

**Summary Report of the Independent Investigation
of Complaints Related to the Brandeis University
Men's Basketball Program: Part One**

August 22, 2018

On April 6, 2018, Brandeis University (“Brandeis” or the “University”) terminated the employment of its longtime men’s basketball coach, Brian Meehan, amid charges of racism and abusive behavior towards his players. These charges and Meehan’s termination were publicized in the national sports and news blog *Deadspin*; some of the allegations had also been the subject of a complaint by six current and former Brandeis players and a six-month investigation by the University’s Human Resources (“HR”) Department in 2017. The day after Meehan’s termination by Vice President of Student Affairs Sheryl Sousa, Sousa’s own direct report, Athletics Director Lynne Dempsey, was placed on paid administrative leave and Brandeis launched an independent investigation summarized below.

In essence, the outside investigators found that over a number of years, there was inadequate supervision of Coach Meehan and a failure to address his unacceptable conduct, especially toward his players. When these problems came to a head with the players’ HR complaint in 2017, the resulting internal disciplinary process was clouded by questions of potential bias and influence, improvised procedures, unexplained delays, and a post hoc reevaluation of the sanction. One thing is clear: Meehan’s behavior continued, with adverse consequences for all concerned.

I. Investigation Announcement and Scope

President Liebowitz, Board Chair Meyer Koplow, and Provost Lisa Lynch announced the independent investigation to the entire Brandeis community in broad terms:

[The independent investigators] will be charged with reviewing our systems, climate, and culture of handling complaints, and will recommend actions and changes, including those related to personnel. Our campus community deserves a thorough and objective look at what occurred here, and we will use this information to make improvements.

The investigators' mandate was clear: conduct a thorough, detailed, utterly objective examination honoring Brandeis's motto: "Truth even unto its innermost parts." As President Liebowitz's April 9, 2018 Town Hall meeting confirmed, however, issues of race have troubled Brandeis for decades (and our country for many more years). At the Town Hall meeting, students and others spoke candidly about feelings of alienation, lack of representation and lack of full participation in the life of the University, especially with respect to students of color.

II. Investigation Strategy and Process

The resulting investigation has been both wide and deep. Since April, the investigators have talked to over 150 members of the Brandeis community and reviewed approximately 30,000 documents, including Brandeis policies and procedures, emails, Athletics Department records, HR records, administrator files, mobile phone records, and other University documents. The investigators spoke with current and former athletes, parents of athletes, coaches and assistant coaches, as well as members of the training staff and former and current Athletics Directors. Interviews also included current and former administrators and faculty members who had responsibility for or knowledge of the Department. Coach Meehan, through his counsel, declined to participate.

A. Two-Part Report

Despite the wide scope of the investigation, we are mindful of the need to get the most urgent information to the Board, the administration, and the Brandeis community as

expeditiously as possible. Accordingly, the investigation reporting has been divided into two parts.

First, we analyzed the circumstances giving rise to the basketball players' complaint against Coach Meehan, the internal investigation conducted by Brandeis, the administrative decision-making processes that followed, and other general concerns raised about athletics at Brandeis.¹ As anticipated in President Liebowitz's April 10 Independent Investigation Update, the findings and recommendations in this first phase of the investigation have been reported directly to Board Chair Meyer Koplow. As the President also noted, "the facts and best-practice recommendations will be shared with the campus community." A summary of the findings of fact and recommendations of this first phase of the investigation is provided below.

Second, the investigators will examine Brandeis's internal policies and procedures for handling complaints of discrimination and harassment, which were already under extensive institutional review prior to our investigation. Our final report will offer additional recommendations in that regard as well as our overall assessment of the climate and culture at Brandeis in light of information obtained in our investigation. We expect to deliver the second report in the fall.

B. Interviews and Meetings

The investigators were provided an office in the Goldfarb Library, where we established office hours to allow anyone in the Brandeis community to meet with the

¹ While the current investigation was pending, we were also asked to conduct a separate investigation of another member of the coaching staff pursuant to the University's standard HR procedures. That investigation was concluded with a separate final written report subject to Brandeis's standard confidentiality procedures for handling such complaints.

investigators (with or without a prior appointment) to describe their experiences, observations, comments, and concerns. As noted in the April 6, 2018 announcement,

[The investigators] are available to students, faculty, staff and alumni who would like to provide information about the former men's basketball coach; concerns about the policies and practices followed in this case; policies and procedures more generally; and the wider climate at the university.

At first, relatively few people contacted the investigators. The University sent out additional notifications to the community. Also, the investigators sent two emails to all members of Brandeis athletic teams and directed targeted emails to coaches, asking them to come forward. This broad outreach greatly increased the number of people visiting the office and contacting the investigators. As will be further discussed in the second report, we noted that many in the Brandeis community were afraid to come forward for fear of retaliation or other adverse consequences.

III. Questions Presented

The investigators framed the following core questions as central to the witness interviews and the extensive document review:

- What was the culture of the men's basketball program during Coach Meehan's tenure? What were the major factors contributing to the creation and maintenance of the culture?
- Was the oversight of Coach Meehan and the men's basketball program adequate prior to the players' complaint to HR?
- Were there opportunities to address the team's culture and conduct of the coach prior to the 2017 HR complaint? What were they, and what happened?
- The Meehan investigation--what was done well and what was done poorly?
- The outcome of the Meehan investigation--what happened and why? And who was responsible?
- What was the culture of the men's basketball team and Coach Meehan's conduct following the Meehan investigation?

- What was the oversight of the men's basketball program following the Meehan investigation?
- Are there other issues within the Athletics Department on other Brandeis teams that reflect an abusive, discriminatory, or unhealthy culture or on the adequacy of the leadership of the Athletics Department?

As our interviews progressed and our understanding of the circumstances increased, we gathered additional information to shed light on the underlying problems, the administration's response to those problems, and suggestions for improvement going forward.

IV. Emerging Themes

In hundreds of hours of discussions and document review, three key themes emerged, placing the discrete facts summarized below in a broader context.

First, we found a true, deep affection for Brandeis across the board and an open-mindedness about people's motivations—even by some who had painfully experienced the institution's shortcomings. In all likelihood, some kept their concerns to themselves out of a misplaced sense of institutional loyalty.

Second, we saw how administrators and staff in an institution founded in response to systemic discrimination could nonetheless fail to recognize, appreciate, or adequately address perceived bias within their own ranks until the problem had already become widely known.

Third, we saw how transitions at Brandeis—growth, decline, and simple turnover—in people, policies, and procedures compounded these problems.

Together, these problems created holes in the administrative safety net, failing to fully protect students and, ultimately, the broader Brandeis community.

V. Findings

A. Growth, Success, and Trouble in the Basketball Program

Soon after her arrival at Brandeis in 2000, Senior Vice President for Students and Enrollment Jean Eddy had executed on her vision of making basketball the premier winter sport to attract and excite students, even at an elite academic research institution. The strategy had undeniably positive results for Brandeis and was embraced by everyone in the Athletics Department, then and now. A chorus of witnesses praised the benefits that Division III sports and UAA membership bring to the University: school spirit, affinity, great students, improved recruiting, strong alumni relations, and donor support. Coach Meehan contributed to the program's early success, helping fill the Gosman Center with enthusiastic basketball fans.

Upgrading the basketball program solved one problem at Brandeis but, as is so often the case, it inadvertently created another. Meehan's unique (for Brandeis) rolling contract, the specially-constructed basketball coaching offices, foreign road trips, and a retention package in response to a competing offer from an Ivy League school are not uncommon in college athletics, particularly in "show" sports such as basketball. But Meehan's early success, the job "perks" he received, and the evergreen hope of repeating it made the Coach seem "untouchable" and above the rules, even to his superiors. Worse, Meehan exhibited unacceptable conduct towards his players and others associated with the team from the beginning. He would yell, swear and make denigrating remarks. For a time, winning masked the problem.

B. A Reversal of Fortunes

According to multiple witness accounts, the downturn in the men's basketball program began after 2010, for a host of reasons probably including but surely not limited to Meehan's diminished ability to gain easy admission for his preferred players. In 2009-10, the Judges were in the NCAA Elite Eight; the next season, they were the ECAC Champions; just a few years later, they were losing a majority of their games, a downward trend that persists to this day.

According to multiple witnesses, Meehan did not adapt to these new realities. Instead, he railed against his perceived misfortunes and, as one friend and supporter observed, Meehan gradually became "pissed off at everything Brandeis." The coach's growing frustration appears to have pressurized the team's culture in unhealthy ways. Witnesses described Meehan as having lost his way, becoming less engaged with his players and more dismissive of others' opinions. As others also noted, Meehan kept his two sons on the team despite all recommendations to the contrary, with predictably negative consequences for the team's morale. Worse, African-American players could understandably interpret Meehan's actions towards his sons as unjust, more discriminatory than paternal. Adding to these problems, Meehan had begun making comments with racial overtones and appeared to treat players of color differently, raising far more serious concerns.

C. Holes in the Safety Net

As summarized below, the investigation identified seven holes in the administrative safety net that should have afforded more protection to the players and, ultimately, the larger Brandeis community.

1. Potential Blind Spots

The first hole in the safety net was created by potential blind spots arising from close relationships within the Athletic Department. According to Dempsey, Sousa and Dempsey met at Brandeis and for a season were teammates on the soccer team in the late 1980's. Dempsey began working at Brandeis after her graduation; Sousa returned to the University in 1998. Dempsey was promoted in 2000 to Assistant Athletics Director, reporting to Director of Athletics Jeff Cohen and Associate Director of Athletics Sousa. Although Cohen was the Director when Meehan began coaching for Brandeis in the fall of 2003, Cohen had by that time begun to transition out of the Department; Sousa assumed his role as Athletics Director. Dempsey was, in turn, promoted by Sousa to Associate Director of Athletics in 2004. From 2003 through 2015, Sousa, Dempsey, and Meehan worked closely together in the Gosman Center.

Dempsey and Meehan had also become close friends. She introduced Meehan to his wife, an undergraduate at Brandeis with Dempsey and a former roommate of Sousa's. Dempsey officiated the Meehans' wedding, which Sousa also attended. According to Sousa, she and Meehan's wife did not stay in touch over the years, but they did sit together at home games in the Gosman Center. Sousa and her wife had also traveled with the basketball team on a ten-day trip to Croatia in 2012 along with Meehan and his wife; Sousa stated publicly that the trip "reignited" their friendship.

Dempsey confirmed in her interview that she and Meehan are "close friends." She also repeatedly indicated that she had no reason to believe that Meehan engaged in abusive or discriminatory behavior towards his players because she had never personally witnessed it.

Likewise, Sousa repeatedly stated that she, too, had not personally witnessed Meehan behaving badly towards his players. Sousa also explained that her relationship with Meehan had changed over time: she liked him in the beginning of his career at Brandeis, but she began to view him differently as she was transitioning out of the Athletics Department. Sousa said that towards the end of her tenure as Athletics Director, Meehan had become increasingly difficult to deal with and was often rude to her.

2. A Homogeneous Senior Athletics Department Staff May Have Been Less Attuned to Race Concerns

The second hole in the safety net came from a lack of diversity within the Athletics Department. Notwithstanding the early and outstanding success of the Eddy strategy, the Brandeis Athletics Department appears to have invested relatively less time and effort – for reasons beyond the scope of this report – in diversifying its leadership and coaching ranks. The investigators found a stunning lack of diversity that cannot be blamed for the problems in the men’s basketball program, but which surely contributed to the Department’s acceptance of or inability to recognize, appreciate, and address potential discrimination concerns shared by African-American and white players alike.

It is always hard to work through the difficult and painful issues of perceived racism, of jokes that go too far, and behavior that crosses invisible and divisive lines. But it is perhaps unimaginably difficult for young and relatively inexperienced college students to do so in an environment bereft of African-American coaching staff and senior leadership. Heading into troubling times, the Athletics Department’s own “bench” may not have been sufficiently deep, bringing together the varied backgrounds, skills, experience, and talent needed for the Department to meet the challenges at hand.

3. Perceived Favoritism Towards Coach Meehan

The third hole in the safety net was created by Dempsey's and Sousa's *perceived* favoritism towards Meehan. During interviews with players, Athletics Department staff, and Department leadership, the investigators repeatedly encountered a profound disconnect. Sousa and Dempsey, on the one hand, personally did not consider themselves biased towards Meehan. Few others at Brandeis, however, had reason to believe that Sousa and Dempsey were not protecting the coach. Predictable consequences followed. Just as they had with many other challenges in managing athletics at Brandeis for so many years, Sousa and Dempsey felt that they were open-minded, ready, and willing to address any and all problems with coaching. For this very reason, Sousa and Dempsey apparently saw no need to develop or underscore existing alternate channels for students and staff to complain about Meehan. Likewise, there is no indication that Sousa or Dempsey sought to reassure students and staff that personal friendships with a coach would never stand in the way of a staff or student complaint. Without the robust efforts required given Sousa's, Dempsey's, and Meehan's personal relationships, players, trainers, and coaches were likely discouraged from complaining about Meehan, reinforcing his "untouchability." Not surprisingly, Sousa and Dempsey can and do now claim that they were unaware of the nature and extent of Meehan's troubling behavior.

Regardless of whether Sousa and Dempsey had a blind spot about Meehan (which they vigorously deny), they failed to demonstrate to others that they had no such blind spot. Practically speaking, the sad outcome turns out to be much the same. People did not speak up.

4. Known Troubling Behavior Unreported, Discounted, or Ignored

The fourth hole in the safety net was created by the Athletics Department's inability or unwillingness to heed alarming warning signs. Although signs of trouble with the men's basketball team had long been present, the administrators responsible for directly and indirectly supervising Meehan apparently failed to connect the dots or they turned a blind eye to what was going on with the team.

The Judges' winning streak began to unravel in 2014, the same year one African-American player's mother complained in writing to President Lawrence that "students are being humiliated" by Meehan and concluding that "it is a social injustice how my son was being treated." The player himself actually met with Dempsey, offering her an opportunity to probe the culture of the team. Dempsey recalled talking to him about the importance of practicing hard, but she did not look deeper into his reasons for reaching out to her. Sousa separately saw the player's year-end survey comments (probably without recognizing the author); she also helped draft President Lawrence's response and later spoke to the player's mother. Sousa took action then, verbally warning Meehan against using profanity when talking to players, but it does not appear as though she followed up on her warning. One thing is certain: Meehan's troubling behavior continued.

Meanwhile, anonymous end-of-year survey results dating back to 2013-2014 were quite negative about the head coach. Dempsey, however, explained that she considers surveys largely as an opportunity for players to "vent," and she does not recall ever discussing them with Meehan. Another coach confirmed, however, that negative player surveys can play a significant role in annual performance reviews of other coaches in the Department.

In 2015, another African-American player had met with Dempsey after Meehan abruptly cut him from the team, raising questions about the fairness of the decision and how it was handled. Dempsey said she could not question a coach's decision. Dean of Students Jamele Adams intervened on the cut player's behalf, seeking to arrange a meeting with Meehan and Dempsey; Sousa was also aware of the requested meeting. The player raised no discrimination or harassment concerns with Dean Adams, just unfair and deliberately harsh treatment by the coach in cutting him from the team. The matter dropped from the Department's radar screen as soon as the player declined Meehan's unusual suggestion that the player put his questions in writing. The player's persistence and the Dean of Student's involvement, especially in the context of other warning signs (i.e., the 2014 complaint to President Lawrence, poor player surveys, and declining team performance) should, however, have signaled the need to dig deeper –but again, neither Sousa nor Dempsey sought to probe.

The 2016-2017 men's basketball team player survey results were highly negative about the head coach, yet Dempsey does not recall discussing them with Meehan.

Also, in 2017, the Judges' star player (and an All-League performer) – who was white – left the team at the end of his junior season, and yet no hard questions were asked of him (or of Meehan) by Dempsey or anyone else with responsibility for athletics at Brandeis. Dempsey did know that the player was unwilling to engage directly with Meehan at the time, which was why he enlisted Dempsey's assistance in gathering his personal belongings. Further probing might have uncovered whether Meehan had been truthful in claiming that the player quit the team despite the player's recollection that he had been cut after complaining to Meehan about, among other things, his mistreatment of players –not the sort of detail that an athlete tends to forget.

Later in 2017, the HR investigation concluded with Sousa's deciding that there was merit to the allegations of "inappropriate and unprofessional" language, including profanities. Despite Sousa's explicit "final written warning," there appears to have been no closer oversight by Dempsey or Sousa in the 2017-2018 season. Just as had occurred after Sousa's 2014 verbal warning to Meehan, his inappropriate behavior continued.

Finally, the investigators uncovered ample evidence that assistant coaches and trainers spoke among themselves about Meehan's mistreatment of players. Many witnessed the same or similar events at issue in the HR investigation that are not detailed in this summary (but are recounted in the *Deadspin* posts) because these incidents were apparently unknown to the Athletics Department's senior leadership, the focus of the findings and recommendations in this report. Silence from below reveals a Department culture that failed to encourage staffers to bring such problems to management's attention with confidence that they would be handled appropriately and without fear of retaliation. Moreover, while a failure to report *crude, hurtful, or otherwise inappropriate* comments and behavior is like "running a yellow light," handling *racially-sensitive* incidents the same way runs a red light.

5. Outmoded Policies, Procedures, and Blurred Administrative Lines

The fifth hole in the safety net came from Brandeis's discrimination and harassment procedures. At the time of the HR investigation, Brandeis's Policy Review Committee had already begun to address gaps, ambiguities, and known problems in the Claim Resolution Procedure. That review was far from complete when the Meehan situation arose. Not surprisingly, the gravity of the Meehan investigation highlighted a variety of concerns about the Brandeis process including: having the HR investigator choose the decision maker; addressing conflict of interest concerns; eschewing written reports; disclosing to the parties

the HR investigator's preliminary conclusions before a final decision is made; articulating burdens and standards of proof; the need to balance witnesses' interest in confidentiality with the decision maker's need for complete information; determining the deference that should be accorded to the HR investigator's findings; and explaining the outcome verbally to the complainants rather than in writing. As noted below, some workarounds and modifications to the Claim Resolution Procedure in the Meehan investigation created new problems.

Meanwhile, Brandeis was also in the process of centralizing, streamlining, and upgrading its anti-discrimination and harassment functions with the arrival of Nelson-Bailey and the new Chief Diversity Officer, Mark Brimhall-Vargas.

The investigators will address all of these concerns in our second report in the fall, but it is important to understand their impact on the Meehan investigation itself, as summarized below.

6. Conflict of Interest Concerns

The sixth hole in the safety net came from Sousa's appointment as the decision maker on the players' complaint against Meehan. The HR investigator (rightly) decided that Dempsey could not be an appropriate decision maker given her personal relationship with Meehan, but the investigator mistakenly assumed that Dempsey's boss, Sousa, had no such ties. Sousa knew, but she was comfortable making the decision because, as she explained, supervisors tend to know their subordinates and, in Sousa's mind, her relationship with Meehan had become more of a "working" one in recent years. Others surely had a different view. Indeed, Meehan told another coach that although he was under investigation and had been "found guilty," Sousa was "taking care of it."² It is precisely this *appearance* of

² In the fall of 2017, Meehan apparently told a coach that he was under investigation and that he was "found guilty." The coach asked, "Then how are you still here?" Meehan responded that Sousa was "taking care of"

impropriety – not just an *actual* impropriety – that the conflict of interest provision in the Brandeis Business Conduct Policy is intended to avoid.

Sousa’s longstanding personal relationship with Meehan (no matter how thin she viewed it) should have been disclosed by Sousa (and, perhaps, even Dempsey). The opportunity to make the disclosure was squarely presented when the HR investigator informed Sousa of the reason why she was selected over Dempsey, and yet Sousa failed to reveal her relationship. Many times, disclosure itself minimizes a perception of bias by getting the issue into the open. No such disclosure was contemplated by Sousa, however, even though that was her primary responsibility under the Business Conduct Policy that covers “[a]ll Brandeis employees”:

Each member of the Brandeis community has an obligation to act in the best interests of the University, and must not permit outside financial interests and/or personal interests to interfere with that obligation. The University’s Conflict of Interest Policy is intended to inform Brandeis Community members of the potential for conflicts of interest and to establish a process for managing or avoiding conflicts.

The Business Conduct Policy also encourages all members of the Brandeis community to direct questions regarding the intent or applicability of the policy to the Office of the General Counsel. There is no indication, however, that Sousa paused to do so before accepting the HR investigator’s assignment to serve as the decision maker in the Meehan investigation.

In Sousa’s account, she assumed that there was no problem with her making the final decision on the players’ HR complaint against Meehan because no one raised a question about her recusal. Under Brandeis’s policy, however, raising the conflict of interest issue was

him. According to this source, Meehan explained that Sousa found some “discrepancies” in the HR investigation and report, including that some witnesses favorable to Meehan were not interviewed. For these reasons, Meehan apparently explained, Sousa was “taking care of it.”

Sousa's responsibility, as was the obligation to seek guidance from Brandeis's General Counsel. Moreover, Sousa knew that the very reason Dempsey was not selected, or *recused*, was because of her personal relationship with Meehan.

Sousa also explained that in a collegial university environment, any supervisor's interactions with a subordinate are likely to be friendly after years of working together; she also noted that the Claim Resolution Procedure explicitly contemplates decisions by supervisors. The investigators accept these points, but they apply equally to Dempsey, who was clearly not considered an appropriate decision maker. Furthermore, what has been documented in this report about Sousa's relationship with Meehan exceeds what could be characterized as simply a friendly working relationship.

Unfortunately for all concerned (including Sousa), the appearance of a conflict left a cloud over Sousa's judgment and her decision on the Meehan investigation, especially in light of the other process problems noted below.

7. Additional Problems in the Claim Resolution Procedure

The seventh hole in the safety net grew from the troubled HR investigation and decision making process. The HR investigator initially suggested a highly questionable timeline to the player-complainants, leaving them with the impression that the matter could be resolved in a matter of weeks (her boss, Nelson-Bailey, did interject that the investigator's predicted timeline was not "realistic"). Next, Nelson-Bailey insisted (rightly) on a written report, even though none was contemplated in the Claim Resolution Procedure and the HR investigator had no previous experience in preparing such reports at Brandeis. Weeks of delay ensued while Nelson-Bailey made extensive comments and edits on multiple drafts of the investigative report (there is no evidence, however, that Nelson-Bailey ever sought to

directly influence or change the HR investigator's findings). Meanwhile, the HR investigator appeared to be stonewalling the players, even though that was not the case.

The HR process problems continued after the report was completed. The HR investigator faced significant pressure during a September 20, 2017 meeting of senior administrators (President Liebowitz or Provost Lynch did not attend), yet she stayed true to her findings. She had found merit to the claims of discrimination and emotionally abusive conduct by Meehan, but did not find sufficient support for the players' claim that Meehan favored his two sons. Sousa did not defer to the experienced HR investigator's findings. As Sousa explained, she wanted to make her own, independent decision. Sousa requested the investigator's complete written report. Given that Brandeis's procedure at the time did not contemplate written reports at all, much less turning over a full written report to the ultimate decision maker, the HR investigator elected to redact her own final report to protect not only the actual identities of the witnesses involved, but also the information that could be traced back to them. For this reason, the HR investigator's redactions were excessive. Despite the redactions, however, sufficient facts remained to support the HR investigator's findings.

After learning of the HR investigator's preliminary findings, Vice President Flagel sought to change or delay the HR investigator's planned disclosure of the discrimination finding to the students, a process step contemplated in the Claim Resolution Procedures even though Sousa had yet to render her final decision. Flagel's motivation may have been to save Meehan's or the University's reputation, however, it was an unwarranted variance of the process. Such deviations inevitably raise concerns about potential manipulation, concerns that may never be laid to rest.

Sousa continued to harbor doubts about the HR investigation and its ultimate findings, particularly the conclusion that there was merit to the discrimination claim. To Sousa, it was particularly significant that she had never personally witnessed Meehan engaging in any such discriminatory behavior. She did not believe that he was a racist. It should go without saying, however, that discriminatory and abusive behavior can be (and often is) committed covertly, especially around supervisors. Also, as a former soccer coach, Sousa certainly was aware of the power dynamic between a coach who decides who is on the team and a player who is willing to accept harsh and abusive treatment to be on the team. Thus, while Sousa's personal experience with Meehan may have informed her decision as she suggests, it is at least equally plausible that it left her unwilling or unable to countenance the players' accusations.

Sousa questioned the highly experienced HR investigator at length on the evidence and, ultimately, disagreed with her discrimination finding. Pressed to make a decision quickly, Sousa shared her thoughts with her boss, Flagel, who volunteered to draft a written decision for Sousa's consideration. Sousa's final decision tracked Flagel's draft, but hewed more closely to the policy language and added a "final warning" at the end.³

Meanwhile, Nelson-Bailey had provided little if any support to her direct report, the HR investigator, in several key meetings. Nelson-Bailey also undercut the HR investigator's findings with Sousa. Finally, the responsibility for confirming the players' right of appeal as Meehan had been informed was clearly with HR, which it failed to do.⁴ Whether this was a

³ Sousa wrote, "I have decided that there is merit to the allegations of inappropriate and unprofessional use of language (including use of profanities) and inappropriate and unprofessional comments that may have caused emotional harm." She also added that her letter "serves as a Final Written Warning. Further incidents of this nature will lead to further disciplinary action up to and including termination."

⁴ Meehan was explicitly reminded of his appeal rights in Sousa's disciplinary letter. The only information the players received about their appeal rights was in their first meeting with HR, when they were given a copy of

failure of process or part of an explicit or implicit effort to protect Meehan and Brandeis from further turmoil is unclear, but it is another undeniable cloud over the process.

Throughout the HR investigation and decision making processes, friendships may have offered Meehan, Dempsey, and Sousa access to information they might not otherwise have had, raising questions about possible influence that, frankly, can never be answered. The investigation revealed that when Sousa spoke with Dempsey, Meehan was told about the conversation. When Meehan was upset, Sousa was told. Information flowed both ways. This might well have been innocent, just part of the normal chain of command and limited to the handful of emails produced in the investigation. But, again, the appearance of possible coordination between the accused and the decision maker, mediated by Dempsey, formed yet another cloud over an already troubled process.

D. It All Comes to a Head

Sousa's initial decision on the Meehan investigation didn't last long. Six months later, Sousa essentially revisited her decision following Dempsey's non-renewal of Meehan's rolling contract, the *Deadspin* publicity, and a new allegation of racially insensitive comments by Meehan towards a player of color during the just concluded 2017-2018 season. This time, after initially suggesting administrative leave for Meehan, Sousa swiftly decided to terminate Meehan's employment –but not for the new allegation against him, which had yet to be investigated. Instead, as Sousa explained, she had just learned that the HR investigator had redacted material information from the previous HR investigation report that, in Sousa's view, justified Meehan's termination for demeaning comments and his

the Brandeis "Nondiscrimination and Harassment Problem Resolution and Appeal Procedure for Claims of Harassment/Discrimination Against Staff or Faculty." The Resolution and Appeal Procedure includes the following provision on appeals: If the respondent receives corrective action and/or other sanctions and objects, he/she may appeal within ten (10) working days from learning of the decision. If the complainant disagrees with the outcome of the review and/or action(s) taken, if any, then he/she may also appeal within ten (10) working days from learning of the decision.

treatment of injured players – not discrimination – at the conclusion of the 2017 HR investigation. Thus, it is important to understand that Sousa never disciplined or terminated Meehan for discriminatory behavior. Notably, all of the Brandeis senior administrators involved concurred with Sousa’s ultimate decision to terminate Meehan. Regrettably for all concerned, however, Sousa’s final decision came too late, after earlier and less painfully public opportunities to address the problems had passed.

This lamentable series of process failures involved many at Brandeis. All claim to have been motivated by good intentions and a genuine commitment to do the right thing. Even assuming the sincerity of these protestations, the investigators find that in the months leading up to the ultimate decision to terminate Meehan’s employment, the interests of the student-athletes appear to have been subordinated to the goals of having a winning basketball team and protecting the institution (or a long-term colleague) from harmful accusations. Our findings thus conclude with an observation about the players who filed the formal complaint against Coach Meehan.

E. The Impact on the Player-Complainants

With seven clear holes in the safety net, it is hardly surprising that it failed to lessen the impact of Meehan’s behavior on the players and, ultimately, the broader Brandeis community. Worse, the players’ efforts and their suffering were not sufficiently appreciated by Brandeis. The player-complainants did not receive the level of respect they deserved and had a right to expect from the University’s complaint and resolution process. The degree of courage it took to come forward and raise claims against an entrenched coach who appeared to have the support of senior University administrators was not sufficiently acknowledged or appreciated by those with the responsibility to ensure a positive experience for Brandeis’s

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athletes. Some players suspected that by stepping up, they could lose their opportunity to play the sport they loved at Brandeis. Nonetheless, they found the needed support amongst themselves and took action.

These student players and the entire Brandeis community were entitled to a fair, thorough, and timely process in which they could have confidence. The players did not expect or deserve an episodic, inconsistent, and opaque process that took six months to reach a vague disciplinary decision addressing only Meehan's "inappropriate and unprofessional use of language" and "comments that may have caused emotional harm." The discipline meted out to Meehan (a "final written warning" and anger management training) also came from someone widely considered to be his friend. Afterwards, the players were entitled to the same clear instructions about their appeal rights that Meehan received from Sousa, but no such guidance or help was forthcoming. Finally, although the HR Investigator herself had found merit to the players' discrimination claim and the subsequent public announcement of Meehan's termination clearly articulated discrimination concerns, no such finding had ever been formally reached by Brandeis.

When complaints of race discrimination are made against senior managers or persons in a position of authority, institutional focus and concern is routinely directed to the impact of being labeled a racist, the fallout for the accused's career, the likelihood of an employee lawsuit, and the negative publicity that follows having employed someone accused of discrimination. The impact on the victims of racially insensitive comments and behavior, however, is all too often of secondary concern. Most victims will acknowledge that the sting of discrimination (real or perceived) is usually repressed, only to return unbidden,

unwelcome, and often not fully understood. These deep feelings can corrode a victim's self-esteem and sense of self-worth. Only time will tell.

VI. Recommendations

A. Human Resources

Specific recommendations regarding additional improvements to the Brandeis Human Resources Claim Resolution Procedure over and above those already contemplated by the Policy Review Committee will be offered in the second investigation report.

With respect to Human Resources personnel involved in the Meehan Investigation, we offer the following recommendations. First, Brandeis should discipline Human Resources leadership as appropriate for failing to provide a thoughtful and principled review of the HR investigator's redactions to assure that identities were masked appropriately but retained as much factual information as possible for Sousa's review. Second, Brandeis should discipline Human Resources leadership as appropriate for the apparent failure to confirm that the player-complainants were explicitly informed of their appeal rights under the Claim Resolution Procedure, as Meehan was.

B. The Athletics Department and its Senior Leadership

In her interview, Sousa raised a number of concerns about Brandeis's HR investigation and decision making procedures. She should not be held accountable for aspects of that process outside of her control. At minimum, however, Sousa should have considered her obligations under the conflict of interest provision of the Brandeis Business Conduct Policy in connection with her appointment as the decision maker in the Meehan Investigation; she should also have sought guidance from Brandeis's General Counsel with respect to these issues. Sousa's actions in this regard cast a regrettable shadow over the entire

decision-making process. The communications between Meehan, Dempsey, and Sousa during the investigation and decision making process only exacerbated Sousa's perceived conflict of interest even if the chatter had no actual effect on Sousa's ultimate decision, as she suggests. Finally, Sousa essentially substituted her judgment for that of the HR investigator in a *de novo* review, and she did so, in no small part, based on her stated concerns about the quality of the investigator's work and Sousa's own experience and relationship with Coach Meehan. This created another cloud on the process.

Putting aside these questions about the HR investigation and decision making procedures, the fundamental concern must be on the management of the underlying problem. Although Sousa, Dempsey, and other Athletic Department staff were clearly aware of serious warning signs regarding Meehan's behavior, the Athletics Department's leadership and its administrative overseer, Sousa, individually and collectively failed to implement adequate measures to prevent further troubling behavior and avoid its impact on the men's basketball team and the larger Brandeis community.

And again, while profanity and intemperate behavior is regrettably commonplace in college sports, "red light" allegations of discriminatory or harassing comments and behavior are qualitatively different, demanding heightened institutional *awareness* and responsive *action*. This is particularly important at Brandeis, which was founded on inclusivity and non-discrimination.

As managers, Dempsey and Sousa are, ultimately, accountable for what happens in the operations they supervise. Effective management of the Meehan situation within the Athletics Department could and should have included, for example:

- Emphatically confirming that all Athletics Department staff members have an individual responsibility to assure that Brandeis athletes are free from abusive

– and especially potentially discriminatory or harassing – comments and behavior, by either handling such problems locally or reporting them to higher authorities as appropriate;

- Thoroughly reassuring all Department staff and athletes that they will be protected from retaliation for bringing complaints or problems to the Department's attention, especially on such sensitive matters as discrimination and harassment;
- Underscoring to all Athletics Department staff and athletes the importance of not allowing real or perceived personal relationships to discourage complaints or suggestions for improving the Department and each athlete's experience in its programs;
- Clearly designating alternate channels for making complaints regarding Department staff to avoid any perception of bias or favoritism (*e.g.*, HR, the University Ombudsman, the Dean of Students, or the Chief Diversity Officer);
- Developing and following clear and defensible protocols for closer monitoring by the Department's leadership of abusive, harassing, or otherwise inappropriate behavior by any Department staff member, especially when allegations of discrimination had been involved;
- Providing any Brandeis athlete subjected to abusive behavior, discrimination, or harassment the support, counseling, and other services needed to assure the full benefit and enjoyment of the Brandeis athletics program;
- Regularly and thoughtfully assessing the effectiveness of training or counseling received by any Department staff in connection with an HR or Title IX investigation and considering whether any additional support services are needed;
- Considering mandatory training for all Department staff on bias, discrimination, harassment, and stress or anger management; and
- Engaging internal and outside experts and consultants as needed to improve the Department's management, operations, systems, and culture to assure compliance, accountability, and compassion for student athletes.

For these reasons, we offer the following recommendations with respect to Athletics Department personnel. First, Brandeis should implement the foregoing management actions and any others that Brandeis identifies as necessary and appropriate to address the problems noted in this report, repairing any remaining “holes” in the safety net. Second, Brandeis

▶ PRINCE LOBEL

should discipline Athletics Department leadership and administrators for the foregoing management lapses in a manner commensurate with their gravity and calibrated to the best interests of the Brandeis athletics program and the broader Brandeis community.