

REPORT OF UNIVERSITY ADVISORY COMMITTEE SUBCOMMITTEE ON SEXUAL VIOLENCE

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Introduction

Social justice, which is a pillar of Brandeis University's identity, must begin at home. Violence of any type in our midst tears at the fabric of who we are as a community, but sexual violence is a particularly pernicious form, because it goes to the heart of a person's being and can result in harms to students' physical and mental health, up to and including becoming suicidal. Survivors of such abuse may not be able to benefit fully from all that a Brandeis education has to offer. They may fall behind in their classes, perform less well on examinations, transfer out of Brandeis to avoid painful associations, or even drop out of school. If the University responds with compassion and fairness to students who have been sexually violated, it cannot undo the harm already done, but it can prevent the secondary trauma that occurs when such students are met with disbelief and insensitivity. The University is legally required under Title IX of the Higher Education Amendments of 1972 to eliminate the hostile environment created by the sexual violence and to remedy its effects.

Compassion and fairness toward sexual assault complainants fully accords with due process for accused students, for whom such an accusation precipitates a crisis in their lives. Were Brandeis not to ensure the rights of the accused, it would be failing to abide by the law, would harm individual accused students, and would erode the campus's confidence in the adjudication process. Failure to ensure due process would also ultimately harm survivors of sexual violence, who might become less willing to report within a system that did not enjoy widespread trust on campus. Further, faculty and staff might be less willing to report complaints or to inform students of their right to file formal grievances.

According to the best national research, 19% of female students and 6.1% of male students experience attempted or completed sexual assault during their time as undergraduates.¹ If this were to be true at Brandeis, then 389 women and 96 men would have such experiences during their undergraduate career.² The research has not yet

¹Christopher P. Krebs, Christine H. Lindquist, Tara D. Warner, Bonnie S. Fisher, and Sandra L. Martin, "The Campus Sexual Assault Study: Final Report" (Nat'l Criminal Justice Reference Serv., Oct. 2007, <http://www.ncjrs.gov/pdffiles1/nij/grants/221153.pdf>). This study was sponsored by the Department of Justice.

²See also the study of Historically Black colleges and universities, which assessed women only and found a somewhat lower figure, namely 14.9%, which the authors hypothesize could be related to lower alcohol consumption: Christopher P. Krebs, Christine H. Lindquist, and Kelle Barrick, "The Historically Black College and Universityampus Sexual Assault (HBCU-CSA) Study" (Nat'l Criminal Justice Reference Serv., Feb. 2011,

included gender nonconforming students, and Brandeis does not yet list statistics for such students, both of which are desiderata. Graduate students have not yet been the subject of a major national study. All of this points to the need for a serious survey of our campus to determine the incidence.

Only a very small percentage of students experiencing sexual assault report it to University officials. The Brandeis Department of Public Safety records the following statistics for forcible sexual offenses that occurred on campus or on official Brandeis trips and the like: 2010: 0; 2011: 2; 2012: 1.³ To be sure, many assaults happen at off-campus parties, but that far from explains the vast discrepancy between the likely incidence and the reports. The Brandeis Students Against Sexual Violence tumblr website testifies to this far greater incidence.⁴

This report is the result of over a year of information gathering; meetings with University administrators, faculty, staff, students, and an outside consultant; and deliberation on these. The report addresses the matters that this committee deems to be the most pressing concerning student-on-student sexual violence. Future work will need to attend to additional issues, including potential revisions to policies concerning verbal sexual harassment and sexual assault complaints about faculty and staff and the best procedures for adjudicating such complaints.⁵ At some points, this report proposes concrete policy changes, at others a framework for policy decisions.

In preparing this report, the committee consulted a number of governmental and other documents for guidance:

- “Not Alone: The First Report of the White House Task Force to Protect Students from Sexual Assault (April 2014);
- “Questions and Answers on Title IX and Sexual Violence” (April 2014) from the Department of Education’s Office for Civil Rights (OCR);
- “Dear Colleague Letter” (April 2011) from the OCR;
- “Revised Sexual Harassment Guidance: Harassment of Students by School Employees, Other Students, or Third Parties” (January 2001) from the OCR;
- “Blueprint for Brandeis University On Preventing and Addressing Campus Sexual Assault,” by Diane L. Rosenfeld, J.D., LL.M. (October 2013);
- “Beyond Title IX: Guidelines for Preventing and Responding to Gender-Based Violence in Higher Education,” by Ann Fleck-Henderson, et al., commissioned by Futures Without Violence and the Avon Foundation for Women (2012);
- “Campus Sexual Assault: Suggested Policies and Procedures,” American Association of University Professors (2013);
- “Call for Stronger Response, Prevention, and Awareness at Brandeis,” by Brandeis Students Against Sexual Violence (B.SASV; 2014); and

<https://www.ncjrs.gov/pdffiles1/nij/grants/233614.pdf>). This study was sponsored by the Department of Justice. If Brandeis were more comparable to the HBCUs, then 305 Brandeis women would have had such experiences as undergraduates.

³ The statistics for 2013 are not yet available. Email from Lieutenant Bette Reilly, June 20, 2014.

⁴ “Speakout! Brandeis” tumblr, by B.SASV, <http://speakoutbrandeis.tumblr.com/>.

⁵ See the Brandeis Human Resources website under “University Policies and Procedures” for the relevant current policies that govern harassment and violence by employees.

- “Speakout! Brandeis” tumblr, by B.SASV.⁶

Background

In response to a letter signed by all 20 WGS core faculty members in June 2011, the Faculty Senate held hearings on sexual violence against students that fall and asked Provost Goldstein to convene a faculty committee to make recommendations on Brandeis’s policies and procedures and their implementation and to report back to the Faculty Senate. That initial letter noted the extremely low reporting rate (one forcible sexual offense per year) and the fact that, although the Office for Civil Rights calls for schools to train its teachers, Brandeis has not provided such training. The WGS faculty members noted that, in contrast to Brandeis’s low reporting rate, the best national research indicates that a significant percentage of students experience attempted or completed sexual assault or rape during their undergraduate career. The Provost appointed this committee in the spring of 2013.

Improvements since 2011

The subcommittee applauds a number of improvements and developments that the administration has either initiated or supported:

1. 2014 positive response by Andrew Flagel to each of the eleven action items called for by Brandeis Students Against Sexual Violence (<http://www.brandeis.edu/svpse/announcements/announce1.html>). This contains many elements not otherwise explicitly enumerated here.

⁶“Not Alone: The First Report of the White House Task Force to Protect Students from Sexual Assault,” http://www.whitehouse.gov/sites/default/files/docs/report_0.pdf (“Not Alone”); OCR’s “Questions and Answers on Title IX and Sexual Violence,” April 2014, <http://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf> (2014 OCR Guidance); OCR’s April 2011 “Dear Colleague Letter,” <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html> (2011 OCR Guidance); (<http://www2.ed.gov/about/offices/list/ocr/docs/shguide.html>); “Beyond Title IX: Guidelines for Preventing and Responding to Gender-Based Violence in Higher Education,” by Ann Fleck-Henderson, et al., commissioned by Futures Without Violence and the Avon Foundation for Women (2012), <http://www.futureswithoutviolence.org/userfiles/file/PublicCommunications/beyondtitleIXfinal.pdf>; “Campus Sexual Assault: Suggested Policies and Procedures,” American Association of University Professors (2013), <http://www.aaup.org/report/campus-sexual-assault-suggested-policies-and-procedures>; “Call for Stronger Response, Prevention, and Awareness at Brandeis,” by Brandeis Students Against Sexual Violence http://www.change.org/petitions/stronger-sexual-assault-response-prevention-and-awareness-at-brandeis-university?recruiter=88794846&utm_campaign=petition_invitation&utm_medium=email&utm_source=share_petition; <https://www.facebook.com/bsasv>); Speakout! Brandeis” tumblr, by B.SASV, <http://speakoutbrandeis.tumblr.com/>.

2. 2014 appointment of Task Force for Sexual Assault Response, Services, and Prevention to be chaired by Sexual Assault Services and Prevention Specialist Sheila McMahon.
3. 2014 all-day training for faculty and staff on Title IX and the Clery Act, taught by the Victim Rights Law Center and the Clery Center and hosted by the Feminist Sexual Ethics Project. Dean of Arts and Sciences Susan Birren welcomed the group.
4. 2013–2014 introduction by Senior Vice President for Students and Enrollments Andrew Flagel first of “Sex Signals” and then of “Speak About It,” innovative theatrical trainings on consent and sexual assault as part of Orientation.
5. 2013–2014 public statements by Fred Lawrence, Steve Goldstein, and Andrew Flagel; participation by Andrew Flagel and Steve Goldstein in “Take Back the Night.”
6. 2013 hiring by Andrew Flagel of Sheila McMahon, M.Div., M.S.W., Ph.D. candidate, as Sexual Assault Services and Prevention Specialist. McMahon provides vital direct, confidential service to students in crisis, provides bystander intervention training to students, coordinates efforts across the campus, has created a resource guide for students, and provides policy recommendations to the University.
7. 2013 creation of a Title IX staff group that meets weekly to discuss cases.
8. 2013 all-day training for 300 college and university administrators, faculty, and staff, “Massachusetts Steps Up: Key Sexual and Domestic Violence Issues for College Administrators,” sponsored by the Massachusetts Department of Public Health and the Governor’s Council to Address Sexual and Domestic Violence Higher Education Working Group and hosted by the Feminist Sexual Ethics Project. President Fred Lawrence, Steve Goldstein, Andrew Flagel, and Brandeis students addressed the group.
9. 2013 introduction into the student code the requirement that consent to sexual acts must be sought affirmatively.
10. 2013 appointment by Steve Goldstein and Andrew Flagel of a committee to seek external funding from the Department of Justice’s Office on Violence Against Women, co-chaired by Sheryl Sousa and Bernadette Brooten.
11. 2012 introduction of the Special Examiner’s Process (SEP). Previously, a Student Conduct Board consisting of students, faculty, and staff adjudicated complaints. Having to appear before fellow students can create a significant disincentive to filing a complaint, and a trained investigator is more capable of posing questions, deciding which witnesses to interview, assessing evidence, and fairly applying the standard of evidence. Upon completion of the SEP, a panel of faculty and staff recommends an outcome (a sanction in the case of the finding of “responsible”) to the Senior Student Officer or Designee.
12. 2012 public conference convened by Anita Hill and Bernadette Brooten, “Disrupting the Script: Raising to Legal Consciousness Sexual Assaults on Black Women,” with support from the Office of the Provost and the Dean of Arts and Sciences and comments by Fred Lawrence and Steve Goldstein.

The subcommittee recognizes the increasing student activism since 2011, of which the following are just some examples. A number of students have communicated to us their significant dissatisfaction with current practices.

1. 2014 creation of “Speakout! Brandeis,” on which students have shared their experiences of having been sexually assaulted (<http://speakoutbrandeis.tumblr.com/>; <https://www.facebook.com/brandeisspeakout>).
2. 2014 change.org petition (signed by 2,696 persons, as of June 20, 2013): “Call for Stronger Response, Prevention, and Awareness at Brandeis,” with eleven concrete proposals, and accompanied by a student video by Brandeis Students Against Sexual Violence (http://www.change.org/petitions/stronger-sexual-assault-response-prevention-and-awareness-at-brandeis-university?recruiter=88794846&utm_campaign=petition_invitation&utm_medium=email&utm_source=share_petition; <https://www.facebook.com/bsasv>).
3. 2013–2014 workshops, lectures, and trainings led by Heller and other students, as part of ‘Deis Impact, in clubs, and in other settings.

SUBCOMMITTEE RECOMMENDATIONS

I. Title IX Officer, Reporting Obligations, and Training.⁷

In order to prevent and respond to sexual violence, the University needs to know when it occurs. The Title IX Officer should be widely known on campus and should be the repository for information concerning the incidence of rape and sexual assault. All “responsible employees” should be informed of their duty to report and should be trained in how to respond to disclosures.

A. Title IX Officer

The Title IX officer’s name and contact information should be listed in multiple locations on the Brandeis website, in printed brochures, and on stickers that are placed in restrooms and other places throughout the campus.

⁷ Until April 2014, the question whether or not faculty are required to report all disclosures of sexual assault was a gray area, with Title IX legal experts divided. In the fall of 2013, in order to ascertain whether or not faculty wish to be required to report all information concerning sexual violence disclosures, Bernadette Brooten met with five groups of faculty members (Faculty Senate, Chairs of Arts and Sciences, Heller, IBS, and NEJS), and the chair of Biology communicated that department’s views to her. A plurality of the faculty stated that they did not wish to be required to report, when the student had explicitly asked for confidentiality, on the grounds that that was disempowering to the student and could dissuade students from seeking support from trusted faculty members. A minority strongly supported a requirement to report, and a large group was undecided.

The President or the Provost should write to the entire faculty and all staff with reporting obligations on an annual basis, informing them of the Title IX officer and her duties. A “Sexual Assault Policy” should be placed on the Provost’s website and on a part of the website likely to be read by staff with reporting duties. It should outline the duty to report to the Title IX officer. A policy statement concerning Title VII obligations should be placed there as well.

Exceedingly few faculty members know that we have a Title IX officer (currently Linda Shinomoto in Human Resources), who she is, or what she does.⁸ No written Brandeis policy currently states that faculty or other employees are required to report sexual violence and harassment to the Title IX officer. (Similarly, very few know that faculty are required under Title VII to report harassment or discrimination based on race, color, religion, sex and national origin by employees, including by student employees.)

The OCR states that schools must publish a notice of non-discrimination that includes the contact information for the Title IX officer: “OCR recommends that the notice be prominently posted on locations throughout the school or campus and published in electronic and printed publications of general distribution that provide information to students and employees about the school’s services and policies. The notice should be available and easily accessible on an ongoing basis.”⁹

In apparent contravention of this recommendation, a search on the Brandeis website for “harassment” yields Brandeis research on harassment, but not Brandeis’s policy.¹⁰ In fact, the Brandeis policies on harassment and discrimination are *password protected* and are on the Human Resources website, where faculty would not think of looking for them. A search for “Title IX officer” shows that Brandeis has one, but one would not think of searching without already knowing what a Title IX officer does.

B. Faculty Reporting Obligations

The University should classify all faculty as “responsible employees,” thereby requiring them to report all known information concerning possible sexual violence and sexual harassment to the Title IX Officer, and it should train all faculty on how to respond to students who disclose to them that they or another student has experienced such violence or harassment.

We recommend that faculty receive in-person training of at least one hour in length during regularly scheduled departmental and program meetings and that trained

⁸ In the listening sessions that Bernadette Brooten conducted in the fall of 2013 with the Faculty Senate, the chairs of Arts and Sciences, Heller, IBS, and NEJS, nearly no one knew about a duty to report or to whom to report, although the Arts and Sciences chairs knew that they should report to the Dean of Arts and Sciences.

⁹ 2011 OCR Guidance, 6–7.

¹⁰ Search on June 20, 2014.

faculty serve as co-facilitators of these trainings.¹¹ Faculty should also be supplied with a one-page guide on what to do if a student seems about to report a sexual assault to them, and this information should be publicly available and easily searchable on the Brandeis website. The guide should instruct faculty members to communicate to students that the University may be able to keep their disclosure confidential, a committee (see below, I C and I D) will have to decide whether or not it may do so. Faculty also need to know what the procedure will be for investigating reports in the absence of a formal grievance, i.e., Community Standards Report (CSR). In order to stay abreast of current federal guidelines and research, such training should be repeated on a regular basis.¹²

**C. A Committee Should Determine When to Investigate against the Express Wishes of a Complainant
The University should designate at least one employee, but preferably three, to decide whether the University needs to investigate a complaint, even though the student has expressly requested confidentiality.**

The University needs to balance the safety of the campus as a whole with the need of sexual assault complainants to be in control of what happens to what they disclose. Forensic psychologist David Lisak's research illustrates the need to investigate all complaints. In his research on male students who admit to acts of sexual and other violence, a very small number (3% of the 1882 in his studies) admitted to committing an average of six rapes each.¹³ (Research in the military has revealed a similar pattern.) That is, according to current research, the vast majority of rapes are committed by a small number of repeat offenders. Thus, if a student truthfully discloses a sexual assault, the likelihood is very high that that same offender has assaulted or will assault others. In other words, not only this specific student needs support and a proper response, but the community as a whole also needs protection from this assailant, which can only be achieved by investigating concrete reports. The OCR and the White House Task Force succeed in balancing the need of the community to be protected from repeat offenders with the need of the rape complainant to maintain control over the process. Sexual assault epitomizes loss of control. A sexual assault survivor overcomes significant emotional and other hurdles in disclosing a deeply painful experience. For such a student explicitly to ask a faculty member to keep that information confidential only to be told that the matter is now out of their hands can be profoundly disempowering. The federal government has responded, "OCR strongly supports a student's interest in confidentiality in cases involving sexual violence....A school should be aware that disregarding requests for confidentiality can have a chilling effect and discourage other students from reporting sexual violence."¹⁴ The OCR and this committee recommend that highly trained

¹¹ The April 2014 U.S. Department of Education's Office for Civil Rights' "Questions and Answers on Title IX and Sexual Violence" (=2014 OCR Guidance), section D outlines the elements of such training.

¹² 2014 OCR Guidance, J-3.

¹³ David Lisak and Paul M. Miller, "Repeat Rape and Multiple Offending among Undetected Rapists," *Violence and Victims* 17 (2002) 73-84.

¹⁴ 2014 OCR Guidance, E-1.

individuals evaluate confidentiality requests and that the Sexual Assault Services and Prevention Specialist be consulted.

The April 2014 OCR guidance document and “Not Alone: The First Report of the White House Task Force to Protect Students from Sexual Assault” address these faculty concerns brilliantly.¹⁵ In order to ensure the safety of the campus as a whole, both strongly imply that faculty should be required to report. All those whom a school designates as “responsible employees”¹⁶ should inform students of their obligation to report, of the student’s right to request confidentiality, which the institution will consider, and of the option to speak instead with a confidential source on campus (counselor, chaplain, sexual assault advocate). At the same time, they direct responsible employees to disclose everything they know to the Title IX officer or designee, which means that the school is fully informed of all complaints, thereby helping the school to track them and to learn the names of those about whom there are multiple reports. The school, however, should only proceed against the express wishes of the complainant after considering such factors as multiple complaints about the same person; whether the alleged perpetrator has a documented history of violence or has threatened further sexual or other violence; and whether there were multiple perpetrators. If the University officials appointed to evaluate requests for confidentiality are well trained and follow the OCR guidelines, then the concerns of those faculty members who opposed being required to report are fully addressed.

C. Staff Reporting Obligations

The University needs to identify clearly which staff are “responsible employees” and which are not and to inform them of their duty.

The University needs to determine, for example, whether or not departmental and program administrators have a duty to report, and to announce that publicly.

Unfortunately, staff members with a known duty to report have not always done so. One committee member has reported three complaints of sexual harassment or attempted sexual assault to the Title IX Officer of which Brandeis staff members with a duty to report were aware but had not reported.¹⁷

D. Inform Complainants Desiring Confidentiality What will Happen after They Disclose

The Brandeis website should note that it will inform a complainant before disclosing their identity to the alleged perpetrator. Similarly, the website should reassure students that if they request that the University not investigate a complaint or seek discipline, but that it decides that the

¹⁵ 2014 OCR Guidance, D; “Not Alone,” 11–12.

¹⁶ “A responsible employee would include any employee who has the authority to take action to redress the harassment, who has the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees, or an individual who a student could reasonably believe has this authority or responsibility.” (2001 OCR Guidance, 13).

¹⁷ In response to the committee member’s inquiry, the Title IX officer confirmed that that person was the first to report these potential violations.

safety of the community requires an investigation, that it then will inform an alleged perpetrator that a complainant has specifically requested that the complaint not be investigated.¹⁸

II. Office of Public Safety

The Office of Public Safety needs to become one of the safest places for sexual assault complainants. Student complaints about Public Safety include: not enforcing No-Contact Orders, not recording reports of sexual assault and rape as such, and responding insensitively to student reports. While this committee cannot assess each of these complaints, our recommendations can help to prevent such problems.

A. No-Contact Orders

No-Contact Orders (NCOs) should specify in writing on the Order itself what constitutes a violation, such as: “You are not allowed to enter a space already occupied by XX.” Alternatively, they should be even more specific, such as stating the number of feet of distance that the person must keep from the other party.

Public Safety should file formal grievances (CSRs) against students who breach NCOs. Otherwise, these orders are toothless and do not protect sexual assault complainants.

Since Brandeis’s NCOs are not bilateral, which this committee supports, the person requesting the Order should not be led to believe that they themselves can violate it. It is for their protection and should not be a source of anxiety for them.

Public Safety should not grant NCOs to students accused of sexual violence against the primary complainant without very substantial evidence that the complainant poses a threat to them.

Public Safety has reported to this committee that it has not issued any CSRs for violations of NCOs in the past five years, in spite of the fact that six to eight persons reported that they had been breached.¹⁹ If Public Safety is not enforcing its own NCOs, then rape complainants and others seeking them are not being protected. The NCO is one of the main tools that the University uses to protect complainants. While Public Safety did respond to the committee’s initial inquiry concerning No-Contact Orders, it failed to reply to a follow-up email with further questions, in spite of four requests.²⁰ Among other questions, the follow-up email asked how many times an alleged perpetrator of sexual violence had been granted an NCO against a rape complainant. Although Public Safety would not provide that information, in two cases known to a committee member, two students either already found responsible for sexual acts without consent (the OCR definition of sexual violence) or already accused and subsequently found responsible

¹⁸ 2014 OCR Guidance, E-2.

¹⁹ Email from Lieutenant Bette Reilly, May 12, 2014.

²⁰ Email requests on May 12 and 27, and June 8 and 19, 2014.

were granted NCOs against a rape complainant. This practice is humiliating and intimidating to rape complainants. This committee recommends intensive training so that Public Safety officers are able to distinguish the primary aggressor in sexual and domestic violence cases. There may, of course, be cases in which a counter-NCO is justified. For example, some perpetrators preemptively accuse their victims of assault.

B. Campus Police Reports

Allow sexual assault and rape complainants to inspect the campus police report and to recommend changes to ensure accuracy.

This committee understands that there may be occasional law-enforcement reasons for not allowing the complainant to inspect the report, but doing so wherever possible will increase accuracy and raise the level of trust among students.²¹ Furthermore, this has already become the practice at least some of the time.

C. Intensive Training for All Campus Police Officers

Require all Brandeis police officers to attend intensive professional training.

The committee is pleased that a small number of Brandeis police officers will attend an intensive three-day training, “Investigation of Sex Crimes for Campus Police and Public Safety Agencies,” provided by Delores Stafford and Associates this June, and recognizes that these individuals can train the remainder of the force. Nevertheless, there is no substitute for multi-day, highly professional training for all campus police officers.

III. Dean of Students Office

The Dean of Students Office is responsible for determining interim measures to protect sexual assault complainants. When students perceive the Dean of Students Office to be fair, consistent, professional, and sensitive, they may be more likely to report. **Students report to us their particular appreciation for the professional, fair, and sensitive way in which Director of Student Rights and Community Standards Dean Gendron carries out his work.**

A. Interim Measures

Include in written materials a list of potential interim measures that a complainant might expect to have enacted for their protection.²²

B. Dean’s Restrictions

²¹ “In most situations, victims of criminal incidents may receive copies of reports filed by Brandeis Police officers as long as the release of the report does not jeopardize the investigation. In certain incidents some report information may have to be redacted for privacy reasons.” (Email from Director of Public Safety Edward Callahan, June 27, 2011)

²² 2014 OCR Guidance, G 1–3.

Provide precise, written instructions on what constitutes a violation to any student being restricted and clarify the precise relationship between specific Dean’s restrictions and an NCO.

C. Minimize the Burden on the Complainant

The Dean of Students should minimize the burden on the sexual assault complainant in any restrictions aimed at separating the complainant and the alleged assailant.²³ The complainant should be informed of all restrictions placed on the other party relevant to their own safety.

D. Consistency and Fairness

Apply restrictions consistently across cases. Once communicated to the student, keep the restriction in place and enforce it until a significant change warrants lifting it.

The Dean of Students should obviously not continue to restrict a student who has been found not responsible for sexual violence or a student whose accuser has withdrawn the grievance against them.

IV. Special Examiner’s Process

The Special Examiner’s Process performs the crucial roles of reducing the number of times that a complainant needs to repeat painful experiences, limits the persons in a small community who will hear the narrative and who will know which student has been accused, and ensures needed professionalism and equitability.

A. Retain a highly trained expert or experts as Special Examiner(s)

Amend *Rights and Responsibilities 22.6* as follows (addition in boldface):

Special Examiner:

The examiner of allegations and related evidence regarding the allegations. The Special Examiner, **who will be an attorney or law enforcement professional experienced in sexual assault investigations**, will conduct an investigation and prepare a report of their findings at the conclusion of the Fact-Finding Phase that is submitted to the Senior Student Affairs

²³ 20111 OCR Guidance, 15–16: “When taking steps to separate the complainant and the alleged perpetrator, a school should minimize the burden on the complainant, and thus should not, as a matter of course, remove complainants from classes or housing while allowing alleged perpetrators to remain.”

Officer or designee in support of the Responsibility Findings and/or Deliberations Phase of the process.

Retaining an expert, which the University has generally done, increases the likelihood of fairness to both parties, which ultimately also protects the school from liability.

B. The use of Special Examiners, which has likely contributed to the increased reporting of sexual violence, should be extended to all complaints determined by the Title IX Officer to warrant investigation. The University should spell out, in writing, its process for investigating reports of sexual harassment, including sexual violence, in the absence of a CSR.

Given that such investigations are as complex as those in which a grievance is filed, a Special Examiner (SE) should conduct any investigation determined necessary by the University officers responsible for deciding when investigations should proceed, including against the express wishes of the complainant.

These investigations will be limited in number and are as important for the safety of the community as those in which a grievance is filed. They will often be more difficult to carry out, because the primary witness, the complainant, may not wish to co-operate, for which reason they require even greater expertise.

**C. The Vital Role of Advisor during the Grievance Process
The University should specially train a group of faculty, students, and staff members willing to serve as Advisor and list those names on its website. For both sexual assault complainants and accused students, the grievance process is a time of crisis during which they need to have robust advocacy from a person not in a state of crisis. *Rights and Responsibilities* should be amended to read (deletion struck through, addition in bold):**

19.6.d.²⁴ Advisors: The Accused and the Accuser in a hearing may each bring an Advisor of their choice, from the University community to provide passive assistance during the hearing. ~~With the permission of the DSRCs administrator,~~ Advisors may be present for conduct meetings prior to, and after, the hearing, **and they may advocate for their Advisees outside of the immediate context of the hearing.**

The presence of the Advisor in other meetings should not depend on the permission of the Director of Student Rights and Community Standards. Both complainants and accused students deserve robust advocacy. This is a frightening process for both parties, and they cannot be expected to write every email on their own behalf or to be their own sole advocate in meetings with the Title IX Officer, the Dean of Students,

²⁴ 22.6 should be similarly amended.

or comparable meetings. Furthermore, students cannot be expected to know all of their rights and need the advocacy of a person better equipped to learn them.

D. Training of Panels
Provide Professional Training to Members of the Panels that Recommend Sanctions.

A best practice, found at a number of schools, is for outside experts to train panels and campus police officers at the same time. The training should include definitions of various forms of sexual violence, what constitutes consent, non-stranger rape and sexual assault, the impact of sexual violence, delayed reporting, sexual violence within the context of relationships, sexual assaults on men, varied cultural responses to sexual violence, LGBTIQ students, students with disabilities, international students, and U.S. students of color.

V. Investigation of Credible Complaints of Sexual Violence

The University has not always investigated all credible complaints. We recommend that the University comply with its legal obligation to do so.²⁵

VI. False Claims Charges

The false claims grievance option should be stricken from *Rights and Responsibilities* 7.5, the “Non-Discrimination and Harassment” policy, the “Non-Discrimination and Harassment Problem Resolution and Appeal Procedure for Claims of Harassment/Discrimination against Staff or Faculty” policy, as it provides assailants and harassers with an easy method of seeking revenge upon a complainant, which can have a deterrent effect on other complainants.

General Counsel Steve Locke writes: “The False Claims language has been in the policies since I arrived in 2005. It is legally permitted, but not necessary.”²⁶

VII. Definitions and Recommended Minimum Sanctions

A. Precise Definitions
***Rights and Responsibilities* should incorporate precise definitions**

²⁵ The Title IX officer has written that she will respond to an email request to know the number of complaints of sexual violence (as defined by the OCR) and sexual harassment that she has received since coming to Brandeis in December 2011, how many of those she has investigated--in the sense of interviewing eyewitnesses and the alleged victim/survivor; how many of the complaints to her have resulted in sanctions, and what the range of the sanctions was. When she does so, we will provide an addendum to this report.

²⁶ Email of October 22, 2013.

of sexual infractions, both so that students understand what is prohibited and so as to set sanctions proportional to the infractions.²⁷ It should also explain “when such conduct creates a hostile environment.”²⁸ Students should be directly involved in the process, especially in creating illustrative examples.

The OCR definition of “sexual violence” provides one framework: Sexual violence, as that term is used in this document and prior OCR guidance, refers to physical sexual acts against a person’s will or where a person is incapable of giving consent (e.g., due to the student’s age or use of drugs or alcohol, or because an intellectual or other disability prevents the student from having the capacity to consent). A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion.²⁹

The FBI’s definition of rape for uniform crime reporting provides a second framework: “The 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, without the consent of the victim.” The FBI’s press release explains that this is a departure from the previous definition: “The longstanding, narrow definition of forcible rape, first established in 1927, is ‘the carnal knowledge of a female, forcibly and against her will.’”³⁰

B. Affirmative Consent

We applaud the introduction in 2013 of the requirement of “affirmative consent,” that is, that consent is not the absence of a “no,” but rather the presence of a clearly communicated “yes.”³¹ We recommend clarifying that consent to one sexual act does not constitute consent to other sexual acts in the course of an encounter and that consent on one occasion does not imply consent on any subsequent occasion.³²

²⁷ The Sexual Assault Policy of the College of the Holy Cross provides one good model for precise definitions (<http://offices.holycross.edu/generalcounsel/policies-procedures/sapolicy>).

²⁸ 2014 OCR Guidance, C-5.

²⁹ 2014 Guidance, A-1.

³⁰ “Attorney General Eric Holder Announces Revisions to the Uniform Crime Report’s Definition of Rape,” Federal Bureau of Investigation, January 6, 2012: <http://www.fbi.gov/news/pressrel/press-releases/attorney-general-eric-holder-announces-revisions-to-the-uniform-crime-reports-definition-of-rape>)

³¹ “Consent must be sought affirmatively and clearly understood and communicated before engaging in any sexual activities.” (*Rights and Responsibilities* 3.0)

³² See, e.g., the policies of Antioch College (student code, p. 37: <http://antiochcollege.org/sites/default/files/pdf/student-handbook.pdf>) and Reed College (http://www.reed.edu/sexual_assault/definitions/consent.html).

C. Recommended Minimum Sanctions

We recommend that expulsion be the normally expected sanction for rape and the preferred sanction for an act of sexual violence as defined by the OCR other than rape.

Some schools, such as Dartmouth College, have moved toward mandatory sanctions, while others recommend minimum sanctions.³³ In order to allow the panel and the decider to take into a range of factors into account, we recommend some leeway, while at the same time ensuring that well-liked students not be treated differently from marginal ones or those that are weaker in any way. In addition, these guidelines will ensure that one panel will not hand down sanctions that diverge from those handed down by a different panel for a similar infraction.

Supplemental guidelines for panels to consider should include: whether there is a finding of multiple sexual assaults or one, whether the same student has previously been found responsible for sexual violence, whether the student employed force or threat of force, whether the student willfully incapacitated the other student, and whether the student displayed bias against a member of a protected class.

D. The Survivor's Wishes

The decider should consult with the survivor on the decision concerning sanctions and be cautious of applying a sanction that exceeds the survivor's wishes.

In the case of repeat offenders, the decider will need to take account both of the wishes of each survivor and of the safety of the community as a whole.

VIII. Training Students on Their Title IX Rights

The University should incorporate such training, which differs from the “Speak About It” program that is currently part of Orientation and the bystander intervention education offered by Sheila McMahon. The OCR states that schools should “ensure that students understand their rights under Title IX,”

³³ The following schools have instituted policies of mandatory or recommended minimum sanctions: Dartmouth College (<http://www.dartmouth.edu/~opa/statements/sa031814.html>), Duke University (<http://www.dukechronicle.com/articles/2013/07/09/duke-changes-sanctioning-guidelines-sexual-assault-cases>), Vassar College (<http://security.vassar.edu/statistics/sexassault.html>), Bard College (<http://www.bard.edu/dosa/handbook/index.php?aid=10766&sid=718>), Westmont College (http://www.westmont.edu/student_life/student_handbook/sexual-assault.html), and Moravian College (<http://www.moravian.edu/studentlife/handbook/disciplinary%5Cdisciplinary4.html>).

and outlines the minimal elements of training for students.³⁴

IX. Maintaining Confidentiality

The Psychological Counseling Center, the Dean of Students Office, and other offices of the University need to keep in strict confidence all information concerning sexual assault complaints unless there is a highly compelling need to share it, such as for the purposes of an investigation or to prevent a suicide.

FERPA gives University officials broad latitude in sharing student information for which there is an educational justification. Perhaps for this reason, University officials have occasionally shared information and impressions across departments that they should not have. Such transfer of information can be harmful to both complainants and accused students.

X. Increasing Cultural Competency and Serving a Diverse Student Body

A. Training in Cultural Competency for Faculty and Staff
Trainings for faculty and staff members should include discussion of the ways in which sexual violence occurs in each culture and ethnic group, but differently in each.

Brandeis's large international student population and its cohorts of domestic students from a range of backgrounds presents challenges for understanding how an individual student may respond to sexual violence. In some societies, the police would be the last to whom one would turn. In some, the shame to rape survivors is so overwhelming that they would not disclose to anyone. Male students arriving from some countries may have a quite inadequate understanding of consent. Harmful racial-sexual stereotypes can mean that students from some groups will be less likely to report out of fear that they will not be believed. Students from some groups may hesitate to report male assailants from their ethnic or religious group out of fear of confirming negative views of men from that group or if police are known to harass men of that group. Training for faculty and staff members and students need to take full account of these challenges.

B. Therapists Fluent in the Languages of Brandeis's Top Groups of International Students
We recommend that the Psychological Counseling Center contract with therapists fluent in global languages with expertise in sexual violence to serve Brandeis's large population of international students.

C. Assist International Crime Victims

³⁴ 2014 OCR Guidance, J-4; see also G-1.

The University should assist international complainants with applications for a U Visa, which is available to persons who have experienced specific crimes.

D. Obtain Knowledge Through Climate Survey

We recommend that the climate survey that Sheila McMahon will be conducting include questions on ethnicity, race, and culture.

XI. LGBTIQ Students

Trainings for faculty, staff, and students need to include components on sexual orientation and gender identity and expression, and all written materials, including *Rights and Responsibilities*, should include LGBTIQ examples.

Transgender individuals are at heightened risk for becoming the victims of sexual and physical violence, and this committee applauds the OCR for recognizing “discrimination based on gender identity or failure to conform to stereotypical notions of masculinity and femininity” as Title IX violations.³⁵ In addition, many people cannot imagine a woman assaulting another woman or cannot understand a man’s inability to protect himself from assault by another man. Beyond this, LGBTIQ students form a small community on campus, and students may hesitate to complain about another member of the community, or they may not wish to out the assailant or themselves by reporting an assault.

XII. Students with Disabilities

Persons with disabilities are at increased risk for being sexually violated.

A. Make Training Materials Accessible

All training materials and information should be accessible to persons with disabilities.

This would include large-font materials and electronic versions and in visuals at trainings, ASL interpretation at in-person trainings, holding trainings in wheelchair-accessible venues, saying everything aloud that is on a visual for visually impaired persons, and the like.

B. Appropriate Responses to Students with Mental-Health Disabilities Resulting from Sexual Violence

The University must respond fairly and appropriately to students who develop mental-health disabilities as a result of sexual violence.

Some students may fear to report sexual violence out of concern that,

³⁵ 2014 OCR Guidance, B-2.

if the mental health consequences of the assault or assaults are significant, the University may ask them to take a leave of absence. Many rape survivors experience suicidal ideation, and they may have heard about other schools placing on leave students with a history of suicidality.³⁶ They may believe, rightly or wrongly, that schools are particularly concerned about legal liability or about damage to their reputation when a student commits suicide on campus.

In addition, students who have experienced particularly severe abuse may become very difficult people with whom to work. They may come to distrust nearly everyone around them. If faculty and staff do not have adequate training on the very significant mental health effects of sexual violence, they will be unable to establish proper working relationships with such students.

UNIVERSITY ADVISORY COUNCIL SUBCOMMITTEE ON SEXUAL VIOLENCE: RECOMMENDATIONS FOR CHANGES TO *RIGHTS AND RESPONSIBILITIES*

Bernadette Brooten, Kim Godsoe, Co-Chairs
David Cunningham, Peter Kalb, Susan Lanser, Kelley Ready
(Janet McIntosh and Sheila McMahan [ex officio] are both currently on leave, but approved the bulk of these recommendations as part of the Subcommittee's June 2014 report)

November 2014

The Subcommittee commends the Division of Students and Enrollment for numerous improvements to *Rights and Responsibilities* in the 2014–2015 edition, including the inclusion of precise definitions of various infractions, greater specificity concerning the Title IX Officer, a Resource Guide for Sexual Assault Survivors, and more.

We recommend the following further improvements and clarifications:

I. Retention of a highly trained expert or experts as Special Examiner(s) (addition in boldface)

P. 52

“Special Examiner: The examiner of allegations and related evidence regarding

³⁶ Max Moran, “Psychology treatment on Yale campus needs immediate reform,” *The Justice*, February 4, 2014 (<http://www.thejustice.org/news/view.php/197153/Psychology-treatment-on-Yale-campus-need>), illustrates the effect of one campus's practices on the students of another.

the allegation(s)...The Special Examiner, **who will be an attorney or law enforcement professional experienced in sexual assault investigations**, may be a University employee or a contracted, external expert. The Special Examiner is appointed by the SVPSE or designee.”

Retaining an expert, which the University has generally done, increases the likelihood of fairness to both parties, which ultimately also protects the school from liability.

II. Extend the Use of Special Examiners to All Complaints Determined by the Title IX Officer to Warrant Investigation.

The use of Special Examiners, which has likely contributed to the increased reporting of sexual violence, should be extended to all complaints determined by the Title IX Officer to warrant investigation. The University should spell out, in writing, in *Rights and Responsibilities*, its process for investigating reports of sexual harassment, including sexual violence, in the absence of a CSR.

Given that such investigations are as complex as those in which a grievance is filed, a Special Examiner (SE) should conduct any investigation determined necessary by the University officers responsible for deciding when investigations should proceed, including against the express wishes of the complainant.

These investigations will be limited in number and are as important for the safety of the community as those in which a grievance is filed. They will often be more difficult to carry out, because the primary witness, the complainant, may not wish to co-operate, for which reason they require even greater expertise.

This should be spelled out on pp. 14 and following.

III. The Vital Role of the Advisor during the Grievance Process

The University should specially train a group of faculty, students, and staff members willing to serve as Advisor and list those names on its website. For both sexual assault complainants and accused students, the grievance process is a time of crisis during which they need to have robust advocacy from a person not in a state of crisis. *Rights and Responsibilities* should be amended to read (deletion struck through, additions in bold):

P. 5

Terms and Conditions

“Advisor: Any Brandeis community member who serves as a passive support person to an accuser or accused during an official meeting of a formal adjudication process, **and, who, in the case of an SEP, may advocate for the advisee outside of the immediate context of the hearing.**”

P. 51

22 Roles and Terms

“Advisor: The accuser and the accused may select the advisor of their choice to provide passive assistance during the SEP. The role of any advisor is passive and does not include writing or speaking on behalf of a party ~~throughout the duration of~~ **within the context of the SEP, but an advisor may advocate for the advisee outside of the immediate context of the hearing.**”

Both complainants and accused students deserve robust advocacy. This is a frightening process for both parties, and they cannot be expected to write every email on their own behalf or to be their own sole advocate in meetings with the Title IX Officer, the Dean of Students, or comparable meetings. Furthermore, students cannot be expected to know all of their rights and need the advocacy of a person better equipped to learn them.

IV.No-Contact Orders

The full subcommittee report contains a number of recommendations concerning No-Contact Orders. The subcommittee believes that trained Police Officers are better suited to issue and enforce No-Contact Orders than is the Dean of Students Office. Deletions are struck through, and additions are rendered in boldface:

P. 16

• “No Contact Orders/Dean’s Restrictions/Protective Measures: These documents may be issued by the ~~DOS Office, in cooperation with the~~ Department of Public Safety, in cooperation with the DOS Office, to ascribe clear, structured guidelines and boundaries between students who are involved in a conflict. The No-Contact Order is meant to protect the student who has complained of sexual violence and does not restrict their movement. The ~~DOS Office~~ **Department of Public Safety, in cooperation with the DOS Office**, can initiate, modify or terminate such orders, in consultation with the requesting party, as it deems appropriate.”

V. Definitions and Recommended Minimum Sanctions

A. Precise Definitions

The Subcommittee applauds the inclusion in the 2014–2015 *Rights and Responsibilities* of precise definitions of sexual infractions.³⁷ In accordance with

³⁷ The Sexual Assault Policy of the College of the Holy Cross provides one good model for precise definitions (<http://offices.holycross.edu/generalcounsel/policies-procedures/sapolicy>).

the 2014 OCR guidance document, it should also explain “when such conduct creates a hostile environment.”³⁸ Students should be directly involved in the process, especially in creating illustrative examples.

The OCR definition of “sexual violence” provides one framework: Sexual violence, as that term is used in this document and prior OCR guidance, refers to physical sexual acts against a person’s will or where a person is incapable of giving consent (e.g., due to the student’s age or use of drugs or alcohol, or because an intellectual or other disability prevents the student from having the capacity to consent). A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion.³⁹

The FBI’s definition of rape for uniform crime reporting provides a second framework: “The 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, without the consent of the victim.” The FBI’s press release explains that this is a departure from the previous definition: “The longstanding, narrow definition of forcible rape, first established in 1927, is ‘the carnal knowledge of a female, forcibly and against her will.’”⁴⁰

We applaud the following and related additions to the 2014–2014 edition of *Rights and Responsibilities*:

P. 10:
“The term ‘rape’ is one with variable definitions across jurisdictions and cultures. Brandeis chooses to avoid confusion by using the term ‘non - consensual intercourse.’ While the behaviors listed in this definition are often considered rape, it is important to remember that an accuser need not prove that rape occurred for a finding of responsibility to be reached in a section 3 allegation.”

P. 13:
3.1.g. “Non - Consensual Intercourse: Any penetration, however slight, with any

³⁸ 2014 OCR Guidance, C-5: A school should include: “adequate definitions of sexual harassment (which includes sexual violence) and an explanation as to when such conduct creates a hostile environment.”

³⁹ 2014 Guidance, A-1.

⁴⁰ “Attorney General Eric Holder Announces Revisions to the Uniform Crime Report’s Definition of Rape,” Federal Bureau of Investigation, January 6, 2012: <http://www.fbi.gov/news/pressrel/press-releases/attorney-general-eric-holder-announces-revisions-to-the-uniform-crime-reports-definition-of-rape>

body part or object by any student upon any other person that is without consent. Intercourse includes: vaginal penetration by any body part, such as a penis, object, tongue or finger, anal penetration by any body part, such as a penis, object, tongue or finger and oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the penetration or contact.”

B. Affirmative Consent

We applaud the introduction in 2013 of the requirement of “affirmative consent,” that is, that consent is not the absence of a “no,” but rather the presence of a clearly communicated “yes.”⁴¹ We recommend the following addition (in boldface):

P. 11:

3.1. “Sexual Misconduct Policy:...

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 a subsequent one, and consent on one occasion does not imply consent on any subsequent occasion.**”⁴²

C. Sanctions

We recommend the following alterations to the current policy:

“Sanctions for Non-Consensual Physical Contact: May Include: Education and Training, University Restrictions, Disciplinary Warning, Disciplinary Probation, Suspension or Dismissal. See section 20 for definitions of specific sanctions.

“Sanctions for Non-Consensual Intercourse ~~May Include: Disciplinary Probation, Suspension or Dismissal.~~ **Dismissal will be the normally expected sanction for Non-Consensual Intercourse whether or not it involved the use of physical force.** See section 20 for definitions of specific sanctions.

⁴¹ “Consent must be sought affirmatively and clearly understood and communicated before engaging in any sexual activities.” (*Rights and Responsibilities* 3.0)

⁴² See, e.g., the policies of Antioch College (student code, p. 37: <http://antiochcollege.org/sites/default/files/pdf/student-handbook.pdf>) and Reed College (http://www.reed.edu/sexual_assault/definitions/consent.html).

“Sanctions for Non-Consensual Intercourse that involves the use of physical force, threat or purposeful incapacitation will result in ~~removal~~ **Dismissal** from Brandeis University.”

The Brandeis definition of Non-Consensual Intercourse is nearly identical to the current federal definition, with the important addition of a man forced to have oral sex performed upon him, which is as invasive as being penetrated. The definition of Forcible Non-Consensual Intercourse (p. 13:3.1.h. “Forcible Non - Consensual Intercourse: Brandeis University recognizes a special category when physical force, threat/intimidation or purposeful incapacitation is employed in any or all of the violations above”) corresponds more closely to the previous, 1927 definition. While we recognize the harm and terror caused by the use of additional force beyond the rape itself, the harm intrinsic to the sexual violence of a rape, even in the absence of other force, warrants dismissal from the community. The technical term “Dismissal” should be used in 13.3.1.h, lest a student be allowed to transfer out of the school without the next school or a future employer being informed of the student’s dismissal. The University would then bear some moral responsibility for future assaults committed by that same person.

Some schools, such as Dartmouth College, have moved toward mandatory sanctions, while others recommend minimum sanctions.⁴³ In order to allow the panel and the decider to take into a range of factors into account, we recommend some leeway, while at the same time ensuring that well-liked students not be treated differently from marginal ones or those that are weaker in any way. In addition, these guidelines will ensure that one panel will not hand down sanctions that diverge from those handed down by a different panel for a similar infraction.

Supplemental guidelines for panels to consider should include: whether there is a finding of multiple sexual assaults or one, whether the same student has previously been found responsible for sexual violence, and whether the student displayed bias against a member of a protected class.

VI. Clarification that the Confidentiality Policy does not Preclude a Student from Disclosing the Outcome

The Subcommittee is in general agreement with the new confidentiality policy. Nevertheless, in order to be in compliance with the federal guideline that

⁴³ The following schools have instituted policies of mandatory or recommended minimum sanctions: Dartmouth College (<http://www.dartmouth.edu/~opa/statements/sa031814.html>), Duke University (<http://www.dukechronicle.com/articles/2013/07/09/duke-changes-sanctioning-guidelines-sexual-assault-cases>), Vassar College (<http://security.vassar.edu/statistics/sexassault.html>), Bard College (<http://www.bard.edu/dosa/handbook/index.php?aid=10766&sid=718>), Westmont College (http://www.westmont.edu/student_life/student_handbook/sexual-assault.html), and Moravian College (<http://www.moravian.edu/studentlife/handbook/disciplinary%5Cdisciplinary4.html>).

schools may not impose nondisclosure agreements on students, additional wording is necessary.⁴⁴ Additions are in boldface.

Pp. 35–36:

“Confidentiality Policy

“Confidentiality Policy: Brandeis considers student privacy to be of the highest importance....

“The policy extends to documents (paper or electronic) and other evidence related to a conduct process, **but not to outcome letters or assessment of the conduct process itself.**”

Fortunately, Andrew Flagel has clarified that the new confidentiality policy does “does not and will not prevent complainants from disclosing outcomes.”⁴⁵ Students publicly calling their schools to accountability for light penalties and other problems with disciplinary processes are largely responsible for bringing this issue to the attention of the public and has had a salutary effect. Furthermore, survivors should not be silenced about the ways in which institutions treat them. Finally, nondisclosure agreements contravene Title IX.

⁴⁴ The 2011 OCR guidance document prohibits nondisclosure agreements (p. 14):

“Postsecondary institutions also are subject to additional rules under the Clery Act. This law, which applies to postsecondary institutions that participate in Federal student financial aid programs, requires that **‘both the accuser and the accused must be informed of the outcome of any institutional disciplinary proceeding brought alleging a sex offense.’** Compliance with this requirement does not constitute a violation of FERPA. Furthermore, the FERPA limitations on redisclosure of information do not apply to information that postsecondary institutions are required to disclose under the Clery Act. **Accordingly, postsecondary institutions may not require a complainant to abide by a nondisclosure agreement, in writing or otherwise, that would prevent the redisclosure of this information.**” (Emphasis added.)

⁴⁵ Email of November 2, 2014.