relevant by the Chair, the party or witness will be brought back into the Hearing, and the support person/advisor can ask the approved question. This process will be repeated for each question that has not been pre-approved but that a party wishes to ask of a party or witness during the Hearing. The questioning process can be expedited by a party submitting questions to the Chair for pre-approval during the Pre-Hearing Conference. Pre-approved questions can be asked by a party's support person/advisor without disruption, subject to the Hearing Rules (see below). At no time may a party's support person/advisor ask a question that has been deemed irrelevant and/or that has not been approved by the Chair.

I. Hearing Rules

The Hearing is meant to be a forum for presenting relevant, factual information to the Decision-Making Panel that will be helpful in making a finding of whether the Respondent is *Responsible* or *Not Responsible* for violating the Policy. The Hearing is an administrative proceeding and is not meant to replicate a courtroom environment. As such, there is no room for what might be considered "courtroom theatrics" in the Hearing. The expectation is that all participants in the Hearing, including the parties and their support person/advisor, will remain seated during the Hearing and will maintain a respectful and civilized tone towards all participant in the Process, including the Panel, other parties and witnesses. There is no place in the Hearing for argument, badgering, abusive language, raised voices, or disrespectful treatment of any Hearing participant. There will be no opening or closing statements by the parties in the Hearing. The Chair will be responsible for letting a party, support person/advisor, or witness know when it is their turn to speak during the Hearing. The parties and their support person/advisor are expected not to speak or comment unless they are told by the Chair that it is their turn to speak during the Hearing. Any participant, including parties and their support person/advisor, who cannot comport themselves in a respectful manner and follow these Hearing Rules throughout the Hearing, as determined by the Chair or the Director, at their discretion, may be removed from the Hearing.

IV. Panel Finding

After the Hearing has been concluded, the Decision-Making Panel (Panel) will deliberate and review the information submitted through the Formal Complaint Process and the Hearing to make a finding as to whether the Respondent is responsible for violating the Policy Against Discrimination, Harassment & Sexual Violence (Policy). The decision of the Panel will be made based on the *preponderance of the evidence* standard -- that is, whether the facts presented in the Formal Complaint Process and Hearing support a finding that it is more likely than not that the Policy was violated. The Decision-Making Panel will base the findings solely on the information presented through the Formal Complaint Process and the Hearing, pursuant to the Process. There is no presumption of responsibility for the Respondent. Instead the question of whether the Respondent has violated the Policy will be made at the conclusion of the Hearing based on the information presented during the Process. The finding of the Panel will be made by a majority. The Panel will issue their written findings on the Formal Complaint to the Director of the Office of Equal Opportunity (or their designee) (Director). The written findings by the Panel will outline any factual determinations made, any credibility assessments from the Hearing, and the rationale used to reach the finding.

A. Student Respondent Notice of Outcome

If a student Respondent is found *Not Responsible* by the Panel for violating the Policy, the Complainant and Respondent will both be notified by the Office of Equal Opportunity (OEO) reasonably simultaneously in writing of the outcome, the option to appeal, an explanation of when that outcome becomes final, and the findings from the Decision-Making Panel.

If a student Respondent is found *Responsible* for a violation of the 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 Respondent may have with the University as outlined in the [Rights & Responsibilities](#) Handbook, Section 20. Sanctions for a *Responsible* finding may include, but are not limited to, denial of privileges, disciplinary warning, disciplinary probation, educational sanctions, suspension, dismissal and any other sanction noted in the Rights and Responsibilities handbook. Both the Complainant and Respondent will be reasonably simultaneously notified in writing of the Notice of Outcome which includes the assigned sanction, the option to appeal, an explanation of when that outcome becomes final and the findings from the Decision-Making Panel. Due to privacy consideration, the Complainant may not be notified of the assigned sanctions, unless they relate to the Complainant (such as a No Contact Order as the sanction). At this time, the Director will again give the Respondent access to the Final Investigative Report, if needed. The Director, at their discretion, and in response to a written request from the Respondent, may also provide access to any supporting documentation and/or gathered information.

B. Employee Respondent Notice of Outcome

If an employee Respondent is found *Not Responsible* for violating the Policy, the Complainant and Respondent will be notified by the Office of Equal Opportunity in writing of the outcome, the option to appeal and an explanation of when that outcome becomes final. The written outcome will include the findings from the Decision-Making Panel.

If an employee Respondent is found *Responsible* for a violation of the Policy, the matter will be referred to Human Resources and the Respondent's supervisor, academic dean, or the Provost (or their designee), who will decide the appropriate sanctions or remedies based on that finding. The determination regarding sanctions will include a consideration of any other disciplinary history the Respondent may have with the University. Sanctions for a *Responsible* finding may include, but are not limited to, warnings (verbal or written), censures, training or other educational responses, final warnings, performance improvement plans, reassignment, demotions, suspensions, and termination. The Respondent will be notified by Human Resources and their supervisor, academic dean, or the Provost (or their designee), in writing, of the Notice of Outcome which includes the assigned sanction, the option to appeal, an explanation of when that outcome becomes final and the findings from the Decision-Making Panel. The Director will again give the Respondent access to the Investigative Report, if needed. The Director, at their discretion, and in response to a written request from the Respondent, may also provide access to review any supporting documentation and/or gathered information. The Complainant will also be notified by Human Resources of the outcome in writing, the option to appeal, an explanation of when the outcome becomes final and the findings from the Decision-Making Panel. Due to privacy consideration, the Complainant will not be notified of the assigned sanctions, unless they relate to the Complainant (such as a No Contact Order as the sanction).

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

V. Appeal

Both the Complainant and Respondent (student, staff or faculty) are entitled to one appeal of the outcome to the Formal Complaint. Any appeal must be submitted in writing to OEO (o eo@brandeis.edu) within five (5) business days of the receipt of the written Notice of 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 Title IX Grievance Process will be closed.

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

There are only three grounds on which an appeal can be filed – procedural error, the availability of new information, and bias. The written appeal must specifically state under which of these three grounds the appeal is being filed. The appeal is not a new fact-finding process. Although a Complainant/Respondent may disagree with the finding, that alone is not a basis for appeal. Instead the appeal must set forth under which of the three grounds the appeal is filed. Appeals that do not comply with these requirements will not be considered, as determined by the Director of the Office of Equal Opportunity (or their designee) (Director), at their discretion. 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 three grounds for appeal are:

1. Procedural Error: The appellant alleges that (i) the procedural requirements of the Formal Complaint Process and/or the Hearing Process were not followed, *and* (ii) that deviation from the process had an adverse impact on the outcome of the Formal Complaint against the appellant.
2. Availability of New Information: The appellant alleges that, subsequent to the issuing of the outcome, new information became available which could have impacted the outcome of the Formal Complaint. The appellant must: (i) present the new information; (ii) show why it was unavailable prior to the outcome; *and* (iii) show that the new information could have altered the outcome of the complaint. If new information is presented, the University Appeal Board (UAB) has the option to ask the Investigator to reopen the Investigation regarding that information.
3. Bias: The appellant alleges that the Director, Investigator, or a member of the Decision-Making Panel had a conflict of interest or bias for or against complainants or respondents generally or against the specific Complainant or Respondent to the Formal Complaint. The appellant must (i) specifically identify who is alleged to have the conflict of interest or bias; (ii) present specific information regarding the nature of the conflict of interest or bias for each individual identified; *and* (iii) show how the conflict of interest or bias had an adverse impact on the outcome of the Formal Complaint against the appellant.

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 violence. The members of the UAB will include different individuals from those who served as the Decision-Making Panel. The three UAB panel members will be chosen at the sole discretion of the Director (or their designee), who will communicate those names to the Complainant and Respondent. If there is an allegation of bias against the Director, they will recuse themselves from the appeal process and the UAB panel members will be chosen by the Vice President for Diversity, Equity and Inclusion (Vice-President). If either the Complainant or Respondent believes there is a possible conflict of interest with any of the UAB members, it must be communicated to the Director or the Vice-President immediately. The Director or the Vice-President then has the discretion to assign a different member to the UAB. Once the appeal has been submitted to the UAB for consideration, there will be no further opportunity to raise potential conflicts of interest.

In reviewing an appeal, the UAB will be given the Final Investigative Report and any supporting documentation, the written Notice of Outcome, the appeal submission and any response, and the results of any additional investigation. The UAB may also be given access to the recording of the Hearing if the UAB decides such access is necessary to make a finding on the appeal.

The UAB has the option to *Dismiss* the appeal as: (1) untimely, (2) failing to state a proper ground for appeal, *or* (3) by finding that the requirements for the appeal grounds chosen have not been met. The UAB also has the option to *Grant* the appeal.

If the UAB grants the appeal for a student appellant, the matter will be referred to the Dean of Students Office who will decide whether to uphold or modify the final outcome on the Formal

Complaint based on the findings of the UAB. If the UAB grants the appeal for an employee appellant, the matter will be referred to the Vice-President of Human Resources who, in consultation with the Provost (or their designee), as appropriate, will decide whether to uphold or modify the final outcome on the Formal Complaint.

The parties will be reasonably simultaneously notified in writing of the Outcome of Appeal. For students, the notification will come from the Dean of Students Office. For employees, the notification will come from Human Resources. Certain employees may have additional appeal rights outside the Title IX Grievance Process.