



## Sexual Misconduct, Harassment and Discrimination Policy for Student on Student Conduct

The Sexual Misconduct, Harassment and Discrimination Policy for Student on Student Conduct reflects the definitions and procedures in Rights and Responsibilities. If there are any inconsistencies between this policy and Rights and Responsibilities, Rights and Responsibilities is the primary policy document of Brandeis University.

### I. Overview

At Brandeis University, we are committed to providing an atmosphere in which all students can live and study in an environment free from harassment and violence. The university takes all allegations of sexual misconduct seriously, and we want to work proactively as a community to address misconduct and prevent future cases of sexual violence.

Brandeis University is also committed to assisting victims/survivors of sexual misconduct through various available support services. A resource guide for sexual assault survivors can be found at: <http://www.brandeis.edu/preventionservices/docs/survivors-guide.pdf>. This guide outlines community resources, how to file a complaint and the adjudication process. Support services (interim measures) for victims/survivors of sexual misconduct are available. These interim measures are available to provide for the safety of the complainant and the campus community during the investigation of a complaint. Support services are available to a complainant even if they do not file or continue to pursue a complaint. Mediation will not be used as a means to address or resolve cases of sexual assault or other gender-based violence. A complainant of sexual violence should also know that they have the option to file criminal charges against the alleged perpetrator.

The university will always respond to complaints, reports, allegations and information about sexual misconduct. At Brandeis, we believe that victims/survivors have the ability to decide whether or not they wish to be involved in any of the university's processes to address sexual misconduct. We will uphold the privacy and confidentiality of all parties to the extent practicable. Some individuals filing complaints or involved in an investigation may want their identity to remain confidential. In some instances, the respondent can be spoken to without the complainant being identified. In other cases, requests for confidentiality must be balanced against the university's need to investigate and take appropriate action. While discretion remains important, parties are not restricted from discussing and sharing information relating to their complaints with others who may support them or assist them in presenting their case.

The university's student code of conduct, "Rights and Responsibilities," describes a wide spectrum of verbal and physical behaviors that are considered sexual misconduct. In cases where allegations of sexual misconduct align with policy violations enumerated within "Rights and Responsibilities," the Special Examiner's Process (SEP) will be used to investigate and adjudicate the case. The current edition of "Rights and Responsibilities" is posted on the website for the Department of Student Rights and Community Standards at <http://www.brandeis.edu/studentlife/srcs/index.html>.

## II. Definitions of Sexual Misconduct

State and federal law, including Title IX of the 1972 of the Education Amendments, prohibits sex/gender-based discrimination. Brandeis defines sexual misconduct as any sexual contact that occurs without the explicit consent of each person involved. Consent must be clearly and affirmatively communicated, mutual, non-coercive, and given free of force or threat of force. Consent to one sexual act does not constitute consent to any other subsequent act, and consent on one occasion does not imply consent on any subsequent occasion. Sexual contact with someone who you know, or reasonably should have known, does not have the capacity to consent is prohibited. The question of what the respondent should have known is objectively based on what a reasonable person in the place of the respondent, sober and exercising good judgment, would have known about the condition of the complainant.

A person who is physically, cognitively, or mentally impaired by drugs, alcohol, or other circumstances is not capable of giving consent. Physical or mental impairment means inability to appreciate the fact that the situation is sexual, and/or the inability to rationally and reasonably appreciate the nature and extent of that situation. Evidence of ingestion of drugs and/or alcohol may raise a presumption of physical and/or mental incapacity. An individual who is incapacitated is unable to give consent to sexual activity. States of incapacitation include sleep, unconsciousness, intermittent consciousness, or any other state in which the individual is unaware that sexual activity is occurring.

Brandeis University is committed to providing a campus environment free of sex/gender- based discrimination, including:

- A. Sexual Assault
  1. Non-Consensual Physical/Sexual Contact
  2. Non-Consensual Physical/Sexual Contact by Force
  3. Non-Consensual Intercourse (Rape)
  4. Forced Sexual Intercourse (Rape)
- B. Sexual Exploitation
- C. Sexual Harassment
- D. Sex and/or Gender Discrimination
- E. Stalking
- F. Relationship Violence (including domestic and dating violence)

These concepts are explained in detail in the attached Appendix.

## III. The Responsibility to Report

All employees including faculty and staff are required by law to promptly report allegations of sexual harassment and other forms of sexual misconduct that they observe or learn about to the Title IX Coordinator. Employees of the university who fail to promptly report allegations of sexual harassment and other forms of sexual misconduct that they observe or learn about may be subject to disciplinary action. Employees whose positions legally require confidentiality (i.e., clergy and counseling staff) or are designated by the university as confidential employees are exempt from reporting.

Reports should be made to:

- Brandeis Title IX Coordinator  
Sonia Jurado  
[sjurado@brandeis.edu](mailto:sjurado@brandeis.edu)  
781-736-4802

Brandeis University and the Title IX Coordinator are mandated to respond promptly and appropriately to any allegations of sexual harassment or other form of sexual misconduct brought to their attention. The Title IX Coordinator will review the next steps students may want to take regarding their experience of sexual misconduct in the context of safety for the reporting student and the community. The Title IX Coordinator also accepts complaints about potential Title IX violations related to the process of adjudication or other aspects of the university's handling of a case.

Options that victim/survivors of sexual assault have include:

- The option to file a criminal complaint with the Brandeis Department of Public Safety and/or Waltham Police Department and/or the option to file a Community Standards Report (CSR) with the Department of Student Rights and Community Standards
- The option to have the Title IX Investigator investigate a complaint without filing a criminal complaint or a Community Standards Report
- The option not to pursue further action.

If a victim/survivor does not want to pursue further action, every effort will be made to honor their request. There are situations, however, when the university may be compelled to take action to protect the safety of the victim/survivor and/or the community. For instance, in cases in which there are multiple anonymous complaints against the individual; the alleged perpetrator has a documented history of violence or has threatened further sexual or other violence; or there are multiple perpetrators, the university may be compelled to investigate. If the complainant requests that their name not be given to the respondent, the University will try to honor the request and will inform the complainant when it cannot. Such a request will limit what the investigation can accomplish.

Retaliation against anyone who reports an incident of sexual misconduct, who brings forward a complaint, or who in any way participates in an inquiry or investigation of sexual misconduct is strictly prohibited. A full description of the adjudication process including sanctions is located in "Rights and Responsibilities." Any person responsible for, or involved in, retaliation and/or sexual misconduct will be subject to disciplinary action by the university, up to and including dismissal.

#### **IV. Resources**

United States Department of Education Office for Civil Rights:

<http://www2.ed.gov/about/offices/list/ocr/index.html>

Office for Civil Rights Title IX and Sex Discrimination (2001):

[http://www2.ed.gov/about/offices/list/ocr/docs/tix\\_dis.html](http://www2.ed.gov/about/offices/list/ocr/docs/tix_dis.html)

Office of Civil Rights Dear Colleague Letter (2011): [http://www.whitehouse.gov/sites/default/files/dear\\_colleague\\_sexual\\_violence.pdf](http://www.whitehouse.gov/sites/default/files/dear_colleague_sexual_violence.pdf)

Office for Civil Rights Questions and Answers on Title IX and Sexual Violence (2014):

<http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>

## **Appendix: Defining and Recognizing Sexual Misconduct and Definition of Consent**

**Prohibition of Sexual Misconduct:** Students are strictly prohibited from engaging in sexual misconduct. Sexual contact that occurs without the explicit consent of each person involved is considered sexual misconduct. Consent must be clearly and affirmatively communicated, mutual, non-coercive, and given free of force or threat of force. Consent to one sexual act does not constitute consent to any other subsequent act, and consent on one occasion does not imply consent on any subsequent occasion.

Consent or lack of consent may be communicated verbally or through actions, but if a refusal to engage in sexual activity is communicated at any time, then the activity must cease immediately. Prior sexual activity or an existing acquaintanceship, friendship, or other relationship that has been sexual in nature does not constitute consent for the continuation or renewal of sexual activity. A full explanation of Brandeis' definition of sexual misconduct and consent are found in "Rights and Responsibilities."

Sexual misconduct is a broad term used to encompass unwelcome conduct of a sexual nature that is prohibited by Title IX and Brandeis University. The term sexual misconduct includes (but is not limited to) behaviors often described as sexual harassment, sex/gender discrimination, sexual assault, rape, stalking, and relationship violence (including domestic and dating violence). Sexual misconduct can occur in any sex or gender configuration (i.e., against the opposite gender, the same gender, or another gender) regardless of sex and gender identity. Sexual misconduct may vary in its severity and consists of a range of behaviors including, but not limited to, the following categories:

- A. Sexual Assault
  - 1. Non-Consensual Physical/Sexual Contact
  - 2. Non-Consensual Physical/Sexual Contact by Force
  - 3. Non-Consensual Intercourse (Rape)
  - 4. Forced Sexual Intercourse (Rape)
- B. Sexual Exploitation
- C. Sexual Harassment
- D. Sex and/or Gender Discrimination
- E. Stalking
- F. Relationship Violence (including domestic and dating violence)

### **A. Sexual Assault**

Sexual assault is the act of committing unwanted physical contact of a sexual nature, whether by an intimate partner, acquaintance or by a stranger. Such contact is unwanted when it occurs without the consent of one or both individuals, when one of the individuals is incapacitated or incapable of giving consent (as defined below), or occurs with the use of force (as defined below). An "acquaintance" can include close friends, intimate partners, family members, classmates, or can be someone you just met.

Victims/survivors and the accused can be of any sex/gender, sexual orientation and/or sexual identity. There are many degrees and forms of sexual assault including, but not limited to, the following:

**1. *Non-Consensual Physical Contact:***

- any intentional sexual touching;
- however slight;
- with any object or body part;
- by a person upon another person;
- without consent or upon a person unable to consent (as defined below).

Examples of non-consensual sexual contact/activity include (but are not limited to): touching of an unwilling or non-consensual person's intimate parts (such as genitalia, groin, breast, buttocks, mouth, and/or clothing covering them); touching of an unwilling person or non-consensual person's with one's own intimate parts; making an unwilling or non-consensual person touch you or another; or any intentional bodily contact in a sexual manner, even if it does not involve breasts, buttocks, groin, genitals, mouth, or other orifice.

Sexual contact/activity with a person who is incapacitated (by use of drugs, alcohol, or any other means) or otherwise unable to consent (i.e. asleep, mentally impaired, etc.) is always considered non-consensual.

**2. *Non-Consensual Sexual Intercourse:***

The term "rape" is one with variable definitions across jurisdictions and cultures. Brandeis chooses to avoid confusion by using the term "non-consensual intercourse." Non-consensual intercourse is any penetration, however slight, with anybody part or object by any student upon any other person that is without consent. Intercourse with a person who is incapacitated (by use of drugs, alcohol or any other means) or otherwise unable to consent (i.e. asleep, mentally impaired, etc.) is always considered non-consensual. See the definitions of consent in Rights and Responsibilities.

**B. Sexual Exploitation**

Sexual Exploitation occurs when a person takes non-consensual, unjust, or abusive sexual advantage of another, for one's own advantage or benefit, or for the benefit or advantage of anyone other than the one being exploited and that behavior does not otherwise constitute non-consensual sexual contact/activity, non-consensual sexual intercourse/penetration, or sexual harassment.

There are many degrees and forms of Sexual Exploitation including, but not limited to, the following:

**1. *Photographing or Video/Audio Taping of Sexual Contact/Activity***

Photographing or taping someone (via audio, video or otherwise) involved in sexual activity, involved in sexual intercourse/penetration, or in a state of undress, without their knowledge or consent (as defined below) constitutes prohibited sexual exploitation in violation of this policy. Even if a person consented to the sexual activity or intercourse/penetration, photographing or taping someone without their knowledge goes beyond the boundaries of that consent. The dissemination of

photographs or video/audio of someone involved in sexual activity or in a state of undress, without their knowledge or consent, constitutes a separate and additional act of sexual exploitation.

*\*\*Please note that the examples used throughout this policy are based on hypothetical situations developed to illustrate various concepts. Any resemblance to real persons or situations is purely coincidental. They are meant as guidance only and depict situations that would "most likely" violate this policy, because it should be understood that sexual misconduct cases involve more complex sets of facts and must be reviewed on a case-by-case basis.\*\**

*Examples:*

- *Isaac and Carla, both students, have been dating for two weeks and have engaged in consensual sex. One Saturday night, Isaac convinces Carla to come to his room. Carla does not know that Isaac has concealed a video camera in his room. Isaac tapes their consensual sexual intercourse without Carla's knowledge or permission. It is the videotaping, not the consensual sex, that would most likely be in violation of this policy.*
- *At Miriam's request, Jessica has been texting naked photographs of herself to Miriam. Without Jessica's knowledge, Miriam has been posting these photographs on her blog and sharing them with her friends. Miriam's sharing of those photographs without Jessica's consent would most likely be sexual exploitation.*

Behavior	Result
Images or recordings were taken with Consent but concerns have been raised about possible dissemination.	<p><b><i>There is likely no policy violation</i></b> as there is no issue of consent. The student in possession of the material may be <b><i>reminded</i></b> that the dissemination of those materials without consent would be a policy violation.</p>
Images or recordings were disseminated with consent but now there are concerns about possible further dissemination.	
Images or recordings were taken without consent.	<p><b><i>This would most likely be a policy violation</i></b> if a lack of Consent is found through an investigation. Discipline will be issued for that conduct through the Special Examiner's Process as described in Rights and Responsibilities. Respondent would also be <b><i>reminded</i></b> that dissemination of those materials without consent would be a further policy violation.</p>
Images or recordings were disseminated without consent.	

## 2. Voyeurism:

Voyeurism is the act of observing someone involved in sexual contact/activity, sexual intercourse/penetration or in a state of undress, without their knowledge or consent.

Examples:

- Omar and Nina have been "hooking up" for two weeks, engaging in consensual sex. On Saturday night, Omar brings Nina to his room to "hook up" again. Nina does not know that Omar has concealed his friends, Liam and Foster, in the closet in his room. Liam and Foster watch through a crack in the door as Omar and Nina engage in consensual sexual intercourse. All three males, who are students, have most likely engaged in sexual exploitation.
- David and Sam, both students, realize that an all-female residence hall backs onto a wooded area, and that the people who live in the rooms that face the back rarely draw their shades because of the private setting. David and Sam take up station in two trees in the woods and observe many students who are partially or completely undressed. Both students have most likely engaged in sexual exploitation.

***Causing impairment or intoxication or taking advantage of a person's impairment or intoxication for the purpose of engaging in sexual activity with them is prohibited.***

Sexual contact with someone who you know, or reasonably should have known, does not have the capacity to consent is prohibited. The question of what the respondent should have known is objectively based on what a reasonable person in the place of the respondent, sober and exercising good judgment, would have known about the condition of the complainant. A person who is physically, cognitively, or mentally impaired by drugs, alcohol, or other circumstances, such as disability, sleep, physical restraint, or other stress-inducing factors (such as extreme exhaustion or illness), may not be capable of giving consent. Physical or mental impairment means the inability to appreciate the fact that the situation is sexual, and/or the inability to rationally and reasonably appreciate the nature and extent of that situation. Evidence of ingestion of drugs and/or alcohol may raise a presumption of physical, cognitive, and/or mental impairment.

An individual who is incapacitated is unable to give consent to sexual activity. States of incapacitation include sleep, unconsciousness, intermittent consciousness, or any other state in which the individual is unaware that sexual activity is occurring. Incapacitation may also exist because of a mental or developmental disability that impairs the ability to consent to sexual activity.

Causing impairment or intoxication or taking advantage of a person's impairment or intoxication for the purpose of engaging in sexual activity with them is prohibited.

Examples:

- Andre meets Kim at a party. He offers her punch to drink but does not tell her it is spiked with grain alcohol. Kim is unable to detect the alcohol in the punch. Andre intends to get Kim intoxicated and engage in sexual intercourse with her later, which would most likely be in violation of this Policy.
- Jake and J., who identifies as gender queer, are drinking at a party. Jake is giving J. Jell-O shots, and after a few, it is clear to Jake that J. does not understand how much alcohol J. is consuming. Jake continues to encourage J. to take more shots, intending to engage in sexual contact with J. later. Jake inducing J. to consume alcohol to impair J.'s ability to withhold consent to sexual activity would most likely constitute sexual exploitation.
- Seth meets Ken at a bar. While he is not looking, Seth slips GHB, Rohypnol, Scopolamine, Burundanga, Ketamine, or another sedative or "date rape" drug\* into Ken's drink. When Ken begins to experience the effects of the drugs, Seth takes him home with the plan to engage in sexual activity with him. Seth's use of drugs to take sexual advantage of Ken would most likely be sexual exploitation.
- Julie arrives at a party off campus and immediately starts to flirt with Tom. Julie has not had anything to drink at the party and Tom does not offer her any drinks. Julie is slurring her word, stumbling and having trouble staying on her feet. Any reasonable person at the party, sober, would observe Julie to be intoxicated. Tom encourages Julie's flirting and takes her back to his room to have sex with her. Julie in her current state lacked the capacity to consent and Tom's actions and would most likely be a violation of this policy.

\*Please note that the possession, use, and/or distribution of any of these substances is prohibited, and administering one of these drugs to another person is a violation of this policy.

### **C. Sexual Harassment**

Sexual harassment is a form of sex discrimination that involves unwelcome conduct of a sexual nature. It can include unwelcome sexual advances, requests for sexual favors, and other physical or verbal conduct of a sexual nature or conduct directed at a person because of his or her sex/gender when:

- such conduct is made an explicit or implicit condition of an individual's academic status or employment; or
- refusing or submitting to such conduct is used as basis for academic or employment decisions; or
- such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance, i.e. it is sufficiently serious, pervasive,



or persistent as to create an intimidating, hostile, humiliating, demeaning, or sexually offensive working, academic, residential, or social environment under both an objective (a reasonable person's view) and subjective (the complainant's view) standard

While it is not possible to list all those additional circumstances that may constitute sexual harassment, the following are some examples of conduct that, if unwelcome, may constitute sexual harassment depending upon the totality of the circumstances including the severity of the conduct and its pervasiveness. The following are some examples of conduct, particularly when unwelcome, which may constitute sexual harassment:

- direct propositioning of a sexual nature and/or subtle pressure for sexual activity that is unwanted and unreasonably interferes with a person's work, academic or educational environment;
- unwelcome sexual advances -- whether they involve physical touching or not;
- sexual epithets or jokes; written or verbal references to sexual conduct; gossip regarding one's or another's sex life; comment on an individual's body; comment about an individual's sexual activity, experiences, deficiencies, or prowess;
- displaying sexually suggestive objects, pictures, cartoons, etc.;
- unwelcome leering, whistling, brushing against the body, sexual gestures, suggestive or insulting comments, threats, or innuendos of a sexual nature;
- unwanted physical contact such as touching, hugging, brushing against a person's body, impeding or blocking movements;
- gender harassment, including sexist statements and behavior that convey insulting, degrading, or sexist attitudes;
- persistent and unwanted requests for dates; unwelcome and inappropriate letters, telephone calls, email, texts, graphics, and other communications or gifts;
- direct or implied threats that indicate that submission to sexual advances will be a condition of employment, work status, promotion, grades, or letters of recommendation;
- sexually explicit statements, questions, jokes, or anecdotes regardless of the means of communication (verbal, written, email, text messages, etc.) without the person's consent
- the display of inappropriate sexually oriented materials in a location where others can view them; or

For more information on this this type of Sexual Misconduct, please see Brandeis' "Rights and Responsibilities."

#### **D. Sex and/or Gender Discrimination**

Sex and/or gender discrimination is the unfair or unequal treatment of an individual (or group) based on sex or gender which violates federal and state law (including Title IX). Brandeis University also prohibits discrimination based on sexual orientation, gender identity and/or gender expression. Brandeis is committed to providing an educational and work environment that is free from sex and/or gender discrimination. For more information on this this type of sexual misconduct, please see Brandeis' Non-Discrimination Policy.

## **E. Stalking**

The term "stalking" is defined by the Commonwealth of Massachusetts as: "Whoever (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." Stalking and cyber stalking are behaviors prohibited by Massachusetts law. Stalking can also constitute a violation of the Sexual Misconduct Policy when the conduct involves a Brandeis student and is gender-based.

### **1. What Is Stalking?**

Stalking is defined as persistent, unwanted and repeated harassing behavior, such as:

- Following a person
- Appearing at a person's home, class or work
- Making frequent phone calls, e-mails, texts messages, etc.
- Leaving written messages or objects
- Vandalizing a person's property

### **2. Who Are Victims Of Stalking?**

Anyone can be stalked. Some victims are picked at random by their stalker, but most stalking victims know their stalker, usually having had some type of interaction or relationship. The perpetrator can be an intimate partner or former partner, classmate, roommate, any other acquaintance or a non-acquaintance. A victim can be stalked for several days or for many years. The stalker's actions can also affect family, friends, and coworkers. Stalking can occur in person or through mail, electronic mail, text messaging, instant messaging, telephone, facsimile, social websites (Facebook, Twitter, My Space, Tumblr, etc.), or other internet communications. Claiming that stalking conduct is common or accepted within a particular social or religious context does not constitute an adequate defense against a complaint of stalking.

### **3. Examples of Stalking:**

Every time Susan went to class, Victor, another student, would sit next to her. Victor kept trying to talk to Susan even though she told him she was not interested in him. Victor then started showing up everywhere that Susan went—outside her residence hall, in the campus center and in the library. Victor began threatening to "make" Susan go out with him. If Victor continues to pursue this conduct, his action would most likely constitute stalking in violation of this Policy.

- Carlos dated Eva, a graduate student, a couple of times but eventually stopped seeing her. Then Eva began sending Carlos multiple e-mails a day. Carlos changed his e-mail address but somehow Eva found out his new address and began sending even more e-mails. Carlos wishes Eva would

stop, but he is not sure what to do. Eva's action would most likely be in violation of this Policy.

- Two weeks ago, Noelle found an anonymous "secret admirer" note that someone had left on one of her books in the library while she was studying. Last week, while studying in the campus center, Noelle got up to stretch. When she returned, Noelle found a cup of coffee with a note saying "I am always watching you." This morning Noelle found flowers outside of her dorm room. Noelle and her friends do not know who is doing this, but it is starting to feel creepy and would most likely be stalking which is in violation of this policy.

#### **F. Relationship Violence (including Domestic and Dating Violence):**

Relationship violence is intentionally violent or controlling behavior by a person who is currently or was previously in a relationship with the victim. Relationship violence includes actual or threatened physical injury, sexual assault, psychological abuse, economic control, and/or progressive social isolation. Relationship violence occurs in all type of relationships (i.e. heterosexual, same sex or any other type of relationship).

Relationship violence may constitute a violation of the sexual misconduct policy when it involves a Brandeis student and the conduct is gender-based.

What is Relationship Violence?

Relationship violence can include, but is not limited to:

- physical or emotional abuse
- controlling/possessive behavior
- making you feel like: you are walking on eggshells; you have to call your friends in secret; you must dress a certain way

#### ***Examples of Gender-Based Relationship Violence:***

- Gen's boyfriend Travis yelled at her today for being late for lunch. Travis grabbed Gen's arm and pulled her out of the dining hall. Gen was humiliated. Later Travis said he was so sorry for embarrassing Gen. Gen says things are okay now but she wonders when it will happen again. This would most likely be in violation of the policy.
- Kelly and Jordan, both students, have been dating since the beginning of the school year. Jordan always criticizes Kelly's weight in front of others, calling her "fatty." If Kelly gets upset about it, Jordan gets angry with her for being oversensitive. Kelly has lost a lot of weight recently and has started checking with Jordan before eating. Kelly has stopped hanging out with her friends since Jordan does not like them. Jordan is becoming more and more possessive with Kelly and she has starting doing whatever Jordan asks just to "keep the peace." Jordan's actions would most likely be in violation of the policy.
- Tony and Aaron have been dating for a month. Tony, a student, has always been jealous, but now he becomes angry when he does not know where Aaron is. He tells Aaron that he will kill him if he ever cheats on him. Tony also told Aaron that he would kill himself if Aaron ever left him. Two weeks ago, Tony slapped Aaron when

he was angry with him. A week ago, when Tony was late for dinner, he hit him so hard that he had bruises. Aaron is becoming more and more afraid of Tony, but he feels trapped and does not know what to do, fearing both for his own safety and for the well-being of Tony. These actions would most likely be in violation of the policy.

- Edward has been dating Rachel for a month. He doesn't know that Rachel identifies as transgender. Rachel confides in Edward that she is trans, which makes Edward very angry and he punches her in the face. Edward is most likely responsible for gender based relationship violence, which would most likely be in violation of the policy.

## **G. Retaliation**

Retaliation is strictly prohibited and may result in sanctions up to and including dismissal. Prohibited conduct includes any verbal or physical behavior or actions (including digital communications like texting or social media posts) that could be construed as retaliation for: (a) an individual's good-faith disclosure or report (to the Department of Public Safety, the Department of Student Rights and Community Standards, or another University official) about another person's behavior, or (b) an individual's participation in an informal or formal adjudication of the disclosed or reported behavior. Retaliation against the peer group, family, or associates of a reporter (third parties) is also prohibited, regardless of whether or not those individuals have participated in an adjudicative process.

### **1. What is Retaliation?**

Retaliation can include:

- Hostility
- Intimidation
- Threats
- Exclusion
- Discrimination because of the individual's complaint or participation in the investigative process

### **2. Examples of Retaliation and Retaliatory Conduct:**

Cory reported to the University's Title IX Coordinator that she felt her ex-boyfriend Danny was harassing her by repeatedly calling her derogatory names in email and on social media based on her female gender identity. The University began an investigation and notified Danny. Later that week, Trey, a good friend of Danny, confronted Cory and told her that if she insisted on pursuing the complaint "she would live to regret it." Trey's conduct would most likely be in violation of this policy.

## **Definition of Consent**

### **1. What is Consent?**

Consent is communication about sexual contact or sexual intercourse that is cognitively aware, explicit, affirmative and free of coercion, force or intimidation. While consent may be sought verbally or through actions, the manner of communication must be mutually

understandable as clear permission (including conditions and boundaries) for sexual contact or sexual intercourse.

Consent is active, not passive. Signals of consent must be part of a mutual and ongoing process, offered freely and knowingly. Consent can be given by words or actions as long as those words or actions create mutually understandable permission regarding the conditions of sexual activity. It is the responsibility of the person who wants to engage in the sexual activity to make sure that there is full consent from any other person(s) involved.

It is important to remember:

- Silence, by itself, cannot constitute consent.
- Consent to one sexual act does not constitute or imply consent to a different sexual act.
- Previous consent does not imply consent to future sexual acts. Consent is required regardless of the parties' relationship status or sexual history together.
- A verbal "no," even if it may sound indecisive or insincere, always indicates a lack of consent.

Consent cannot be obtained by use of force (as defined below), which includes coercion. Coercion is the use of frequent and/or intense pressure to compel another individual to initiate or continue sexual activity against their will after they have already communicated lack of consent. Coercion can include a wide range of behaviors, including intimidation, isolation, manipulation, threats, and blackmail.

## **2. *Consent May Not Be Given By:***

- a. 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 or asleep. It is a violation of the sexual misconduct policy (and Massachusetts law) to engage in sexual activity with someone you know or should know is incapacitated. See the definition of incapacity below for more information.
- b. Someone under the legal age of consent. The legal age of consent in Massachusetts is sixteen (16). It is a per se violation of the sexual misconduct policy (and Massachusetts law) to engage in sexual activity with a person who is under the age of consent, regardless of whether the person was a willing participant in the conduct.
- c. Someone who is mentally disabled. Certain mental disabilities can cause a person to be unable to knowingly consent to sexual activity. It is a violation of the sexual misconduct policy to engage in sexual activity with a person whose mental disability renders them incapable of giving consent and the disability is known or should have been known to the non-disabled sexual partner. Under these circumstances, the conduct is non-consensual regardless of whether the person appeared to be a willing participant.

## **3. *Use of Alcohol or Drugs:***

A person who has consumed alcohol and/or drugs still has a responsibility to obtain ongoing consent for any sexual activity with another person. The use of alcohol or other drugs by the person initiating sexual activity will never be accepted as an excuse for failing to obtain consent.

#### **4. Force**

Force may never be used to make someone submit or to complete sexual activity. The use of force to cause someone to engage in sexual activity is, by definition, non-consensual contact. The term "Force" includes the use of any of the following:

i. Physical Force, Violence, the Presence of a Weapon

Example: Jared and Maya return to his room after a party. They consensually begin kissing and touching each other. Jared wants to have sex, but Maya says she does not want to go that far. When Maya tries to get off the bed, Jared pushes her and holds her down and they have sex. Jared's use of force renders the sexual intercourse non-consensual and would most likely be a violation of this policy.

ii. Threats or Harassment

Example: Ian and Sean are friends who meet at a party. Ian confides in Sean that he has recently "come out" to a few friends, but most people do not know. Ian worries how people will react if they knew. As the evening progresses, Sean and Ian start kissing. Sean wants to have sex, but Ian tells him he is not ready for that. Sean threatens to "out" Ian on Facebook if he does not have sex with him. Out of fear, Ian submits to Sean although he does not want to. Any sexual activity that then occurs would most likely be a violation of this policy.

iii. Intimidation, Abuse of Power or Authority, Implied Threats

Example: Josh is a popular senior and the captain of a sports team on campus. He has brought Sofia, who is a new female athlete at school, to a party. Sofia would not have been able to get into the party if it was not for Josh's influence. Later in the evening, Sofia wants to leave, but Josh blocks her way with his body. He is significantly bigger than she is and she cannot get around him. Josh starts to kiss and touch Sofia, but she tells him to stop. Josh tells Sofia that if she wants to continue to get invited to the big parties on campus and if she wants to see any playing time this year, she will stay with him. Sofia does not want to be with Josh but she is worried about the impact he could have on her social and sports life if she refuses. If Sofia submits to Josh out of his implied threats and abuse of his status, it would most likely be in violation of this policy.

iv. Coercion or Duress

Example: Erin recently lost one of her parents and has been having a hard time this semester. Kyle, a friend of Erin's, comes to her room to watch a movie with her. When Erin starts crying and becomes upset, Kyle hugs and comforts her.

Eventually Erin and Kyle start kissing and touching one another. Erin wants to stop but Kyle tells her "you've made me so hot, how can you stop now?" When Erin tells Kyle she wants to be alone, Kyle asks what kind of a friend Erin is to leave him like this, especially when he came over to help her. Erin is confused and emotionally vulnerable. Kyle implies that she "owes him sex" after all he has done to support her. Kyle continues to pressure and cajole Erin until she eventually submits to his advances. If Erin submits to Kyle because of this coercion or duress, it would most likely be in violation of this policy.

## **5. Incapacity**

Incapacity is a mental or physical state in which a person cannot make a rational, reasonable decision because they lack the ability to understand the consequences of their actions. Incapacity literally means the inability to fully understand what is happening. First responders will assess someone's capacity or incapacity through the use of common questions such as "What is your name?", "Do you know where you are?", "Do you know what day it is?", and "Do you know how you got here?". This is called being oriented to person, place, time and event. Someone who cannot answer some or all of these questions accurately may lack the ability to make rational, reasonable judgments as a result of consuming alcohol, drugs or other intoxicating substances. A person may also be incapacitated because they are unconscious or asleep. In all of these situations, a person is incapacitated and therefore unable to consent to sexual activity. It is a violation of the sexual misconduct policy (and Massachusetts law) to engage in sexual activity with a person who you know or should know is incapacitated, regardless of whether the person appeared to be a willing participant. If there is any question regarding whether a person may be incapacitated, it is best not to engage in sexual activity with that person.

## **The Importance of Reporting**

If you have experienced any of the behaviors that have been described in this Policy, the University encourages you to seek help and support by reporting the conduct to the Title IX officer, a faculty member or a staff member. Reporting sexual misconduct can be difficult, and victim/survivors (or witnesses to such behavior) may experience a multitude of emotions when considering whether or not to report the conduct. However, the University encourages victims/survivors and complainants (or witnesses to such behavior) to prioritize their personal safety and physical/emotional well-being. It is important for victims/survivors to maintain their own health and safety. It is also important to report the conduct so that steps can be taken to prevent this from happening to anyone else.

Witnesses and victim/survivors should be assured that the focus in matters of Sexual Misconduct is always on the reported behavior, not on whether someone was using alcohol or drugs at the time. Individuals are encouraged to come forward and report such conduct regardless of the surrounding circumstances. In situations involving allegations of sexual misconduct, Brandeis University will, to the extent allowed by applicable laws and University policy, seek to make the sexual misconduct allegation the primary focus of any investigation or disciplinary action. Amnesty, as described in "Rights and Responsibilities," is granted to students who report sexual misconduct. This means reporting students will not be subject to disciplinary action for minor code infractions discovered as a result of contacting university officials or support staff. The Dean of Students Office reserves the right to take action to protect the health and safety of the individual and the community.