



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

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The Formal Complaint Process (Process) includes the process and procedures that are available to students, employees (staff and faculty), and in some cases, third parties who believe they have experienced a violation of the Policy Against Discrimination, Harassment & Sexual Violence (Policy). When Brandeis is notified of a possible violation of the Policy, the Office of Equal Opportunity (OEO) will attempt to communicate with the person who experienced the alleged conduct regarding that incident.¹ OEO will inform the person who experienced the alleged conduct of supportive measures and resources, which are available (without fee or charge) regardless of whether a formal complaint has been filed or a process is being pursued. OEO will also inform the person who experienced the alleged conduct of the available options for addressing the conduct within the University, including formal and informal options. Individuals may also have the option to concurrently pursue separate legal remedies outside of the University, including filing criminal charges with the police, filing a civil legal action, and/or filing an administrative complaint (i.e., Office for Civil Rights, Massachusetts Commission Against Discrimination). When the University receives notice of a report of conduct that may violate the Policy, the person who experienced the alleged conduct will be reminded that they may choose to file a Formal Complaint or initiate the Informal Resolution Process. In some cases, the Institution may pursue a Formal Complaint even if the person who experienced the alleged conduct does not want to pursue action. If the Investigative Procedure is initiated, a determination as to whether the Policy was violated will be made regarding the alleged conduct through the Formal Resolution Process or Title IX Grievance Process, as applicable.

This Process is effective August 1, 2024, and applies to conduct occurring on or after that date. A prior version of this Process is applicable to conduct from April 2022, through July 31, 2024. For conduct that occurred prior to April 2022, please see the version of this Process that was in effect at the time the conduct is alleged to have occurred. Brandeis reserves the right to make changes to this Process as necessary. This Process is maintained, reviewed, and revised by OEO. The most up-to-date version of this Process that is currently in effect at the University can be found on the [OEO website](#).² If government regulations change in a way that impacts this Process, this Process will be construed to comply with government regulations in their most updated and applicable form, based on the effective date of the regulations in question.

¹ The Director of the Office of Equal Opportunity (Director) serves as the Title IX Coordinator for Brandeis University (oeo@brandeis.edu or 781-736-4806). As stated in the Policy, the Director/Title IX Coordinator is the university official authorized to coordinate and manage all aspects of the university's compliance with Title IX, including, but not limited to, the creation of Title IX policies and the adoption of grievance procedures providing for the prompt and equitable resolution of complaints of policy violations; the response to reports of alleged violations of the university's Title IX policies; the notification, investigation and disposition of complaints; the oversight of university employees and third party vendors engaged by the university to facilitate the notification, investigation and disposition of complaints; the development and delivery of training and education related to the university's Title IX policies; and the assessment of the university's effectiveness in responding to and remedying the effects of conduct that violates the university's Title IX policies.

² Please contact the Office of Equal Opportunity at 781.736.4806; OEO@brandeis.edu if you need assistance locating a prior version of this Process.

I. Jurisdiction

The Policy Against Discrimination, Harassment & Sexual Violence (Policy) applies to all students³ and employees (staff and faculty).⁴ It also applies to any other individuals while they are participating or attempting to participate in the University's programs or activities or are otherwise on campus.⁵ This Formal Complaint Process (Process) is available to students, employees, and any other individuals who allege they experienced prohibited conduct under the Policy while they were a student, employee, or otherwise participating in or attempting to participate in the University's programs or activities *and* Brandeis has disciplinary authority over the person alleged to have committed the prohibited conduct. This Process also applies to discrimination, harassment, and/or sexual violence that occurs off-campus. There is no time limitation for the submission of a Formal Complaint alleging a violation of the Policy. Matters will be adjudicated under the Process in effect at the time the alleged conduct occurred.

The University has jurisdiction over the person accused of the alleged conduct so long as they continue to be affiliated with Brandeis as a student or employee (staff or faculty).⁶ On occasion, the person accused of discrimination, harassment, or sexual violence may be someone who is not affiliated with or is no longer affiliated with, Brandeis University. Under those circumstances, the University's ability to respond to the incident may be limited. Brandeis can provide information about supportive measures & resources available, both on and off campus, to members of the University community who experienced the alleged conduct. The University can also provide information regarding any off-campus options that may be available to address the conduct, including referring the matter to law enforcement or another institution. When appropriate, Brandeis has the discretion to restrict a non-affiliated person's access to campus or other Brandeis property.

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

³ The term "student" means a person who has gained admission to Brandeis.

⁴ "Employees" refers to anyone employed by Brandeis in any capacity including faculty and staff.

⁵ For purposes of this Policy, conduct occurring "on campus" includes to conduct that occurs in a building owned or controlled by a student organization that is officially recognized by Brandeis.

⁶ Once a Formal Complaint is initiated, Brandeis may, at the discretion of the Director, maintain jurisdiction over a person accused of violating the Policy even if their affiliation with the University ends before the Formal Complaint is fully resolved.

allegations before making a determination regarding whether to initiate an Administrative Complaint.

II. Initiating a Formal Complaint

In order to pursue action for conduct alleged to have violated the Policy Against Discrimination, Harassment & Sexual Violence (Policy), the person who experienced the alleged conduct (student, staff, or faculty)⁷ will need to initiate a Formal Complaint. Note that a person, other than the Director of OEO or their designee, is entitled to make a complaint of Sex-Based Harassment or Harassment Based on a Protected Category Other than Sex only if: (1) they themselves are alleged to have been subjected to the harassment; or (2) if they have a legal right to act on behalf the person subjected to the harassment. Complaints alleging Discrimination Based on a Protected Category and/or Retaliation may be made by any student, employee, or other person who was participating or attempting to participate in the University's education or work program at the time of the alleged discrimination or retaliation, even if they were not subject to the alleged conduct themselves. A Formal Complaint cannot be initiated anonymously.

Once the Formal Complaint has been initiated, OEO will conduct an Initial Assessment to determine if that individual can then access the Informal Resolution Process and/or the Investigative Procedure. In either case, the person who experienced the alleged conduct, and who is initiating the Formal Complaint, will be referred to as the *Complainant*. The person against whom the Formal Complaint is made will be referred to as the *Respondent*. As discussed further in Section II.C, the University also has the discretion to serve as a Complainant through an Administrative Complaint.

A. Support Person/Advisor

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

⁷ A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant and/or a person other than a student or employee of Brandeis who is alleged to have been subjected to conduct that could constitute sex discrimination under the Policy at a time when that individual was participating or attempting to participate in the University's education program or activity may also initiate a Formal Complaint.

Opportunity (or their designee) (Director) and/or the Investigator with the identity and contact information (e-mail and telephone) of the support person/advisor who will be accompanying them to that meeting.

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

B. Complainant-Initiated Formal Complaint

Whether the Complainant chooses to initiate an Informal Resolution Process or the Investigative Procedure, they will need to make a *Formal Complaint*. The Formal Complaint is a document that is created by the Office of Equal Opportunity (OEO) from information provided by the Complainant. The request to initiate a Formal Complaint must be made to OEO (oeo@brandeis.edu 781- 736-4806) orally or in writing.⁸ OEO will conduct an initial assessment of the submitted information to determine whether the alleged conduct could be a violation of the Policy and/or whether the Investigative Procedure or the Informal Resolution Process are available options to address the reported concerns. The decision regarding whether either process is an available option will be made by OEO, at their discretion and in consultation with the Office of General Counsel, and the Office of Human Resources in matters involving employees.

1. **Statement (oral or written):** The Complainant must provide a statement (written or oral) to OEO outlining the details of the alleged incident(s) that is believed to have violated the Policy, including the name of the Respondent(s) and the date(s) (or approximate dates) and location(s) of the incident(s). From the information provided by the Complainant, a written Formal Complaint will be created. If the Statement is submitted in a form that does not meet these requirements, OEO will work with the Complainant to correct any deficiencies.
2. **Witnesses and Documents:** If a Complainant wishes to pursue the Investigative Procedure, then with the Formal Complaint, the Complainant should provide OEO with the names and contact information of any witnesses who may have relevant information about the alleged incident(s). The Complainant should include a brief description of what information a witness might have related to the alleged conduct. The Complainant

⁸ The request must be objectively understandable as a request for the University to investigate and make a determination about the alleged Prohibited Conduct or as a request to initiate the Informal Resolution Process. Reporting information to OEO without requesting either a formal investigation or an Informal Resolution Process will initiate a conversation with OEO but is not considered a request to initiate a Formal Complaint.

should also identify to OEO any documents that may be available regarding the incident(s), including emails, text messages, journal entries, or social media posts. Both parties should understand that any information gathered through the course of this Formal Complaint Process will be shared with the other party.

3. Review Privacy / Non-Retaliation Requirements: Each Party (and witness) will review a document containing information about the requirements of the Process regarding privacy and non-retaliation. Through a review of this document, the parties and witnesses should understand that while parties are not restricted from discussing the allegations in order to be able to gather information relevant to the Formal Complaint, they have been advised that there is a prohibition against retaliation and that they have been advised about the importance of maintaining discretion and privacy regarding the complaint to protect the integrity of the Process.

C. University-Initiated Formal Administrative Complaint

Brandeis has the option to independently initiate a Formal Administrative Complaint against a student or employee (staff or faculty) under the Formal Complaint Process. This type of complaint may be initiated in situations where the person(s) who experienced the alleged conduct is unable or uninterested in initiating the process (or continuing the process once initiated). This type of complaint can also be initiated when the conduct is discovered by the University (rather than through a report), or when the allegations are made by a non-affiliate (including a former affiliate) or third party. OEO has the option to initiate a Formal Administrative Complaint when sufficient information is available regarding the incident to provide the Respondent with adequate notice (as discussed below). To obtain sufficient information about the incident, usually, an account of the incident from the person(s) who experienced the alleged conduct will be required.

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

OEO has discretion in determining whether to initiate a Formal Administrative Complaint. In making this determination, OEO will consult with the Office of the General Counsel, and the Office of Human Resources in matters involving employees, and will consider the following factors non-exhaustive factors:

- The Complainant's request not to initiate a Complaint.
- The Complainant's reasonable safety concerns regarding initiating a Complaint.
- The risk that additional acts of discrimination would occur if a Complaint is not initiated.
- The severity of the alleged discrimination, including whether the discrimination, if established, would require the removal of a Respondent from campus or imposition of another disciplinary sanction to end the discrimination and prevent its recurrence.

- The age and relationship of the Parties, including whether the Respondent is a Brandeis employee;
- The scope of the alleged discrimination, including information suggesting a pattern, ongoing discrimination, or discrimination alleged to have impacted multiple individuals;
- The availability of evidence to assist a Decision-maker in determining whether discrimination occurred;
- Whether Brandeis could end the alleged discrimination and prevent its recurrence without initiating its resolution process.

If, after considering these and other relevant factors, the Director determines that the conduct as alleged presents an imminent and serious threat to the health or safety of the complainant or other person, or that the conduct as alleged prevents the University from ensuring equal access on the basis of a *Protected Category* to its education program, activity, or work environment, OEO may initiate a complaint.

III. Initial Assessment & Dismissal

When a Complainant-Initiated Formal Complaint is created, the Director of OEO or their designee (Director) will conduct a review and assessment of those allegations to determine whether the alleged conduct could be a violation of the Policy and/or whether the Formal Investigative Process and/or Informal Resolution Process are available options to address the reported concerns. The Director may dismiss a Formal Complaint if:

- The University is unable to identify the Respondent after taking reasonable steps to do so;
- The Respondent is not participating in a Brandeis education program or activity and is not a Brandeis employee;
- A Complainant voluntarily withdraws any or all of the allegations in the Complaint, and the Director declines to initiate a Formal Administrative Complaint
- The Director or their designee determines the conduct alleged in the Complaint, even if proven, would not violate the Policy.

The decision regarding whether to dismiss the Complaint will be made by OEO, at their discretion, based on the available information and in consultation with the Office of General Counsel, and the Office of Human Resources in matters involving employees. Dismissal can occur at any time during the Formal Complaint Process on the bases above.

OEO strives to complete the Initial Assessment of each Formal Complaint within 30 business days. If additional time is required, OEO will notify the Complainant that additional time is needed and will explain the reason for the delay. If the Respondent has been notified of the allegations, OEO will also provide the same information to the Respondent.

In situations where the Formal Complaint is dismissed but the alleged conduct is still something of concern to the University, OEO has the option to meet with the individual accused of the alleged

conduct to discuss the concerns.⁹ This conversation is meant to alert the accused individual to the concerns that were reported and to give them an opportunity to respond to those items. In situations where the accused individual is an employee (staff or faculty), their supervisor or dean may also participate in this conversation. The purpose of this conversation is to educate the accused individual about the Policy and to provide them with an opportunity to make any changes necessary to avoid violating the Policy in the future. This conversation is meant to be educational in nature and will be the only response to the reported concerns at that time. During the conversation, the accused individuals will be reminded about the prohibition against retaliation. A record of the conversation will be maintained by OEO and may be taken into consideration should future concerns of a similar nature be reported. If additional information regarding these allegations is reported to OEO, additional steps may be taken regarding that conduct in the future, including the initiation of a Formal Complaint, as appropriate.¹⁰

If a Formal Complaint is dismissed, OEO will promptly send the Complainant written notification of the dismissal and the rationale for doing so. If the dismissal occurs after the Respondent has been made aware of the allegations, OEO will also notify the Respondent of the dismissal. If another University policy may have been violated by the alleged conduct, the matter may be referred to the appropriate process.

IV. Appeal of Dismissal

If, during the Initial Assessment, or at any time during the Investigative Procedure, the Formal Complaint is dismissed, the Complainant may appeal. The Respondent may also appeal the dismissal of the Formal Complaint if dismissal occurs after the Respondent has been notified of the allegations. All dismissal appeal requests must be filed within five (5) business days¹¹ of the notification of the dismissal and must be accompanied by OEO's Dismissal Appeal Request Form and will be shared with all parties.

The Director of OEO or their designee (Director) will notify the Complainant and Respondent of any appeal of the dismissal. If, however, the Complainant appeals, but the Respondent was not notified of the Complaint, the Director will provide the Respondent with a Notice of the Formal Complaint, the dismissal, and the appeal. Upon receiving notice of an appeal, the non-appealing party will have five (5) business days to respond.

The grounds to appeal a dismissal are limited to:

⁹ OEO also has the discretion to initiate an Administrative Complaint, as discussed in Section II.C.

¹⁰ OEO may also engage in similar conversations when concerns about discrimination or harassment based on a protected category is reported to OEO but a Formal Complaint has not been initiated. OEO has the option of offering this as an Informal Resolution option, in which case it would foreclose a future Formal Complaint based on the same allegations. OEO may also initiate such a conversation on their own, in which case further action, such as a Formal Complaint or Formal Administrative Complaint would still be possible.

¹¹ All timeframes in the Formal Complaint Process can be extended at the discretion of the Director of the Office of Equal Opportunity. The decision to extend timeframes for parties will be made on a case-by-case basis for good cause with written notice to the parties, including the reason for the delay.

- 1) Procedural Error: The appellant alleges that (i) the procedural requirements of the Formal Complaint Process were not followed, *and* (ii) that deviation from the process changed the outcome of the Formal Complaint
- 2) New Information: The appellant alleges that, subsequent to the issuing of the dismissal, new information became available which could have impacted the outcome of the dismissal. The appellant must: (i) present the new information; (ii) show why it was not reasonably available prior to the dismissal; *and* (iii) show that the new information would change the outcome of the dismissal. If new information is presented, the Dismissal Appeal Officer has the option to ask the Director to reconsider the dismissal.
- 3) Conflict of Interest or Bias: The appellant alleges that the Director, Investigator, or a member of the Decision-Making Panel had a conflict of interest or bias for or against complainants or respondents generally or against the specific Complainant or Respondent to the Formal Complaint. The appellant must (i) specifically identify who is alleged to have the conflict of interest or bias; (ii) present specific information regarding the nature of the conflict of interest or bias for each individual identified; *and* (iii) show how the conflict of interest or bias changed the outcome of the Formal Complaint against the appellant.

Any appeal will be assigned to a trained Dismissal Appeal Officer chosen at the discretion of the Director of the Office of Equal Opportunity. If there is an allegation of bias against the Director, they will recuse themselves from the appeal process and the UAB panel members will be chosen by the Vice President for Diversity, Equity, and Inclusion (Vice-President). The selected Dismissal Appeal Officer will not have taken part in the Initial Assessment, Investigative Procedure, or Informal Resolution Process with respect to the Formal Complaint. If either the Complainant or Respondent believes there is a possible conflict of interest with the Dismissal Appeal Officer, it must be communicated to the Director within two business days. The Director then has the discretion to assign a different Dismissal Appeal Officer. At the conclusion of the response period, the Director will forward the appeal, as well as any response provided by the other Parties and/or the Director to the Dismissal Appeal Officer for consideration.

If the Request for Appeal does not provide information that meets one of the three grounds for appeal enumerated above, based on the preponderance of the evidence standard, the Dismissal Appeal Officer will deny the request, and the Parties, their Advisors, and the Director will be notified in writing of the denial and the rationale.

If any of the asserted grounds in the appeal satisfy any of the three grounds above, based on the preponderance of the evidence standard, then the Dismissal Appeal Officer will grant the appeal and notify the Director of their decision and rationale in writing. The Director will promptly notify all Parties and their Advisors, and the effect will be to reinstate the Formal Complaint.

In most circumstances, appeals are confined to a review of the written documentation or record of the original determination and pertinent documentation regarding the specific appeal grounds. The Dismissal Appeal Officer has seven (7) business days to review and decide on the appeal, though extensions can be granted at the Director's discretion, and the Parties will be notified of any extension.

V. Notice to the Respondent

After a Formal Complaint has been initiated and advanced through the Initial Assessment, the Respondent (student, staff, or faculty) will receive a written Notice of Formal Complaint.¹² This Notice will also be shared with the Complainant. The Notice of Formal Complaint will include the identities of the parties involved (if known); the specific section(s) of the Policy Against Discrimination, Harassment & Sexual Violence (Policy) alleged to have been violated; a brief description of the alleged conduct, and the date(s) (or approximate dates) and location(s) of the alleged conduct; a link to the Formal Complaint Process and, if applicable, Title IX Grievance Process; information about the Informal Resolution Process; a statement that retaliation is prohibited; and a statement that the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence.¹³ The Respondent will then have the opportunity to meet with the Office of Equal Opportunity (OEO) to review the Notice of Formal Complaint and to discuss the Informal Resolution Process, Investigative Procedure, Formal Resolution Process, and Title IX Grievance Process.

At this point in the process, the Respondent has three options: they can request an Informal Resolution as described in Section VI; they can accept responsibility for the conduct outlined in the Notice of Formal Complaint; or they can proceed through the Investigative Procedure described in Section VII.

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

There is a presumption in any process that the Respondent is not responsible for the alleged conduct until a determination has been made at the conclusion of the Formal Resolution Process or Title IX Grievance Process. Instead, the Investigative Procedure (as discussed below) is meant to gather relevant information about the alleged conduct to assist the decision-maker in making a determination of whether the Policy was violated at the conclusion of the applicable process. If additional possible Policy violations are identified at any point during the Investigative Procedure, and OEO decides to investigate additional allegations that are not included in the original Notice to the Respondent or that are included in a complaint that is consolidated with the original Formal Complaint, OEO will provide notice of the additional allegations to the parties whose identities are known.

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

¹² To the extent the University has reasonable concerns for the safety of any person as a result of providing this notice, the University may reasonably delay providing written notice of the allegations in order to address the safety concern appropriately. Reasonable concerns must be based on individualized safety and risk analysis and not on mere speculation or stereotypes.

¹³ In addition, the Notice will include all information required by applicable law or regulations.

1. **Statement:** The Respondent has the option to provide a statement (written or oral) to OEO outlining their response to the Notice of Formal Complaint. This statement must be submitted to OEO within seven (7) business days after receipt of the Notice of Formal Complaint. The Investigative Procedure may be started before the Respondent submits their statement. The Director of OEO may provide additional time for the statement at their discretion if the Respondent requests an Informal Resolution or otherwise determines an extension is appropriate.
2. **Witnesses and Documents:** The Respondent should provide OEO with the name and contact information of any witnesses who may have relevant information about the alleged incident(s). The Respondent should include a brief description of what information a witness might have related to the alleged conduct. The Respondent should also identify to OEO any documents that may be available regarding the incident(s), including emails, text messages, journal entries, or social media posts. This information should be submitted to OEO within seven (7) business days after the receipt of the Formal Notice of Complaint and can be supplemented as needed prior to the time the draft report is shared with the Parties.¹⁴ The Investigative Procedure may be started before the Respondent submits their witnesses and documents. The Director of OEO may provide additional time for the statement at their discretion if the Respondent requests an Informal Resolution or otherwise determines an extension is appropriate. Both parties should understand that any information gathered through the course of the Formal Complaint Process will be shared with the other party.
3. **Review Privacy /Non-Retaliation Requirements:** Each Party (and witness) will review a document containing information about the requirements of the Process regarding privacy and non-retaliation. Through a review of this document, the parties and witnesses should understand that while parties are not restricted from discussing the allegations in order to be able to gather information relevant to the Formal Complaint, they have been advised that there is a prohibition against retaliation and that they have been advised about the importance of maintaining discretion and privacy regarding the complaint to protect the integrity of the Process.

VI. Informal Resolution Process

This Informal Resolution Process is available to students, staff, faculty, and in some cases, non-affiliated parties. After the completion of the Initial Assessment (discussed above), and prior to the completion of the Investigative Procedure (discussed below) the Complainant and Respondent both have the option to request an Informal Resolution Process. Such informal resolutions can be used prior to, instead of, or during, the Investigative Procedure.

If either party makes a request for an Informal Resolution, the Director of the Office of Equal Opportunity (or their designee) (Director) will make the determination regarding whether the

¹⁴ See Section VII.G for information about new information provided during or as a result of review of the draft Investigative Report.

Informal Resolution Process will be an option in a pending matter based on a review and assessment of the allegations, the available information, and the interests of the parties and the University. If the Director determines that the Informal Resolution Process is an available option, OEO will reach out to the other party or parties to see if they would like to participate. Entering into the Informal Resolution Process is voluntary, and both the Complainant and Respondent must agree to participate. At no time is a party obligated to participate in an Informal Resolution Process.

If the parties agree to the Informal Resolution Process, the Director will assign a Facilitator trained on this Informal Resolution Process and will notify the parties of the Facilitator's identity. The Facilitator may be part of OEO or a designee. The parties will have 30 days from the date they are notified of the Facilitator's identity to reach a Resolution Agreement. Extensions of the 30-day period may be granted at the discretion of the Director, with the agreement of the parties and the Facilitator. The Director will decide whether to start, delay, continue, or stop the Investigative Procedure during the Informal Resolution Process, at their discretion. Either party has the option to discontinue the Informal Resolution Process at any time, and may also request that the Investigative Procedure be started or continued to conclusion. The University also has the discretion to terminate the Informal Resolution Process and continue with the Investigative Procedure or initiate the Formal Resolution Process or Title IX Grievance Process as deemed appropriate by the Director.

The parties should understand that the Facilitator will not disclose information during the Investigative Procedure that is shared with them by a party unless the party authorizes it. The Facilitator will not serve as a witness in the Investigative Procedure and will not provide information to the Investigator or Decision-Makers that they learned from a party during the Informal Resolution Process. Information shared between the parties during the Informal Resolution Process, however, is not subject to any such restrictions beyond the Privacy / Non-Retaliation Requirements and could be used during the Investigative Procedure.

Once assigned, the Facilitator will attempt to facilitate a Resolution Agreement that is agreeable to both the Complainant and the Respondent and acceptable to the University. The Facilitator will meet with the parties separately and determine with the parties whether to conduct the facilitation through shuttle negotiations (where the parties do not speak to each other directly but go through the Facilitator), joint facilitation sessions (in person or via Zoom), or through some other mutually agreed upon manner. Terms of a Resolution Agreement must be agreed to by the parties and must be acceptable to the University. What terms might be appropriate will vary depending on the allegations. Possible terms include but are not limited to: restrictions on contact and/or participation in University programs or activities or attendance at certain events; participation in a training or educational conversation or program or reflective activity; an agreement not to engage in certain conduct; and/or the provision of an apology. The terms of a Resolution Agreement cannot require action by anyone other than a party since the Resolution Agreement is only binding on the parties.¹⁵

¹⁵ Parties do not have the authority to stipulate restrictions or obligations for individuals or groups that are not involved in the Informal Resolution Process. The Director will determine whether additional individual or community remedies are necessary in addition to the alternative resolution.

At the conclusion of the Informal Resolution Process, if the parties are able to reach an agreement that is also agreeable to the University, a written Resolution Agreement between the parties will be created that contains the agreed-upon terms and an acknowledgment that the Resolution Agreement will be the final resolution of the pending matter for the University, meaning that the Formal Complaint will be dismissed, the pending matter will be considered closed, and the Formal Complaint Process will not subsequently be initiated with respect to any allegation in the Formal Complaint that is the subject of the Resolution Agreement. If the Resolution Agreement is violated or the terms are not followed/completed by one of the parties, that violation will be addressed for students as a conduct matter through the Department of Student Rights and Community Service and for employees by Human Resources, the Academic Deans and/or the Provost (or their designee), as appropriate. If no agreement is reached, the Investigative Procedure will continue.

VII. Investigative Procedure

After providing Notice to the Respondent or if the Informal Resolution Process is unsuccessful/does not resolve the Formal Complaint, the Director of the Office of Equal Opportunity (or their designee) (Director), will assign an Investigator who will be responsible for gathering information regarding the allegations raised in the Formal Complaint and will notify the parties of the Investigator's identity by email. The assigned Investigator may be an employee of the University or a trained professional from outside the University, at the discretion of the Director. The Director will assign an Investigator who does not have a conflict of interest or bias for or against complainants or respondents generally, and who has no conflict or bias against any of the parties to the Formal Complaint. If either the Complainant or Respondent believes there is a possible conflict of interest with the Investigator, that must be communicated to the Director within two business days. The Director then has the discretion to assign a different Investigator.

The assigned Investigator will have annual training and experience on issues of relevance, as well as discrimination, harassment, and sexual violence (sexual assault, dating violence, domestic violence, and stalking), and will be able to create an Investigative Report that fairly summarizes relevant evidence in the pending matter. Brandeis reserves the right to assign more than one investigator or a note taker in addition to the Investigator to a matter as deemed necessary by the Director at their discretion. In all cases, the Investigator will conduct a prompt, equitable, fair, thorough, and impartial investigation into the allegations raised.

A. Timing

Through this Investigative Procedure, the University strives to provide a process that is prompt, equitable, fair, thorough, and impartial toward all parties and witnesses involved (students, staff, and faculty). During the academic year, the goal is to complete the Formal Resolution Process within a reasonably prompt timeframe after the initiation of the Formal Complaint (and not from the time of when the matter was first reported), including any appeals. Depending on the complexity of the investigation and whether the Formal Resolution Process or Title IX Grievance Process is used, more or less time may be required to complete the process. The parties will be kept informed, in writing, at least every 30 days, regarding the progress of the Investigative Procedure, and are

welcome to contact OEO (781-736-4806; oeo@brandeis.edu) at any time for information regarding the status of the complaint. OEO strives to complete the Investigative Procedure within 75 business days of its initiation. If additional time is required, OEO will notify the parties that additional time is needed and will explain the reason for the delay. It should be noted that, while complaints will be processed to the best of the University's ability during break periods, including the summer and holidays, the availability of witnesses, parties, and/or University officials during these times can often require additional time for the completion of the Investigative Procedure. If a student Respondent is scheduled to graduate prior to the resolution of a Formal Complaint, a hold may be placed on their graduation and/or official transcripts until the complaint is fully resolved (including any appeal). As noted elsewhere, all timeframes in the Formal Complaint Process can be extended at the discretion of the Director of the Office of Equal Opportunity. The decision to extend timeframes for parties will be made on a case-by-case basis for good cause with written notice to the parties, including the reason for the delay.

B. Cooperation

When the Investigator wishes to speak with a party, they will provide written notice of the date, time, location, participants, and purpose of all meetings or proceedings with sufficient time for the party to prepare to participate. In order for the Investigation to be conducted in a timely manner, it is important that parties and witnesses make themselves reasonably available to the Investigator, including over holidays and breaks. The Complainant/Respondent and witnesses should know that they have an obligation to comply with instructions from University officials, including the Investigator, and are expected to cooperate with the Investigator throughout the Investigative Procedure.¹⁶ The Complainant/Respondent and witnesses should also know that they are prohibited from knowingly making false statements and/or knowingly submitting false information to the Investigator.¹⁷ Knowingly providing false information at any point in the Process may result in a separate disciplinary action.

If the Respondent chooses not to meet with OEO or the Investigator, they should understand that the Investigative Procedure will still continue without the benefit of their input. The Formal Complaint may still be adjudicated through the Formal Resolution Process or Title IX Grievance Process without the benefit of input from a non-cooperative party. The Investigator will reach out to the Complainant/Respondent to schedule these meetings. If a party does not respond to the Investigator within seven (7) business days after that initial contact or fails to make themselves reasonably available to meet with the Investigator, the party's opportunity to participate in the Investigation or any subsequent Process may be waived. The party would then have waived their

¹⁶ Students are not required to participate in the Investigative Process and the Investigator will not instruct them to do so. Nevertheless, if Students are participating, they need to comply with instructions from University Officials. See [Rights & Responsibilities](#), Section 2. Employees are expected to cooperate with administrators as part of their employment responsibilities and, with the exception of the person who allegedly experienced the Prohibited Conduct, are required to participate in the Investigative Process.

¹⁷ Students under the [Rights and Responsibilities](#) Section 1.2 and employees under the [Conduct Standards and Corrective Action Policy and Business Conduct Policy](#).

right to be heard and to participate in the Investigative Procedure and any subsequent Process by failing to respond to, or attend a meeting with, the Investigator.

C. Disability Accommodations

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

D. Providing Information

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

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

E. Scope of Investigation

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

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

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

within seven (7) business days after that initial contact, the Complainant/ Respondent's opportunity to participate in the Investigation and any subsequent process may close. The Complainant/Respondent may waive their right to be heard and to participate in the Investigation by failing to cooperate with the Investigator. If a party refuses to participate in the Investigation or provide all relevant information known and available to them at time of Investigation, that information cannot be presented for the first time in the Formal Resolution Process or Title IX Grievance Process barring exceptional circumstances, as determined by the Director.

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

F. Recording Interviews

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

G. Investigative Report and Review

Once the Investigation has been completed, the Investigator will prepare a draft Investigative Report summarizing the relevant facts obtained through the Investigative Procedure. The Investigator may draw conclusions regarding the credibility of statements by the Complainant, Respondent, witnesses, and the reliability of documentation. The Investigator will also identify any undisputed facts from the Investigation. Once the draft report is complete, the Complainant and Respondent (student, staff, or faculty) will each be given the opportunity to independently review the draft Investigative Report and any exhibits to that report. The parties will also be given access to all of the interviews and documentation gathered through the Investigative Procedure regardless of whether it was included in the draft Investigative Report (“gathered information”). The review of the draft Investigative Report and gathered information is expected to be done electronically, barring exceptional circumstances, as determined by the Director. At the written request of a party, the draft Investigative Report and gathered information may also be shared with their support person/advisor. The draft Investigative Report and the gathered information should not be shared, copied, downloaded, photographed, or circulated in any manner by the parties and/or their support person/advisor.

The Complainant/Respondent will be given access to the draft Investigative Report and gathered information for seven (7) business days. The Complainant and Respondent will have the option (but are not required) to provide written comments regarding the draft Investigative Report and the gathered information within that seven (7) business days period. Those comments should contain a party’s substantive comments on the content of the draft Investigative Report and gathered materials. The Investigative Report Review period is not the appropriate time for the submission of substantive information not previously disclosed in the Investigation, and such information will not be considered unless the Party provides a reasonable explanation as to why it was not submitted during the investigation. Such new information may or may not be included in the Final Investigative Report, at the Investigator’s discretion.

All submitted comments should be written by the parties (submissions by third parties, such as friends, family, advisors or attorneys may not be considered). Only comments to the draft Investigative Report that are submitted in writing to the Investigator within the seven (7) business day period will be considered in the Formal Complaint Process.

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

Based on the submitted comments from the parties and the results of any additional investigation, the Investigator will create the Final Investigative Report. The Investigator may include or address any comments submitted by the parties in that Final Investigative Report or create an addendum to the report to address any comments, at their discretion. Once the Final Investigative Report has been created, the Complainant/Respondent will each be given access for seven (7) business days to

the report, but there will be no additional opportunity to provide comments. At the written request of a party, the Final Investigative Report may also be shared with their support person/advisor. The Final Investigative Report should not be shared, copied, downloaded, photographed, or circulated in any manner by the parties and/or their support person/advisor. Once the Final Investigative Report has been completed and it has been shared with the parties, the Investigative Procedure will be closed.

H. Resolution of Formal Administrative Complaints

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

VIII. Process Determination

At the conclusion of the Investigative Procedure, the Director of the Office of Equal Opportunity (or their designee) (Director) will make a determination regarding whether the adjudication of the Formal Complaint will be made through the Formal Resolution Process or the Title IX Grievance Process. The Formal Resolution Process (Non-Title IX) will be used when the Formal Complaint contains allegations of conduct other than Sex-Based Harassment. If the Formal Complaint contains allegations that fall within the definition of Sex-Based Harassment of the Policy (Section IV.C), the allegations in the Formal Complaint will be adjudicated through the Title IX Grievance Process.

IX. Formal Resolution Process (Non-Title IX)

The Formal Resolution Process involves a review of the Final Investigative Report and any supporting materials by those who will determine if the Respondent violated the Policy Against Discrimination, Harassment & Sexual Violence (Policy) based on the conduct alleged in the Formal Complaint. The process for that determination and for assigning sanctions depends on whether the

Respondent is a student or an employee (staff or faculty). In situations where the Respondent is both a student and an employee of the University, the Director of the Office of Equal Opportunity (OEO)(or their designee) (Director), at their discretion, will decide which process will govern based on the role the Respondent was serving in at the time of the alleged incident. The University strives to complete the Formal Resolution Process within 30 business days of its initiation. If additional time is required, OEO will notify the parties that additional time is needed and will explain the reason for the delay.

A. Student Formal Resolution Process

Once the Investigative Procedure has closed, the Director will submit the Final Investigative Report and supporting documentation referenced in the report to a Decision-Making Panel of three people. The Decision-Making Panel will consist of three University employees (staff or faculty) who have been trained in the resolution of issues of discrimination, harassment and sexual violence. The three panel members will be chosen at the sole discretion of the Director, and their names will be communicated to the Complainant and Respondent once the Process Determination has been made. If either the Complainant or Respondent believes there is a possible conflict of interest with any of the members of the Decision-Making Panel, it must be communicated to the Director within two (2) business days. The Director then has the discretion to assign a different member to that panel.

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

The Decision-Making Panel will review the Final Investigative Report and any supporting documentation referenced in the report to determine whether they believe the Respondent is responsible for violating the Policy. The decision of the Decision-Making Panel will be made based on the *preponderance of the evidence* standard -- that is, whether the facts presented in the Final Investigative Report support a finding that it is more likely than not that the Policy was violated. The Decision-Making Panel will base the findings solely on the information presented in the Final Investigative Report and any supporting documentation referenced in the report. The finding of the Decision-Making Panel will be made by a majority. The Decision-Making Panel will issue their written findings on the Formal Complaint to the Director. That finding will then be referred to the Dean of Students Office who will issue the Notice of Outcome in the pending matter.

If the Respondent is found *Not Responsible* for violating the Policy, the Complainant and Respondent will both be notified by the Dean of Students Office (DOSO) reasonably simultaneously in writing of the outcome, the option to appeal, an explanation of when that outcome becomes final and the findings from the Decision-Making Panel. The Notice of Outcome will be issued to the parties within seven (7) business days after the findings have been made by the Decision-Making Panel. At this time, the Director will again give the parties access to the Final Investigative Report. At the Director's discretion, and in response to a written request from the parties, they may also be given access to review any supporting documentation and/or gathered information.

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

B. Employee Formal Resolution Process

Once the Investigative Procedure has closed, the Director will submit the Final Investigative Report and any supporting documentation referenced in the report to Decision-Makers. The Decision-Makers will consist of three trained individuals.¹⁸ The names of the Decision-Makers will be communicated to the Complainant and Respondent once the Process Determination has been made. If either the Complainant or Respondent believes there is a possible conflict of interest with any of the Decision-Makers, it must be communicated to the Director within two (2) business days. The Director then has the discretion to assign a different Decision-Maker.

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

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

If the Respondent is found *Not Responsible* for violating the Policy, the Complainant and Respondent will be notified by the Decision-Makers and/or Human Resources in writing of the outcome, the option to appeal, and an explanation of when that outcome becomes final. The written outcome

¹⁸ The three individuals will be selected at the Director's discretion and may include trained employees and/or outside professionals.

will include the findings from the Decision-Makers. The written Notice of Outcome will be issued to the Respondent (and Complainant as appropriate) within seven (7) business days after the finding has been made. At this time, the Director will again give the parties access to the Final Investigative Report. At the Director's discretion, and in response to a written request from the parties, they may also be given access to review any supporting documentation and/or gathered information.

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

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

C. Appeals

Both the Complainant and Respondent (student, staff, or faculty) are entitled to one appeal of the outcome to the Formal Complaint. The filing of an appeal will not stay imposition of any assigned sanction. If the Complainant or Respondent did not participate in the Investigative Procedure, as determined by OEO, that party will not have a right to appeal the final outcome. An appeal must be submitted in writing to OEO (oeo@brandeis.edu) within seven (7) business days of the receipt of the written outcome. The individual who files an appeal is known as the *appellant*. The appellant must submit an Appeal Form with their appeal which is available from OEO. If an appeal is not received within seven (7) business days, the outcome will be considered final and the Formal Resolution Process will be closed. The University strives to complete the Appeals within 30

business days of their initiation. If additional time is required, OEO will notify the parties that additional time is needed and will explain the reason for the delay.

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

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

The three grounds for appeal are:

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

Appeals will be decided by a University Appeals Board (UAB) of three people. The UAB will consist of three staff or faculty who have been trained in the resolution of issues of discrimination, harassment, and sexual violence. The members of the UAB will include different individuals from

those who served as the Decision-Makers or the Decision-Making Panel. The three UAB panel members will be chosen at the sole discretion of the Director (or their designee), who will communicate those names to the appellant and the non-appealing party, if they responded to the appeal. If there is an allegation of bias against the Director, they will recuse themselves from the appeal process and the UAB panel members will be chosen by the Vice President for Diversity, Equity, and Inclusion (Vice-President). If either party believes there is a possible conflict of interest with any of the UAB members, they must communicate that to the Director within two (2) business days. The Director then has the discretion to assign a different member to the UAB. Once the appeal has been submitted to the UAB for consideration, there will be no further opportunity to raise potential conflicts of interest.

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

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

X. Other Considerations

A. Amnesty

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

- underage drinking or other alcohol infractions
- individual drug use
- unregistered party

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

B. Right to Investigate and Decide Other Conduct Violations

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

C. Criminal Conduct

Some of the behaviors addressed by the Policy Against Discrimination, Harassment & Sexual Violence (Policy) may also constitute violations of criminal law. The University will conduct its own investigation and adjudication of conduct alleged in the Formal Complaint Process, regardless of whether the alleged conduct is also being pursued through the civil or criminal justice system. The University will comply with any law enforcement requests for cooperation regarding its Investigative Procedure, Formal Resolution Process, or Title IX Grievance Process. At times, that cooperation may require the University to temporarily suspend its Process while law enforcement gathers

information. The University will promptly resume the Process as soon as it is notified that doing so would not impede or interfere with any law enforcement activities. The University reserves the right to restrict a student's or employee's access to the campus if criminal charges are filed against that individual.

D. Family Notification

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

E. Maintenance of Records

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

This policy is for general guidance only. It does not create an employment contract or any right to continued employment at Brandeis University. Brandeis University reserves the right to modify, revoke, suspend, terminate and/or change any and all policies and procedures at any time, with or without notice.

Office of Equal Opportunity

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