

No. 97-P-1868.  
Appeals Court of Massachusetts,  
Middlesex.  
Argued May 11, 1999.  
Decided Sept. 30, 1999.

Student disciplined by private university sued university and individual university administrators and faculty members, seeking injunctive relief and compensatory damages. The Middlesex County Superior Court Department, Herman J. Smith, Jr., J., granted university's motion to dismiss complaint for failure to state claim upon which relief could be granted, and student appealed. The Appeals Court, Kass, J., held that: (1) student was entitled at common law to hearing that substantially, but not rigidly, observed procedures laid out in university code; (2) allegation that university failed to make careful evaluation of facts and credibility of persons reporting them was sufficient to state common-law claim; (3) allegation that university failed to make adequate record of proceedings was sufficient to state common-law claim; (4) allegation that university received irrelevant and inflammatory evidence was sufficient to state common-law claim; (5) allegation that university failed to apply clear and convincing evidence standard was sufficient to state common-law claim; (6) allegation that university failed to accord student process due under university code was sufficient to state common-law claim; and (7) university's inquiry into disciplinary charges did not violate student's statutory right to privacy. Affirmed in part; vacated and reversed in part.

[1] COLLEGES AND UNIVERSITIES k9.30(7) 81k9.30(7) Student's request for review of private university's disciplinary actions against him was not rendered moot by passage of sufficient time to enable student to graduate or complete his undergraduate work elsewhere, as student requested money damages as part of relief sought and notation of disciplinary action in his student record had potential to harm his career.

[2] APPEAL AND ERROR k919 30k919 Allegations in complaint, and inferences to be drawn from them, must be taken as true for purposes of deciding whether dismissal of complaint for failure to state claim upon which relief can be granted was correct. Rules Civ.Proc., Rule 12(b)(6), 43A M.G.L.A.

[3] COLLEGES AND UNIVERSITIES k9.30(7) 81k9.30(7) Courts are chary about interfering with academic and disciplinary decisions made by private colleges and universities; deference is born of respect for independence of private associations and disinclination by courts to be drawn into their internal governance.

[3] COLLEGES AND UNIVERSITIES k9.35(4) 81k9.35(4) Courts are chary about interfering with academic and disciplinary decisions made by private colleges and universities; deference is born of respect for independence of private associations and disinclination by courts to be drawn into their internal governance.

[4] COLLEGES AND UNIVERSITIES k9.30(7) 81k9.30(7) Reluctance of courts to become involved in

student discipline diminishes as subject matter graduates from academic issues to misconduct: court is most unlikely to adjudicate whether exam was graded fairly or student was fairly disciplined for poor academic performance; degree of deference will still be considerable if student is disciplined for nonacademic activity involving concerns peculiar to educational institution; and least deference is afforded administratively imposed discipline for misconduct such as theft or rape, as such presents subject matter familiar to courts and mars student's record in manner likely to have serious consequences for student outside academic setting.

[4] COLLEGES AND UNIVERSITIES k9.35(4) 81k9.35(4) Reluctance of courts to become involved in student discipline diminishes as subject matter graduates from academic issues to misconduct: court is most unlikely to adjudicate whether exam was graded fairly or student was fairly disciplined for poor academic performance; degree of deference will still be considerable if student is disciplined for nonacademic activity involving concerns peculiar to educational institution; and least deference is afforded administratively imposed discipline for misconduct such as theft or rape, as such presents subject matter familiar to courts and mars student's record in manner likely to have serious consequences for student outside academic setting.

[5] COLLEGES AND UNIVERSITIES k9.30(7) 81k9.30(7) Court has duty to examine whether private university's disciplinary proceedings, including hearing, have been conducted with basic fairness.

[6] COLLEGES AND UNIVERSITIES k9.30(7) 81k9.30(7) Hearing afforded student at private university who is accused of misconduct should be appropriate to nature of case, and, therefore, must be conducted with greater care, and will be reviewed by court with greater scrutiny, when underlying offense is one that society would regard severely, such as theft, distribution of drugs, or rape.

[7] COLLEGES AND UNIVERSITIES k9.30(7) 81k9.30(7) When private university, or, more generally, private association, provides for hearings in university code, student is entitled to hearing, and adjunct proceedings, that substantially observe institution's code.

[8] COLLEGES AND UNIVERSITIES k9.30(7) 81k9.30(7) Scope of right of student at private university to be disciplined in accordance with procedures set forth in student manual may be defined in terms of common-law right of member of association not to be dismissed or otherwise disciplined without substantial adherence to that association's rules; principle of adherence to institution's self-prescribed procedures does not require rigid compliance or adherence to process consistent with basic fairness on federal or state constitutional imperatives, but on common law rules.

[9] COLLEGES AND UNIVERSITIES k9.30(7) 81k9.30(7) Student subjected to discipline by private university on basis of conduct in violation of university code but not related to academics, was entitled to hearing that substantially, but not rigidly, observed procedures laid out in university code.

[10] COLLEGES AND UNIVERSITIES k9.30(7) 81k9.30(7) Student's allegation that private university failed to make careful evaluation of facts presented in disciplinary proceeding against him and of

credibility of persons reporting them, as required by university code, was sufficient to state common-law claim against university for failing to substantially conform its disciplinary process to requirements of its code.

[11] COLLEGES AND UNIVERSITIES k9.30(7) 81k9.30(7) Student's allegation that private university failed to make record of disciplinary proceeding against him, as required by university code, was sufficient to state common-law claim against university for failing to substantially conform its disciplinary process to requirements of its code; according to student's complaint, hearing lasted five and one-half to six hours and involved thirteen witnesses, but record contained only 12-line summary of his testimony and that of his accuser.

[12] COLLEGES AND UNIVERSITIES k9.30(7) 81k9.30(7) Student's allegation that private university received irrelevant and inflammatory evidence in disciplinary proceeding against him, in violation of competence requirements with respect to evidence in such proceedings as set forth in university code, was sufficient to state common-law claim against university for failing to substantially conform its disciplinary process to requirements of its code; university police officer was allowed to testify that when she saw complainant one month after encounter with student, "[complainant] looked like a rape victim," and another witness was allowed to give opinion that student was "a self-motivated egotistical bastard who had no respect for women."

[13] COLLEGES AND UNIVERSITIES k9.30(7) 81k9.30(7) Student's allegation that private university failed to apply clear and convincing evidence standard in disciplinary proceeding against him, as required by university code, was sufficient to state common-law claim against university for failing to substantially conform its disciplinary process to requirements of its code; according to student's complaint, university's record of hearing disclosed no more than "she said" against "he said."

[14] COLLEGES AND UNIVERSITIES k9.30(7) 81k9.30(7) Student's allegation that private university failed to accord him process due under university code in regard to disciplinary proceeding against him was sufficient to state common-law claim against university for failing to substantially conform its disciplinary process to requirements of its code; student alleged that faculty member assigned to advise disciplinary board, three-quarters of which was made up of students, did nothing to advise board members as to how they should adjudicate accusation against student.

[15] COLLEGES AND UNIVERSITIES k9.30(7) 81k9.30(7) Requirements of Miranda would not be imputed to private university's dealings with student accused of violation of disciplinary rules set forth in student handbook, and university administrator did not commit actionable misconduct by failing to inform student that complaint had been lodged against him.

[16] COLLEGES AND UNIVERSITIES k9.30(5) 81k9.30(5) Disciplinary action taken by private university, its administrators and faculty members against student could not amount to interference with contractual relations, as university was party to contractual relationship allegedly interfered with and administrators and faculty members were acting in course of their official duties.

[17] COLLEGES AND UNIVERSITIES k9.30(5) 81k9.30(5) Private university's notice to student that accusation had been made against him and disciplinary proceeding commenced did not amount to direct assault upon student's exercise of any right enjoyed by him under state constitution, in absence of any accusation of threats, intimidation or coercion, and could not serve as basis for statutory cause of action against university. M.G.L.A. c. 12, ss 11H, 11I.

[18] COLLEGES AND UNIVERSITIES k9.30(5) 81k9.30(5) Private university's inquiry into disciplinary charges against student did not violate student's statutory right to privacy; university had duty to inquire into charge that student had violated university code of conduct, and had legitimate countervailing interest in disclosing facts of personal and intimate nature. M.G.L.A. c. 214, s 1B.

\*\*1058 \*23 David M. Lipton for the plaintiff.  
Alan D. Rose, Boston, for the defendants.

Present: KASS, PORADA, & LENK, JJ.

KASS, J. As framed, the charges upon which Brandeis University (Brandeis) disciplined David Arlen Schaer, a third-year undergraduate, were (1) engaging in unwanted sexual activity; and (2) creating a hostile environment for the accuser, both offenses in violation of the rights and responsibilities section of the student handbook. The university board on student conduct found Schaer to have committed those infractions and disciplined \*24 him with a three-month suspension and by placing him on disciplinary probation for his last college year. On appeal the parties present questions about the availability and extent of judicial review of a private university's disciplining of one of its students. Schaer filed a seven-count complaint in Superior Court asking for injunctive relief and compensatory damages; the former was denied and, thereafter, the complaint as a whole was dismissed for failing to state a claim for which relief can be granted. Mass.R.Civ.P. 12(b)(6), 365 Mass. 755 (1974). We affirm in part and reverse in part that disposition.

Stripped of euphemism, Brandeis's complaint against Schaer was that he raped a fellow student; i.e., the accusing student said that after some foreplay she had told Schaer she "did not want to have sex" and then, while awakening from sleep, found Schaer inside her. [FN2] Schaer's response was that the sexual intercourse in which he had engaged with his accuser was not merely consensual, but had been urgently and ardently invited by her. He asked for and received a hearing before the university board on student conduct (board). That board consisted of six students (counting the chairperson as a student--the record is not clear on the point) and two faculty members. [FN3] Thirteen witnesses (including the principals) appeared before the board. As noted, the board found Schaer responsible for the violations charged. The sanction of suspension bridged the summer recess but forbade Schaer's being on Brandeis property. That sanction was not without consequence because Schaer had intended to spend the summer continuing work on a biomedical research project in a Brandeis laboratory. In addition, the board ordered \*25 Schaer: on probation for \*\*1059 the balance of his "time as a student at Brandeis"; to avoid any and all contact with his accuser; and to "[u]ndergo appropriate professional counseling and provide proof of same to the Dean of Student Affairs." Schaer filed a request for a new hearing before the university

appeals board on student conduct (appeals board). The appeals board "did not find sufficient merit in [Schaer's] written presentation to grant a new hearing." [FN4]

FN2. The texts of the sections of the student handbook rights and responsibilities code that Schaer was said to have violated are as follows:

"2.1 [A student is expected and required to] respect the integrity and personal rights of others.

Intimidation of, threats to, physical abuse of, or harassment ... which threatens or endangers the health, safety or welfare of a member of the University community is unacceptable."

"6.3 At Brandeis University, any faculty member, employee, or student who sexually harasses a member of the University community shall be subject to disciplinary action, up to and including termination of employment or dismissal of a student from the University. Sexual harassment includes unwelcome sexual advances, requests or demands for sexual favors, and other verbal or physical conduct of a sexual nature."

FN3. Rick Sawyer, associate dean of students and director of campus life, acted as "adviser of the board."

FN4. By this time Schaer had employed counsel and he had the assistance of counsel in requesting a hearing by the appeals board.

[1] These events occurred in the winter and spring of 1996, i.e., the encounter was in the early hours of February 14, and the appeals board denied rehearing on May 13, 1996. By now, Schaer would either have graduated or completed his undergraduate work elsewhere. There is no suggestion of mootness, however, because there are claims of money damages and, more significantly, because notation of the board's decision in Schaer's student record has potential for harming his career. See *Greene v. Howard Univ.*, 412 F.2d 1128, 1130-1131 (D.C.Cir.1969); *Clayton v. Trustees of Princeton Univ.*, 608 F.Supp. 413, 436 (D.N.J.1985), quoting from an earlier decision involving an earlier phase (summary judgment) of the same case reported at 519 F.Supp. 802, 805 (D.N.J.1981); Note, *Common Law Rights for Private University Students*, 84 *Yale L.J.* 120, 129 (1974). Schaer's complaint is anything but a "short and plain statement of the claim." *Mass.R.Civ.P.* 8(a)(1), 365 *Mass.* 749 (1974). It sends 125 paragraphs sprawling over thirty-four pages. One gets the point; Schaer alleges that the Brandeis disciplinary process was fundamentally unfair. That is not a promising claim as the student manual attached as an exhibit to the complaint describes a procedure that is manifestly adequate for a private association. There are, however, more specific allegations that Brandeis in Schaer's case did not abide by the rules it set for itself and students in the rights and responsibilities code (code). Those are:

(a) Brandeis failed, prior to bringing the complaint against Schaer before its "judicial system," to make a careful evaluation of the facts and of the credibility of persons reporting them as required by s 17 of the code [FN5]; FN5. The complaint paints with a broader brush and says on this point, "No investigation was made before the charge was issued."

(b) The board failed to make a record of the proceedings, as required by s 19.4 of the code;

\*26 c) The hearing panel received irrelevant and inflammatory testimony and arbitrarily excluded relevant evidence, in violation of s 19.13 of the code;

(d) The hearing panel failed to apply the "clear and convincing evidence" standard established for decision making by s 19.13 of the code;

(e) The hearing panel and its advisor failed woefully in according Schaer the procedural due process required by s 18.11 of the code.

[2] Those five allegations, and the inferences to be drawn from them, must be taken as true for purposes of deciding whether the dismissal under rule 12(b)(6) was correct. *Nader v. Citron*, 372 Mass. 96, 98, 360 N.E.2d 870 (1977). *McCone v. New England Tel. & Tel. Co.*, 393 Mass. 231, 232, 471 N.E.2d 47 (1984). *Blieden v. Blieden*, 14 Mass.App.Ct. 959, 961, 438 N.E.2d 371 (1982). We proceed to consider whether, on the five allegations, Schaer can prove any set of facts that would entitle him to relief. *General Motors Acceptance Corp. v. Abington Cas. Ins. Co.*, 413 Mass. 583, 584, 602 N.E.2d 1085 (1992). *Pucci v. Amherst Restaurant Enterprises, Inc.*, 33 Mass.App.Ct. 779, 783, 605 N.E.2d 309 (1992). We shall touch summarily on some of the other counts in the complaint.

\*\*1060 [3][4] 1. Failure to comply with Brandeis's code. Courts are chary about interfering with academic and disciplinary decisions made by private colleges and universities. See *Russell v. Salve Regina College*, 890 F.2d 484, 489 (1st Cir.1989), rev'd on other grounds, 499 U.S. 225, 111 S.Ct. 1217, 113 L.Ed.2d 190 (1991), reinstated 938 F.2d 315 (1st Cir.1991); *Clayton v. Trustees of Princeton Univ.*, 608 F.Supp. at 437- 438. See also *Curators of the Univ. of Missouri v. Horowitz*, 435 U.S. 78, 87, 98 S.Ct. 948, 55 L.Ed.2d 124 (1978). Cf. *Coveney v. President & Trustees of the College of the Holy Cross*, 388 Mass. 16, 19, 445 N.E.2d 136 (1983); *Cloud v. Trustees of Boston Univ.*, 720 F.2d 721, 724 (1st Cir.1983). It is a deference born of respect for the independence of private associations and disinclination by courts to be drawn into their internal governance. See Chafee, *The Internal Affairs of Associations Not for Profit*, 43 Harv. L.Rev. 993, 1021-1029 (1930).

[FN6] Reluctance of courts to become involved in student discipline diminishes as the subject matter graduates from academic issues to misconduct. *Board of Curators of the \*27 Univ. of Missouri v. Horowitz*, 435 U.S. at 87-91, 98 S.Ct. 948. *Barnard v. Shelburne*, 216 Mass. 19, 22, 102 N.E. 1095 (1913) (involving a public high school but making the academic failure/misconduct distinction). *Napolitano v. Trustees of Princeton Univ.*, 186 N.J.Super. 548, 567, 453 A.2d 263 (App.Div.1982). *Tedeschi v. Wagner College*, 49 N.Y.2d 652, 658, 427 N.Y.S.2d 760, 404 N.E.2d 1302 (1980). *Swem, Due Process Rights in Student Disciplinary Matters*, 14 J.C. & U.L. 359, 361-364 (1987). So, for example, a court is most unlikely to adjudicate whether an examination has been graded fairly or a student has been fairly placed on probation by reason of poor academic performance. Plagiarism is more an academic than societal offense. *Napolitano v. Trustees of Princeton Univ.*, 186 N.J.Super. at 569-570, 453 A.2d 263. If a student is disciplined for defacing college property or postgame brawling, the degree of deference will still be very considerable because this involves concerns peculiar to the educational institution. Should the student, however, be suspended or expelled for misconduct, such as theft or--as here--rape, the subject matter is not only familiar to courts but mars the record of the student in a manner that is likely to have serious consequences for the student in admission for graduate study or competition for a job. See *Greene v. Howard Univ.*, 412 F.2d at 1130-1131; *Clayton v. Trustees of Princeton Univ.*, 608 F.Supp. at 436; Note, *Common Law Rights for Private University Students*, 84 Yale L.J. at 129. See also *Rutledge v. Gulian*, 93 N.J. 113, 118-119, 459 A.2d 680 (1983) (speaking of valuable relationship that a person has to the institution).

FN6. Professor Chafee refers to this consideration as the Living Tree Policy. If the association has a very direct bearing on the member's career, e.g., membership in a medical association, the Living Tree Policy may give way to the Strangle-hold Policy. See also his discussion of the bearing of the Dismal Swamp Policy and the Hot Potato Policy on judicial intervention. 43 Harv. L.Rev. at 1021-1029.

In *Coveney v. President & Trustees of the College of the Holy Cross*, 388 Mass. at 19-20, 445 N.E.2d 136, the court applied as the standard of review whether the college, in dismissing a student for misconduct, had acted arbitrarily or capriciously. In that case, decided on a motion for summary judgment, it was undisputed that the student had committed a serious infraction of college rules (there, too, the offense was sexual in nature) and the dispute was only about whether expulsion was justified. The degree of discipline, the court concluded, was within the discretion of the institution and a hearing before the president was adequate; there was no inherent requirement for a hearing with the trappings of procedural due process, e.g., right to counsel, right to confront witnesses, right to cross-examination, etc. *Id.* at 21-22, 445 N.E.2d 136. See *Goss v. Lopez*, 419 U.S. 565, 583, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975).

\*\*1061 [5][6][7][8] \*28 The *Coveney* opinion neither dismisses the idea that a student at a private university in certain circumstances is entitled to a hearing nor forgoes the duty of a court to examine whether the disciplinary proceedings, including the hearing, have been conducted with basic fairness. *Coveney*, supra at 20, 445 N.E.2d 136. *Cloud v. Trustees of Boston Univ.*, 720 F.2d at 725 & n. 2. That hearing should be appropriate to the nature of the case, *Goss v. Lopez*, 419 U.S. at 579, 95 S.Ct. 729, and, therefore, must be conducted with greater care, and will be reviewed by a court with greater scrutiny, when the underlying offense is one that society would regard severely, e.g., theft, distribution of drugs, or rape. When a university (or, more generally, a private association) provides for hearings in a university code, such as the Rights and Responsibilities code at Brandeis, the student is entitled to a hearing, and adjunct proceedings, that substantially observe the institution's code. *Coveney*, supra at 21-22, 445 N.E.2d 136, seems to recognize that principle. Although adherence to a student manual in some of the cases is founded on a theory of contract, see *Russell v. Salve Regina College*, 890 F.2d. at 489; *Mangla v. Brown Univ.*, 135 F.3d 80, 83 (1st Cir.1998), it may be wiser, as the court suggests in *Tedeschi v. Wagner College*, 49 N.Y.2d at 659-660, 427 N.Y.S.2d 760, 404 N.E.2d 1302, to think in terms of the common-law right of a member of an association not to be dismissed or otherwise disciplined without substantial adherence to that association's rules. Compare *Clayton v. Trustees of Princeton Univ.*, 608 F.Supp. at 435; *Rutledge v. Gulian*, 93 N.J. at 118- 119, 459 A.2d 680. The idea was anticipated more than a century ago in *Gray v. Christian Soc.*, 137 Mass. 329, 331 (1884), in which the court said that it is a requirement of common justice that a person not be deprived of membership in a society, except in accordance with its rules and, in that case, a fair hearing. See *Spillman v. Supreme Council of the Home Circle*, 157 Mass. 128, 130-131, 31 N.E. 776 (1892). See also Note, *Common Law Rights for Private University Students*, 84 Yale L.J. at 132-140. The principle of adherence to an institution's self-prescribed procedures does not require rigid compliance. *Slaughter v. Brigham Young Univ.*, 514 F.2d 622, 626 (10th Cir.), cert. denied, 423 U.S. 898, 96 S.Ct. 202, 46 L.Ed.2d 131 (1975). The cases do not, and we do not, require adherence to process consistent with basic fairness on Federal or State constitutional imperatives, but on the common law rules we have discussed.

[9] Schaer, therefore, was entitled to a hearing that substantially, but not rigidly, observed the procedures laid out in Brandeis's \*29 code. We examine next whether Schaer's complaint, indulgently read, *Federico v. Brockton Credit Union*, 39 Mass.App.Ct. 57, 61, 653 N.E.2d 607 (1995), states a claim that Brandeis did not substantially conform its disciplinary process in Schaer's case to the code.

[10] a. Failure to make careful evaluation of the facts and of the credibility of persons reporting them, as required by s 17 of the code. Nothing in the record, which is larger than one might suppose on a rule 12(b)(6) motion because the plaintiff attached voluminous materials as exhibits to the complaint, bears on who evaluated what the accuser said, how that was done, who was spoken to, and whether any credibility assessment had been made. According to the complaint, nobody interviewed Schaer before the proceedings were launched. If those preliminary inquiries, in the nature of testing for probable cause, were not made or wholly superficially made, Schaer may have been unwarrantably placed on trial in what the complaint describes as a superheated atmosphere. On a failure to state a claim basis, this aspect of the complaint was not ripe for dismissal.

[11] b. Failure to make a record of the proceedings of the board, as required by s 19.4. There were thirteen witnesses. Only what the "accuser" and "accused" \*\*1062 said was summarized in highly compressed form: five and one-half lines for her; six lines for him. The hearing, according to the complaint, lasted five and one-half to six hours. The failure to make an adequate record is not inconsequential. It bears on the care with which the tribunal analyzed what was before them and it bears on what Schaer had to present in his application for an appeal to the appeals board. Schaer was entitled to probe, through discovery, his allegation that the incompleteness of the record that was made worked to his prejudice.

[12] c. Receipt of irrelevant and inflammatory evidence, in violation of s 19.13 of the code. That section provides that decisions of the board shall be made solely upon evidence and testimony introduced at the hearing. While we do not intimate that court rules of evidence are to be imported to university disciplinary proceeds, s 19.13 implies a minimum level of competence. The complaint states that a Brandeis police officer was allowed to testify that when she saw the complainant one month after the encounter, "She looked like a rape victim." On what possible basis a police officer could know such a thing does not appear. Another witness was allowed to give his opinion that Schaer was "a self-motivated egotistical bastard who had no \*30 respect for women." Both statements are so without rudimentary foundation and so unfairly prejudicial that they can be said to be in violation of s 19.13.

[13] d. Failure to apply "clear and convincing evidence" standard prescribed by s 19.13 of the code. What, according to the complaint, Brandeis passes off as a record discloses no more than "she said" against "he said." The plaintiff's allegation that the clear and convincing evidence was not adhered to states a claim that Schaer is entitled to explore; i.e., what evidence did the board consider clear and convincing.

[14] e. Failure to accord Schaer the process due under s 18.11 of the code. There is nothing in the complaint that supports a conclusion that the plaintiff could not possibly adduce evidence tending to

prove his allegation in the complaint that the advisor to the board did nothing, or was not able to do anything, to advise the board, as s 18.11 provides, "regarding the requirements and provisions of substantive and procedural due process." If, indeed, the board, three-quarters of which consisted of students, were not so advised, it might have had a significant impact on how they went about adjudicating the accusation that had been brought. Once again, the issue could not be flicked away on a motion under rule 12(b)(6). In the end, Schaer may not strike any pay dirt through affidavits and discovery, and Brandeis, in connection with a motion for summary judgment, may be able to adduce uncontradicted evidence that it substantially complied with its own procedures or that such failures to comply as occurred were without consequence to Schaer. That was not the case at the rule 12(b)(6) stage and it was error to allow the motion to dismiss on the basis of a failure to state a claim for which relief can be granted.

2. Other claims. We deal with Schaer's other claims in summary form.

a. The count claiming intentional infliction of emotional harm was not argued in Schaer's brief and we treat it as waived. Mass.R.A.P. 16(a)(4), as amended, 367 Mass. 921 (1975).

[15] b. There was no actionable misrepresentation by the defendant Bennett by reason of her failing to have tipped off Schaer that the accuser had already lodged a complaint against him. We do not import the requirements of *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), to Brandeis.

[16] c. There was no interference by the defendants with \*31 contractual relations. Yes, Schaer had an associational \*\*1063 connection with Brandeis but Brandeis, as a party to that connection, could not be a third party interfering with it. All other parties acted in the course of their duties and nothing in the complaint alleges any improper motive incident to their work.

[17] d. The complaint alleges no threats, intimidation, or coercion and the claim under G.L. c. 12, ss 11H and 11I, fails. Brandeis's notifying Schaer of an accusation and a disciplinary proceeding is not the kind of "direct assault" upon the exercise of a protected right that the State punishes. *Bally v. Northeastern Univ.*, 403 Mass. 713, 719, 532 N.E.2d 49 (1989). Contrast *Redgrave v. Boston Symphony Orchestra, Inc.*, 399 Mass. 93, 100, 502 N.E.2d 1375 (1987).

[18] e. There is nothing in the complaint that sustains a claim of violation of privacy rights, contrary to G.L. c. 214, s 1B. Brandeis was duty bound to inquire into the complaint made that Schaer had violated the code. Brandeis had a legitimate countervailing interest in disclosing facts of a personal and intimate nature. *Mulgrew v. Taunton*, 410 Mass. 631, 637, 574 N.E.2d 389 (1991). The dismissal of count three of the complaint is vacated and the judgment reversed. Judgments of dismissal of the remaining counts of the complaint are affirmed.

So ordered.

END OF DOCUMENT