Non-Discrimination and Harassment Problem Resolution and Appeal Procedure for Claims of Harassment/Discrimination against Staff or Faculty

Policy Statement
It is the University's legal and ethical responsibility to prevent harassment and discrimination on the basis of race, color, ancestry, religious creed, gender identity and expression, national or ethnic origin, sex, sexual orientation, pregnancy, age, genetic information, disability, veteran status or any other category protected by law, while protecting academic freedom. (See Non-Discrimination and Harassment Policy, http://www.brandeis.edu/humanresources/policy.html, for specific information and definitions.)

Any member of the Brandeis community who has a concern or complaint of harassment or discrimination, whether sexual in nature or otherwise, and without regard to the status of the alleged harasser (supervisor, co-worker, faculty, student, vendor or visitor), should bring the problem to the attention of the Vice President for Human Resources.

A violation of the University's policy on harassment and discrimination may result in a range of corrective action, up to and including release from employment or other status. This may also result in mandatory training, transfer to another area or shift, loss of privileges or some other action or combination of actions designed to remediate the situation.

While the definitions and examples of harassment in the University's Non-Discrimination and Harassment policy are based on the idea that we have a common basis for understanding those definitions and examples, one must remember that in a diverse university environment understanding the differences between events that are merely upsetting or shocking and events that constitute harassment or discrimination is not always easy. In classes, one will be exposed to a wide range of material, in the studies of history and of various cultures, that may include material that some may currently find inappropriate or disturbing. Being exposed to and studying such subject matter may be necessary to the content of certain courses, and if dealt with in a suitably academic manner, would not be considered harassment.

Applicability
This policy applies to students, staff, and faculty including visiting faculty, post-doctoral fellows, and graduate students. The provisions of the student Rights and Responsibilities handbook outline the procedures for complaints against students. Bargaining unit employees may be covered by the terms of the specific collective bargaining agreement with regard to discipline or termination, but harassment and discrimination concerns are addressed and investigated under this policy. The faculty is covered by the terms of the Faculty Handbook with regard to discipline or termination, but harassment and discrimination concerns are addressed and investigated under this policy.

Guidelines

Academic Freedom
Brandeis University adheres to the principles and traditions of academic freedom, and recognizes that these freedoms must be in balance with the rights of others, including the right of individuals not to be subjected to discrimination or harassment. It is understood that the principles of academic freedom permit topics of all types
to be part of courses, lectures, and other academic pursuits. Materials that are used or displayed in an educational setting should be related to educational purposes.

**Brandeis University’s Problem Resolution Process**

Within a framework of its legal responsibilities, concern for employees’ rights and responsibilities, and respect for academic freedom, Brandeis University strives whenever possible to resolve concerns about the possible occurrence of harassment or discrimination in a timely, confidential and informal manner. The terms “harassment” and “discrimination” can have an alarming quality to them and, as a result, people may be concerned about bringing forward concerns of this nature or learning that they are the subject of such a concern. Very often, however, these issues involve misunderstandings or miscommunications that can be easily resolved. One aim of the University’s problem resolution process is to help individuals feel comfortable bringing issues forward without needing to label the conduct as harassment or discrimination, so that individuals who may be the subject of a complaint are treated fairly, to investigate any conduct that raises concerns, and to initiate any resolution that may be required. The problem resolution process is also designed to effectively and impartially review harassment and discrimination issues of a more serious nature or which may require more in-depth investigation. In either case, individuals with any concerns of this nature are strongly encouraged to come forward for assistance in resolving the matter independently or with the help of Human Resources Staff. Furthermore, employees should be aware that it is the University’s responsibility to pursue harassment and discrimination concerns of which it becomes aware.

The guiding principles of the Problem Resolution Process are:

- To address concerns about harassment and discrimination while protecting academic freedom
- To address concerns early on and quickly, while they may be easier to resolve
- To welcome individuals to voice concerns through this process without needing to label the behavior of concern as harassment or discrimination
- To protect the confidentiality of the parties involved, whenever possible
- To attempt informal resolution whenever possible, but provide for a formal review and appeal process for both parties
- To maintain objectivity while remaining sensitive to concerns of both parties
- To stop and prevent any conduct that violates the University’s Non-Discrimination and Harassment Policy and to initiate any resolution that may be required
- To provide for a process and solutions that are flexible and based on the unique circumstances of each situation
- To provide a legally sound process

**Retaliation**

Retaliation against any person who, in good faith, initiates a complaint of harassment or discrimination or cooperates in the investigation of a complaint of harassment or discrimination is a separate violation of this policy and is strictly prohibited by law and by this policy. Retaliation may result in corrective action, up to and including termination from employment or loss of privileges.

**Fraudulent Claims**

A determined that an individual intentionally falsified a claim of harassment or discrimination may lead to corrective action, up to and including release from employment or other sanctions.

**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 Students at 781-736-3600.

Emergency Situations
Issues of rape, acquaintance rape, sexual assault, stalking, other sex offenses, or threats or acts of violence must be immediately reported to the Department of Public Safety at 781-736-3333. If on campus, employees seeing any of these acts being committed or if fearful for their own safety or the safety of others, should go to any emergency phone with a blue-green light and dial 6-3333 to be connected with campus police directly.

Interim Action
In certain circumstances, the University may determine that due to the nature or severity of a situation, interim action needs to be taken pending review. Such action may include, but is not limited to, temporarily transferring an individual to another location; placing an individual on leave pending investigation; or otherwise taking appropriate action designed to alleviate concerns pending the review of a matter.

**Brandeis University’s Problem Resolution Process Steps**

- Step 1: Getting Help to Resolve the Problem Informally
- Step 2: Formal Investigation and Resolution
- Step 3: Harassment/Discrimination Appeal Process
- Step 4: Further Appeal (for faculty who have been suspended or terminated)

**Alternative Steps**

- Alternative Step 1: Independently Addressing Inappropriate Conduct
- Alternative Step 2: Filing Complaint with State/Federal Employment Discrimination Agencies

**Step 1: Getting Help to Resolve the Problem Informally**
Many concerns about potential harassment and/or discrimination can be resolved quickly and effectively. If you have concerns about potential harassment or discrimination by staff or faculty, contact the Human Resources Office at 781-736-4464 and ask for the VP of Human Resources or the Director of Employee Relations, Labor Relations and Compliance. After an initial review and assessment by Human Resources staff, members of the Human Resources staff
will work with the complainant to identify approaches for managing the situation. The following illustrates some of the approaches that may be used:

- discreet guidance to the complainant on how to approach the situation, with measured steps/intervention if earlier approaches are ineffective
- direct intervention by Human Resources staff and other action taken as appropriate
- conversations between the parties to clarify the behavior of concern training sessions in the area where the alleged harassment/discrimination is occurring other creative solutions

**Step 2: Formal Investigation and Resolution**

If Step 1 is deemed insufficient by the complainant or the VP of Human Resources, a more formal investigation will be conducted. A member of the Human Resources staff will conduct a prompt and thorough investigation. The University expects faculty, staff and members of the community to cooperate fully in any review process. Such individuals are also expected to maintain confidentiality regarding the complaint and any facts of which such individual may become aware during the review process.

Review of harassment or discrimination complaints, sexual or otherwise are handled as follows: A member of the Human Resources staff or a designee appointed by the Vice President for Human Resources will meet with the complainant, review the concerns, and investigate, as appropriate. The complainant may be asked to submit his/her complaint in writing to assist the investigator in understanding the issues, but this is not necessary to conduct a review. A member of the Human Resources staff or a designee appointed by the Vice President for Human Resources will serve as investigator. The investigation will be carried out promptly, impartially, and with a goal of sensitivity toward all parties involved. The review may include interviews with the person(s) alleged to have engaged in inappropriate conduct (the respondent), other employees, witnesses, and a review of relevant documents, and other steps considered necessary or appropriate by the investigator.

Investigators will make every effort to conduct the review in a confidential manner. Only those individuals with a need to know or who have information important to the review will be involved in or informed of any complaint or investigation.

The respondent or complainant may bring a member of the Brandeis community with him or her for moral support throughout the process. This individual may not speak for or represent the respondent or complainant. Neither the person making a complaint nor the person accused may have legal counsel present during the review process. No member of the Human Resources staff and no employee in a position reporting to the complainant or respondent may serve in this role.

When the review process has been completed, the investigator will meet with the complainant and respondent individually to review the facts, preliminary findings and ask for final comments, clarification, etc. before the findings are shared with the supervisor(s)/decision maker(s).

After the final review is completed, the investigator will meet with the appropriate supervisor(s)/decision maker(s) to review the findings and, together with Human Resources staff and the appropriate supervisor(s)/decision makers, shall determine whether any corrective action and/or sanction, is warranted.
The result will be communicated to the respondent. To the extent appropriate, the complainant will be informed of the outcome of the review and status of general actions taken, if any.

**Step 3: Harassment/Discrimination Appeal Process**

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. The appeal process shall be as follows:

- To initiate an appeal it must be put in writing to the Vice President for Human Resources and include a reason for the objection and the appealing employee’s proposed outcome.

- An advisory committee will be convened from a pre-appointed list of individuals. The committee will consist of three Brandeis staff (at least one of these individuals must be a manager or supervisor) or faculty as appropriate. Those appointed must be from outside the respondent or complainant’s department. In the case of a faculty respondent, at least two of the three members of the advisory committee will be faculty members.

- The charge of the advisory committee shall be to determine whether the policy and/or process was applied fairly in the individual case, if the action taken was appropriate, and to make one of the following recommendations to the relevant senior manager/dean and/or program/department chair:
  - To uphold the decision
  - To overturn the decision
  - To modify the decision

- Once appointed, the advisory committee members will receive copies of all relevant documents. The first meeting of the advisory committee will be with the investigator and final senior manager/decision maker to review and discuss the findings and basis for corrective action and/or sanctions. Thereafter, the advisory committee may request to meet with the complainant and/or respondent if the committee believes this is necessary before making a recommendation.

- The advisory committee is normally expected to make a recommendation within fifteen (15) working days from the initial advisory committee meeting.

- The relevant senior manager or dean may accept, reject or modify the recommendation of the advisory committee. This decision is final and binding and shall be put in writing to the appealing employee/student and supervisor(s)/decision maker(s) involved in the issue under appeal.
Step 4: Further Appeal (for faculty who have been suspended or terminated)
A decision to suspend or dismiss a faculty member may be appealed further under the applicable appeal procedure set forth in the Faculty Handbook.

Record Keeping
Records of investigation and appeal shall be kept in confidential files in the Office of Human Resources, and shall not be placed in either the complainant or respondent’s personnel file. Records of disciplinary action taken as a result of the investigation shall be placed in the respondent’s personnel file.

Alternative Step 1: Independently Addressing Inappropriate Conduct
The University strongly encourages and advises individuals to seek help from Human Resources staff to address concerns of potential harassment or discrimination, but acknowledges that in some situations there may be a reluctance to do so. A major goal of this policy is to stop harassing and/or discriminatory conduct and to prevent it from recurring. If individuals are reluctant to seek help, there are independent steps they may consider taking to address the situation. Suggestions for taking independent action include the following:

- Tell the person to stop. Consider bringing a friend along when doing so. Be very clear that the conduct is unwelcome and must stop. Consider stating that Human Resources staff will be contacted if the problem continues.

- Document the conversation, including the date, time and any other individuals present. If the conduct continues (or as a first step), write a letter:
  
  - Describe the objectionable conduct, state very clearly that the conduct is unwelcome and must stop; date the letter.
  - If the person was previously told to stop and did not, indicate this in the letter and include dates if possible.
  - State that Human Resources staff will be contacted if the conduct continues.
  - Keep a copy of the dated letter. Consider sending the letter via certified mail.

If independent action fails to end the conduct, contact Human Resources staff for help.

While the above actions may help to resolve a given situation, the University cannot assist an individual with a concern about harassment or discrimination if it is not aware of the situation. Individuals are strongly urged to seek assistance from the Office of Human Resources.

Alternative Step 2: Filing Complaint with State/Federal Employment Discrimination Agencies
Brandeis University is committed to a harassment and discrimination-free environment and encourages individuals to bring their concerns to the attention of the University for assistance and resolution. It is an individual’s right, however, to file a formal complaint with either or both of the government agencies set forth below. Using the University’s complaint process does not prohibit individuals from filing a complaint with these agencies. The time frame for filing with these agencies is 300 days.
This policy is for general guidance only. It does not create an employment contract or any right to continued employment at Brandeis University. Brandeis University reserves the right to modify, revoke, suspend, terminate and/or change any and all policies and procedures at any time, with or without notice.