



## Department of Student Rights and Community Standards

### Section 3. Harassment, Discrimination, Sexual Violence

Brandeis University is committed to and strives to create an educational and work environment free of discrimination, harassment and sexual violence. Brandeis prohibits discrimination and on the basis of race, color, national origin/ethnicity, caste, sex, pregnancy, sexual orientation, gender identity/expression, including transgender identity, religion, disability, age, genetics, active military or veteran status and any other characteristics protected under applicable federal or Massachusetts law, known as "Protected Categories." Brandeis also prohibits sexual violence against students which includes sexual assault, stalking, and dating violence, and domestic violence). For more information regarding Brandeis' Policy Against Discrimination, Harassment and Sexual Violence, please visit the website for the [Office of Equal Opportunity \(OEO\)](#).

When it is alleged that members of the Brandeis community have engaged in discrimination, harassment or sexual violence, the OEO Formal Complaint Process and/or Title IX Grievance Process may be available to address that conduct. The Formal Complaint Process contains informal and formal resolution options. For more information, the Brandeis Policy Against Discrimination, Harassment and Sexual Violence (Policy), the Formal Complaint Process and the Title IX Grievance Process, all of which can be found on the website for the [Office of Equal Opportunity \(OEO\)](#).

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### Definitions

#### Consent

Consent is an affirmative, voluntary, knowing, and continuous agreement to engage in a specific form of sexual activity. Consent must be obtained before engaging in any sexual activity. Consent may be communicated verbally or physically so long as those words or actions create clear, mutually understandable permission regarding the conditions of sexual activity. Consent is an active and affirmative process. It is the responsibility of the person who wants to engage in sexual activity and/or who may be initiating that sexual activity, to make sure that they have received consent from any other person(s) involved. If an individual is not sure if they have received consent, they have an obligation to seek additional clarification. Consent must be received for each individual sexual act that a person wishes to engage in with another person(s). Consent may not be inferred from silence or lack of resistance to sexual advances, or from prior consensual sexual contact. Relationship status is immaterial to the issue of consent. Consent may be withdrawn at any time, and consent to one sexual activity does not imply consent to any subsequent sexual activity. For more information regarding the definition of consent, please see the Brandeis Policy Against Discrimination, Harassment and Sexual Violence, which can be found on the website for the [Office of Equal Opportunity \(OEO\)](#).

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#### Incapacity

Incapacity is a state in which someone cannot make a decision because they lack the ability to fully understand what is happening. When incapacitated, an individual moves from being simply drunk or under the influence of drugs to being physically and/or mentally debilitated due to their drug or alcohol consumption. Individuals can also be incapacitated because they are unconscious or asleep. A person who is incapacitated cannot consent even if they appear to be a willing participant. An individual who is intoxicated may be able to consent to sexual activity. However, when an individual passes from intoxication to a state of incapacitation, they no longer have the ability to give consent. For more information regarding the definition of incapacity, please see the Brandeis Policy Against Discrimination, Harassment and Sexual Violence, which can be found on the website for the [Office of Equal Opportunity \(OEO\)](#).

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## Force

The use of force to cause someone to engage in sexual activity they would not have otherwise agreed to is, by definition, non-consensual. Force is not limited to physical violence, but also includes threats, intimidation, abuse of power, coercion, or any combination of these behaviors. The presence of force during sexual activity can negate indications of consent, unless the consent was specifically for the use of force. For more information regarding the definition of force, please see the Brandeis Policy Against Discrimination, Harassment and Sexual Violence, which can be found on the website for the [Office of Equal Opportunity \(OEO\)](#).

## Prohibited Conduct

Below is a summary of the Prohibited Conduct found in the Policy Against Discrimination, Harassment, and Sexual Violence. For more information about these categories of conduct, please see the full policy on the webpage for the Office of Equal Opportunity (OEO) (<https://brandeis.edu/o eo>)

**3.0 Discrimination Based on a Protected Category:** Discrimination Based on a Protected Category (discrimination) occurs when someone (or a group) is treated unfairly, less favorably and/or deprived access, benefits, or opportunities in education or employment based on membership in a Protected Category. Protected Categories include race, color, national origin/ethnicity, caste, sex (which includes pregnancy), sexual orientation, gender identity/expression, including transgender identity, religion, disability, age, genetics, active military or veteran status and any other characteristics protected under applicable federal or state law. When individuals are excluded from participation, are treated differently, or are otherwise adversely affected in a term or condition of their employment, education, living environment or participation in a University program or activity based on their membership in one of these Protected Categories, it constitutes discrimination.

**3.1 Harassment Based on a Protected Category:** Harassment Based on a Protected Category (harassment) occurs when there is unwelcome or unwanted verbal or physical conduct which is objectively offensive and severe, persistent, or pervasive and is directed at an individual based on their membership in one (or more) Protected Categories. Protected Categories include race, color, national origin/ethnicity, caste, sex (which includes pregnancy), sexual orientation, gender identity/expression, including transgender identity, religion, disability, age, genetics, active military or veteran status and any other characteristics protected under applicable federal or state law. Harassment can include objectively offensive conduct that can be physical, verbal, non-verbal, and/or visual in nature. Harassment can include things such as jokes, slurs, epithets, name-calling, threats, intimidation, ridicule, mockery, insults, put-downs, unwanted touching, offensive objects or pictures, or other conduct that may be humiliating or that interferes with a person's education or work environment. Typically single, isolated incidents will often not be enough to rise to the level of harassment. The conduct is harassment when it is objectively offensive and severe, pervasive, or

persistent to a reasonable person and interferes with an individual's education or work environment or their participation in University programs or activities by creating an intimidating, hostile or offensive environment. Harassment that is not based on a protected category would be addressed in Section 2.10.c.

**3.2 Sexual Exploitation:** Sexual Exploitation occurs when a person(s) takes non-consensual or abusive sexual advantage of another, for any purpose. Sexual exploitation can take many forms, including those noted below, but is not limited to just the behaviors listed here. Other forms of sexual exploitation can occur beyond the categories listed here, as determined by the Office of Equal Opportunity on a case by case basis.

**3.2.a Non-Consensual Photographing/ Recording Sexual Activity/ Nudity and Sharing Photographs/ Recordings of Sexual Activity/ Nudity:** Sexual Exploitation occurs when someone photographs or otherwise records someone (via audio, video or any other medium) involved in sexual activity, or in any state of undress, without their consent. Even if a person consented to the sexual activity or being in a state of undress, photographing or recording someone without consent goes beyond the boundary of that original consent. The act of sharing or disseminating photographs or recordings of someone involved in sexual activity or in a state of undress, without their consent, also constitutes sexual exploitation. Even if the images were taken with consent, it is a violation of the Policy to share those photographs or recordings without first obtaining the consent of all person(s) involved. Anyone in possession of the photographs or recordings and who is sharing those images without consent is responsible for sexual exploitation, regardless of whether that individual was the person who originally took the photographs or recording. It is a violation of the Policy to share those photographs or recordings by digitally forwarding them, posting copies of the images or otherwise sharing, or by simply showing someone else those images without relinquishing possession.

**3.2.b Voyeurism:** The act of intentionally observing, spying on or listening to a person(s) involved in sexual activity or in any state of undress, without their consent. Voyeurism also occurs when an individual allows others to observe sexual activity or someone in any state of undress without the consent of all the person(s) involved.

**3.2.c. Indecent Exposure:** Exposing one's intimate parts, such as genitalia, groin, breasts and/or buttocks to someone without their consent. This behavior is the deliberate showing of intimate parts of the body and may, but does not necessarily have to, include a sexual act. Engaging in sexual activity in public, witnessed by a non-consenting person(s), is also a form of indecent exposure.

**3.3 Title IX Sexual Harassment/Violence:** Conduct that falls within the following definitions and that meets the jurisdictional requirements found in the Title IX Grievance Process is considered Title IX Sexual Harassment/Violence. If the conduct does not meet the requirements to be considered Title IX Sexual Harassment/Violence, it may still be a violation of the Policy Against Discrimination, Harassment and Sexual Violence under another section, such as Harassment Based on a Protected Category (3.1), Sexual Exploitation (3.2) or Sexual Violence (Non-Title IX)(3.4).

**3.3.a. Title IX Sexual Harassment:** Title IX Sexual Harassment is unwelcome conduct that a reasonable person would find to be so severe, pervasive, and objectively offensive that it effectively denies them equal access to the University's education program or activity. A reasonable person is defined as a reasonable person under similar circumstances and with similar identities. When conduct that is defined as Sexual Exploitation under 3.2 above also meets the three criteria under this section, it will be addressed as Title IX Sexual Harassment. If the conduct does not meet all three criteria (severe, pervasive, and objectively offensive) and/or does not meet the jurisdictional requirements found in the Title IX Grievance Process, it does not fall within the definition of Title IX Sexual Harassment. However, this conduct may still constitute Harassment Based on a Protected Category (3.1) or Sexual Exploitation (3.2).

**3.3.b. Title IX Sexual Violence – Sexual Assault:** Sexual Assault is any sexual act directed against an individual through the use of force, without consent and/or in instances where the Complainant is incapable of giving consent, as defined in the Policy Against Discrimination, Harassment and Sexual Violence.

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

**3.3.d. Title IX Sexual Violence – Domestic Violence:** Domestic Violence is violence committed by a person who is: the current or former spouse or intimate partner of the Complainant; a person with whom the Complainant shares a child in common; a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner (not just a roommate); or a person similarly situated to a spouse of the Complainant. Domestic Violence can include verbal, physical, emotional or psychological abuse.

**3.3.e. Title IX Sexual Violence -Stalking:** Stalking is a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or to suffer substantial emotional distress, as defined in the Policy Against Discrimination, Harassment and Sexual Violence.

**3.4 Sexual Violence (Non-Title IX):** Conduct is considered Sexual Violence (Non-Title IX) when it meets one (or more) of the definitions of Title IX Sexual Violence (3.3) but does not meet the jurisdictional requirements found in the Title IX Grievance Process. Such conduct can be addressed through the Formal Resolution Process found in the Formal Complaint Process. For more information, visit the website for the [Office of Equal Opportunity \(OEO\)](#).

**3.4.a. Sexual Violence (Non-Title IX) – Sexual Assault:** Sexual Assault is any sexual act directed against an individual through the use of force, without consent and/or in instances where the Complainant is incapable of giving consent, as defined in the Policy Against Discrimination, Harassment and Sexual Violence.

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

**3.4.c. Sexual Violence (Non-Title IX) – Domestic Violence:** Domestic Violence is violence committed by a person who is: the current or former spouse or intimate partner of the Complainant; a person with whom the Complainant shares a child in common; a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner (not just a roommate); or a person similarly situated to a spouse of the Complainant. Domestic Violence can include verbal, physical, emotional or psychological abuse.

**3.4.d. Sexual Violence (Non-Title IX) -Stalking:** Stalking is a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or to suffer substantial emotional distress, as defined in the Policy Against Discrimination, Harassment and Sexual Violence.

**3.5 Retaliation:** An adverse or negative action taken against an individual for reporting concerns about discrimination, harassment or sexual violence, participating in a resolution process or investigation or otherwise exercising their rights. Retaliation against anyone who files a complaint of discrimination, harassment or sexual violence and/or who participates in an inquiry or investigation into those behaviors is strictly prohibited. Brandeis has the discretion to address issues of retaliation through an OEO Resolution Process or through a student conduct process. Also see [Section 2.1](#).

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