Interim Report of UAC Subcommittee on Sexual Violence (October 29, 2013)

Dear Faculty Senators,

I am pleased to have been invited to the Faculty Senate meeting next week to report on three items, the first of which is an interim report of the UAC Subcommittee on Sexual Violence formed by the Provost at the request of the Faculty Senate. So that we can devote our limited time together to discussion, I am outlining the first issue that the Subcommittee wishes to clarify, namely whether or not faculty should be required to report complaints of sexual violence that students disclose to them, whether or not the student requests confidentiality.

At its recent meeting, the Subcommittee deliberated at some length and there was a consensus among the four members present (Sue Lanser, Peter Kalb, Janet McIntosh, and Kelley Ready; David Cunningham had another obligation that prevented him for attending) that the University should not require faculty to report. Kim Godsoe would like for the University to do so, and I believe that there are strong arguments on both sides. Committee members did suggest encouraging faculty to report and is open to alternative schemes for reporting, such as reporting to Sheila McMahon, the incoming Sexual Assault Prevention and Services Specialist, who will not be required to report under Title IX. (The Association of Title IX Administrators’ model template [attached] suggests that.)

I want to outline some legal and policy issues for you. Associate General Counsel Steve Locke strongly prefers requiring faculty to report and has communicated to me that the current policy is to require faculty to report to the Title IX officer, Linda Shinomoto. Steve writes that this policy is articulated in a document on the HR website entitled "Non-Discrimination and Harassment Problem Resolution and Appeal Procedure for Claims of Harassment/Discrimination against Staff or Faculty":

Management and Faculty Responsibility

Administrators, supervisors and faculty who observe, suspect or are informed of an incident of sexual harassment or other forms of harassment or discrimination should immediately contact the individuals listed below for guidance. Although it may be natural to
want to keep such concerns confidential or desire not to escalate the issue, it is imperative that supervisors understand that these concerns must be addressed appropriately and effectively to ensure that any conduct in violation of the University’s Non-Discrimination and Harassment Policy ceases and that any required resolution is initiated, with guidance from individuals trained to handle such matters. This is true even if the complainant requests confidentiality.

**Contact Information**

Complaints about Staff or Faculty:
Complaints about staff or faculty (including visiting faculty, post-doctoral fellows, or graduate students acting in an instructional capacity) should be brought to the attention of the Vice President for Human Resources or the Director of Employment and Employee Relations at 781-736-4464.

Complaints about Students or Graduate Students:
Any person making a complaint about an undergraduate or graduate student should bring the complaint directly to the Office of the Dean of Student Life at 781-736-3600.

The members of the UAC Subcommittee do not read this policy as requiring all faculty to report to the Title IX officer complaints of sexual assault by student against students. I am attaching this and other current policies on faculty obligations, which can be found by going to the HR website, logging on with our password, and searching through the list for "harassment." They do not explicitly mention sexual violence at all. I will be interested to see if you read them as mandating all faculty to report to the Title IX officer all cases of sexual violence. I also attach the Workplace Violence Prevention and Workplace Conduct policy, which I also do not read as addressing disclosures of sexual violence by students against students. Thus, I believe that requiring faculty to be mandated reporters would mean a change in policy or, in any case a clear statement of the policy with wide distribution to all faculty, prominent placement of the policy in a public location on the Brandeis website (easily accessible by googling, i.e., not password protected), and extensive training to ensure that all faculty understand all of the nuances of the policy.
The legal situation is this. **Title IX of the Educational Amendments Act of 1972 does not legally obligate universities to mandate that all faculty report cases of sexual violence.** The Office for Civil Rights of the Department of Education, however, has made clear that it wants universities to require all employees (with the noted exceptions) to report. The OCR articulated this in May of this year in a Resolution Agreement with the University of Montana:

7. **a requirement that all employees who are aware of sex-based harassment, except for health-care professionals and any other individuals who are statutorily prohibited from reporting, report it to the Title IX coordinator regardless of whether a formal complaint was filed (p. 7, attached).**

Thus, we have legal leeway, but the OCR has made its preference clear. The legal basis behind OCR’s preference lies in its definition of "responsible employee" with respect to sexual harassment (the federal government construes sexual violence as a form of sexual harassment):

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

The Supreme Court held that a school will only be liable for money damages in a private lawsuit where there is actual notice to a school official with the authority to address the alleged discrimination and take corrective action. *Gebser*, 524 U.S. at 290, and *Davis*, 526 U.S. at 642. The concept of a “responsible employee” under our guidance is broader.

That is, even if a responsible employee does not have the authority to address the discrimination and take corrective action, he or she does have the obligation to report it to appropriate school officials. (2011 OCR Guidance, p.34, n. 74, attached)
Increased reporting could help to ensure the safety of our students in several ways. According to forensic psychologist David Lisak's research on male students who admit to acts of sexual and other violence, a very small number (3% of the 1882 in his study) admitted to committing an average of six rapes each. (Research in the military has revealed a similar pattern.) Thus, if a student truthfully discloses a sexual assault to us, the likelihood is very high that that same offender has assaulted or will assault others. Thus, not only this specific student needs support and a proper response, but the community as a whole also needs protection from this assailant.

At the policy level, I would like for us to think about what kind of policy will serve to increase reporting. I believe that, if we don’t have faculty buy-in to whichever policy Brandeis has, then faculty will not comply with it, which undercuts the policy.

Increasing the reporting rate could also mean that the University could provide needed services to the victim/survivor. If students are left totally on their own, they won’t be able, for example, to obtain a needed Incomplete, to obtain a No Contact order, to obtain safe housing (preferably by the University moving the offender), or to obtain justice through a grievance procedure.

Beyond this, the Office for Civil Rights states that the University is required to prevent a hostile environment and to investigate credible allegations of sexual violence, even when the student chooses not to file a grievance. Thus, the University needs to know of such allegations.

**Our reporting rate remains exceedingly low.** Public Safety reports (under the Clery Act, which is different from Title IX, as I can explain in the meeting, if you wish): 2010: 0; 2011: 2; 2012: 1. I attach a PPT with my calculations of the likely prevalence among Brandeis undergraduates alone, based on the best national studies. If comparable to the largest national study, over the four years of their undergraduate career, 95 Brandeis males and 385 females (they don’t account for gender non-conforming individuals) will have experienced attempted or completed sexual assault. Or, based on a different study, in the last 12 months, 50 undergraduate males and 148 females would have experienced unwanted sexual touching, 27 males and 69 females a sexual penetration attempt without their consent, and 14 males and 39 females sexual penetration without their consent. Our Public Safety statistics include only on-campus and some specific official off-campus occurrences, but that alone cannot account for the great discrepancy between our
statistics and the likely number of occurrences. In addition, our Public Safety statistics could include forcible sexual offenses against grad students and employees.

The question is how best to increase students' confidence that the University will respond compassionately and will prevent a hostile environment.

Columbia has succeeded in greatly increasing its Clery reports of forcible sexual offenses. Rosalie Siler, whom some of you heard at the September 17th training and whose presentation was particularly well received, oversees Columbia’s training efforts. Columbia mandates all faculty to report and clearly communicates this obligation on its website in a location which can be easily found by googling: http://www.tc.columbia.edu/titleix/index.asp?id=Guidance+from+the+President%27s+Office&info=Abuse+and+Harassment+of+Minors+and+Adults%3A+Guidance+for+Teachers+College+Faculty+and+Staff+on+Reporting+Obligations.

Columbia’s policy is controversial on its own campus: http://www.theatlantic.com/national/archive/2013/05/which-matters-more-reporting-assault-or-respecting-a-victims-wishes/276042/. Some other schools, however, also follow such a policy.

Attorney Brett Sokolow, head of the Association of Title IX Administrators, has written on this subject in The Chronicle of Higher Education: http://chronicle.com/article/Mandatory-Reporting-for-Title/141785/. In addition, he proposes a model policy on mandatory reporting (attached), which I find to be extremely cumbersome, and which would take extensive training for faculty to understand. I would rather that precious training time for faculty be devoted to understanding sexual violence itself and how prevent and respond to it.

In our meeting next week, I would like to discuss with you is what kind of policy you might wish to recommend and why. Susan Birren has invited me to go to an A&S chairs meeting to obtain their opinion. I will also seek to obtain guidance from both Lisa Lynch and Bruce Magid. We might even wish to poll the entire faculty.

In all of this, we do need to recognize that the OCR wishes for all faculty to be mandated reporters.
Report on Sexual and Racial Harassment

October 26, 2013

Dear Colleagues,

While the UAC Subcommittee on Sexual Violence does have sexual and racial harassment as part of its mandate, the two issues are inter-related and any policies on reporting need to address both, although perhaps not in the same documents (although that would be Steve Locke's preference).

I am writing mainly to say that I hope that you, as our elected representatives, will ensure faculty self-governance by seeking direct involvement in reviewing our policies and grievance procedures. I am attaching three relevant documents from the HR website:

1. Workplace Violence Prevention and Workplace Conduct
2. Non-Discrimination and Harassment
3. Non-Discrimination and Harassment Problem Resolution and Appeal Procedure for Claims of Harassment/Discrimination against Staff or Faculty

The second document contains this definition of harassment:

"It is regarded as harassment when conduct has the purpose or effect of unreasonably interfering with a person's education or work performance by creating an intimidating, hostile or offensive environment in which to work, study or live; or otherwise adversely affects a person's employment or educational opportunities. This may include but is not limited to, hiring, firing, salary increases, promotions, grades, recommendations, scholarly or teaching opportunities, participation in extracurricular activities and student organizations." (p. 2)

I'm not a lawyer, but I read this definition as including two forms of harassment:
hostile environment harassment and quid pro quo harassment. The Office for Civil Rights’ 2001 Guidance (attached) presents both forms as unacceptable (p. 5). In other words, I take "This may include..." to refer only to the latter of the two forms of harassment.

In my recollection, in the 2007 Donald Hindley case, some faculty members expressed the view that harassment only occurs where there is demonstrable harm in the form, e.g., of a lower grade or a less enthusiastic letter of recommendation. I don't know that we have had widespread discussion among the faculty about what constitutes harassment subsequent to the Hindley case.

I would hope that the Faculty Senate will promote such education and discussion, such as by working with Linda Shinomoto, who is holding trainings on harassment. As faculty members, we have multiple interests: we need to ensure full academic freedom; we need to advocate for our students’ right to an environment free of harassment; and we need to ensure that grievance procedures are fair to both parties. University policies will only be effective if they are widely known, understood, and agreed to by the faculty.

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Report for Faculty Senate on Discussions with Sodexo

October 26, 2013

Dear Colleagues,

I am pleased to report on two meetings with representatives of Sodexo, with whom Brandeis has recently entered into a ten-year contract to provide our food services. I especially thank Eric Chasalow and Ellen de Graffenreid for setting up the meetings. Civil discourse, even if we don't agree, can help to move us ahead.

Summary

According to our food services workers’ union, communication between faculty members and Sodexo has helped to prevent the workers’ conditions from being
degraded. Sodexo, however, is not willing to bring the lowest paid workers' hourly rates up to a living wage. (Newly hired counter workers earn $12.51 per hour and do not reach the union negotiated rate of $16.68 for five years.) I propose that the Faculty Senate sponsor a public, academic forum on how living wage rates are calculated and what they would mean for Brandeis. I would hope that it would then follow through with faculty, students, and the administration on the questions: What is the lowest hourly rate that is compatible with Brandeis's values? What trade-offs do we need to make to ensure that every worker is paid that "Brandeis minimum wage"?

Background

When Brandeis announced the new contract with Sodexo, some of us were concerned about Sodexo's record of low wages, race discrimination, and anti-union activities. Sue Lanser and I wrote to Ellen de Graffenreid, and a number of colleagues wrote to Eric Chasalow.

In its Request for Proposals (RFP), Brandeis required only that the food services operator pay its workers at market rate. (See attached, p. 7, 1.1; I am grateful to the Administration for providing us with this document.) Against the background of Brandeis's RFP, the workers' first fear was whether or not they would be rehired, and, if they were, at which hourly rates and with which benefits, and whether or not Sodexo would recognize their union, Unite Here.

Sodexo agreed to rehire all of the workers and to recognize the union, but it proposed changes to the Aramark contract to the workers' detriment. In addition, it did not agree to allow accrued sick days to be carried over.

First Meeting with Sodexo

On July 1st, Eric Chasalow, Carol Osler, Cindy Thomas, Faith Smith, and I met with Sodexo's regional manager Jason LaPrade, the Brandeis manager Jay Degioia, and two national reps via telephone, along with Steve Manos, Ellen de Graffenreid, Mark Collins, David Bunis, and Andrew Flagel. We discussed hourly rates, insurance premiums, Sodexo's diversity record in the wake of its 2005 $80,000,000 settlement with African American workers, part-time work, sustainability, National Labor Relations Board findings against Sodexo for anti-union activities, and recycling, among other topics. In closing the meeting, its chair Steve Manos stated that he appreciated our raising questions of social justice, but that we also have to be concerned about the survival of the University, especially in the light of our high
tuition and our deficit. He stated that the University tries to keep its compensation commensurate with the various markets represented here, one of which is the market for faculty and another of which is the market for food-service workers. Because we had not obtained answers to many of our questions, Ellen and Eric worked to arrange a second meeting.

Contract between Sodeoxo and Unite Here

Unite Here representatives met with Sodexo to negotiate a contract later in July, and Sodexo agreed to adopt the Aramark contract. Subsequent to that negotiation, a Unite Here representative was able to persuade the University and Sodexo that the sick days should be carried over.

The Unite Here representatives believe that the meeting between the faculty and Sodexo played a crucial role in Sodexo's not degrading the workers' conditions, as well as in allowing the sick days to be carried over. Thus, faculty have already played a salutary role, for which I thank Eric, the Faculty Senate Council, and the senior administration.

Second Meeting with Sodexo

On October 18th, Sue Lanser (English, etc.) and Jeff Prottas (Heller, and Faculty Senator) and I met with Jason LaPrade, Jay Degioia, Nancy Judy (Senior Director of Communications, Education Market), Tom Mackall (Vice President, Global Labor Relations at Sodexo), and John Storti (Director of Strategic Procurement, Brandeis). Sue Lanser's questions focused on whether or not Sodexo is eroding the arena of full-time work through part-time workers, including students; on whether Sodexo would allow workers to obtain literacy education while working; on whether Sodexo would make the services of its foundation to combat hunger in children available to its low-paid workers; on why it takes five years for workers to reach the union-negotiated hourly rates; and on most workers being laid off for two months in the summer. Jeff asked about the percentage of part-time employees, and about why it takes five years to reach the full hourly rate. In addition, Jeff said, "A primary goal of our institution is to educate our students in social responsibility, and we need to see that in tangible form on our campus." I pre-distributed my questions to all participants (attached below).

The main theme of Sodexo's responses was that it has just negotiated a contract with the workers' union and will not do anything over and above what that contract requires. In addition, it would not provide information on the benchmarks (Key
Performance Indicators), citing the confidentiality of its contract with Brandeis. Sodexo representatives stated that the workers are happy to have the time off in the summer; that, unlike us, most people find its unionization rate of over 15% to be high; that Sodexo chose not to contest every complaint filed against it with the National Labor Relations Board and that most of the findings against it had occurred as the result of a campaign by SEIU; that it has a good record on diversity (but has not and perhaps will not release to us its diversity figures); and that literacy education would have to be negotiated for the next contract with Unite Here (2016), i.e., that it will not happen now. When Tom Mackall, the most senior Sodexo person present stated, "When Brandeis moved to us, it was a big move forward," I responded that I did not understand, because the contract with the union was exactly the same.

The one area in which we found openness was on providing on-the-clock annual training on sexual violence and sexual and other harassment. I referred to bystander intervention trainings, which have proven to be the most effective methods for preventing sexual and domestic violence, citing especially the evidence-based University of New Hampshire program. Tom Mackall asked to know more about that, and I will provide him with information.

(The University is required to report on its website all forcible sexual offenses and some other crimes that occur on its premises. This includes sexual assaults on food service workers, even though they are not Brandeis employees or students. Yale University was recently fined $165,000 for not reporting rapes that had occurred in its hospital; for the Department of Education letter, see: http://big.assets.huffingtonpost.com/1250_001.pdf. Thus, Brandeis has not only a moral, but also a legal obligation to work with Sodexo on this.)

Sue, Jeff, and I expressed the desire to be kept informed and to meet again with Sodexo representatives, and I am confident that that can happen.

**Communication with the Provost**

Steve Goldstein met with me in July to discuss Sodexo and promoting discussion of a living wage on campus. Steve is not only open to it; he is eager to have serious and thoughtful academic discussion of fair labor standards on our campus. Persons to involve might include Lisa Lynch, Jeff Prottas, Tom Shapiro, Janet Boguslaw, Tatjana Meschede, economists working with the Economic Policy Institute (on whose board Lisa Lynch serves), the Crittenton Women’s Union, the Living Wage Calculator housed at MIT, or the Institute for Women’s Policy Research.
The Provost and I also spoke about an idea first presented by Eric Chasalow in connection with the retirement investment discussion, namely for Brandeis to sponsor a symposium on SRI/ESG investing. Steve is very excited about that idea. We need a person to head up the effort. I have quite a number of ideas that I can provide, both conceptual and for specific speakers. If the Senate were interested in sponsoring or promoting this idea, Steve would be very supportive.

Bernadette Brooten’s Questions for Meeting with Sodexo, October 18, 2013
(Some of the questions by Jeff Prottas and Sue Lanser summarized in the report above)

First, let me say that I am pleased to hear that you are continuing the Brandeis Be Our Guest student-run program that serves homeless persons.

In addition, I am happy to hear that you have agreed with Unite Here, for the duration of the current contract (i.e., until 2016) not to sub-outsource any further work beyond AFC Sushi and that the Dunkin’ Donuts workers will have the opportunity to be represented by Unite Here. As you know, outsourcing is an industry-wide pattern that can result in and has resulted in degraded working conditions, including lower hourly rates. I do understand that you made plausible arguments for the subcontract with AFC Sushi, namely that the potential health risks of raw fish require a particular expertise.

These are the questions I would like to discuss with you as Sodexo representatives and for which I request written documentation:

1. I am concerned about the lowest paid workers. In your contract with Unite Here, you list the union hourly rate of $16.68 for a GSI counter worker (p. 33). You also note that new hires into that position receive 75% of the union-negotiated rate in their first year and don’t receive the full negotiated rate for five years (p. 33). Most workers are laid off for two months during the summer, which significantly reduces their annual income.

The federal poverty level for 2013 for a family of three (e.g., a mother and two
children) is $19,530 ([http://aspe.hhs.gov/poverty/13poverty.cfm](http://aspe.hhs.gov/poverty/13poverty.cfm)).

The cost of living in Middlesex County is, of course, much higher than in Mississippi or Arkansas, and we need for our workers to have a living wage, not a poverty-level wage. The Crittenton Women's Union, which is very respected and has leaders from the corporate and finance world on its board, provides an economic independence calculator by city (I am quoting directly):

**Monthly Costs for One Adult (Waltham)**

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<td>Personal &amp; Household Needs</td>
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**Economic Independence Wage (Waltham)**

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<th>Category</th>
<th>Hourly (per adult)</th>
<th>Monthly (per adult)</th>
<th>Annual (per household)</th>
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<td>$15.05</td>
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**Monthly Costs for One Adult and One Preschool-Age Child (Waltham)**

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</table>

**Economic Independence Wage (Waltham)**
Hourly (per adult) $27.64
Monthly (per adult) $4,810
Annual (per household) $57,720

(http://www.liveworkthrive.org/research_and_tools/economic_independence_calculator)

The Economic Policy Institute, on whose board Dean Lisa Lynch of Brandeis’s Heller School serve, calculates the cost for a family of one parent and one child in the Boston metro area a bit higher. “EPI’s Family Budget Calculator measures the income a family needs in order to attain a secure yet modest living standard by estimating community-specific costs of housing, food, child care, transportation, health care, other necessities, and taxes.” (http://www.epi.org/resources/budget/) (Again, I am quoting directly.)

**Monthly costs**

for a family with

**1 parent and 1 child**

in Boston-Cambridge-Quincy, Massachusetts

- **Housing** $1,444
- **Food** $369
- **Child Care** $1,019
- **Transportation** $480
- **Health Care** $1,037
- **Other Necessities** $464
- **Taxes** $847
- **Monthly Total** $5,660
The above figures assume year-round employment, but most of Brandeis’s food service workers aren’t employed over the summer. I imagine that, with all of the schools in the Boston area, the market is flooded in the summer time with food service workers, most of whom can probably not get work during the summer. What will you do to bring the workers’ wages up to a living wage?

2. Are fair labor standards included in the Key Performance Indicators? If not, would you be willing to include them?

3. How do you respond to the NLRB decisions concerning Sodexo and the rights of their employees to unionize? Apparently, in 2011, around 18,000 of the roughly 120,000 were unionized. According to your website, the percentage of unionized workers is currently over 15%, which is just about the same proportion as two years ago. Why is the number so low?

4. Do you have an annual, on-the-clock training program on gender, race, sexual orientation and sexual and other violence? If not, are you willing to establish one? Low-wage workers are at particular risk for such harassment. Could you please share with us your policy statement on sexual and other forms of harassment and sexual and violence?

5. What will you do to maximize the number of full-time positions? Is this issue included in the Key Performance Indicators?

6. In 2005, Sodexo settled for $80,000,000 a race-bias lawsuit brought by African American mid-level workers. According to the Washington Post, the lawsuit concerned promotions denied to 3,400 Black workers. It appears to me that you have made both good faith efforts and actual progress in diversity, but I can’t

    Applying the adage that “what gets measured gets done,” Sodexo tracks its diversity performance to ensure continued progress. As part of its long-term commitment to diversity and inclusion, Sodexo tracks both quantitative and qualitative accountability with a scorecard to ensure we are recruiting, developing, engaging and retaining a diverse and highly skilled workforce.

Can you please provide us with the report that tracks your progress in the Boston area?

One effective way to ensure gender, racial, and other diversity is to have a policy that a promotion or transfer goes to the most senior, qualified person. I am happy to see that you plan to follow that policy, with the exception of cooks.