

Policy Name: Harassment and Discrimination
Approving Authority: Board of Governors

Policy # HR-003
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Statement

The Harassment and Discrimination Policy of Beal University Canada (“BUC” or the “University”) is intended to promote and maintain a respectful workplace and education environment where all University Members enjoy a positive experience. The Board of Governors will review the policy annually.

Purpose

The Harassment and Discrimination Policy provides the guidelines for all Members of the University Community to ensure a safe and respectful community.

Specifically,

- to inform Members of the University Community what discrimination, sexual assault, sexual harassment and non-sexual harassment are and what they should do when they encounter them.
- to enable Members of the University Community to obtain informal, confidential advice and guidance on how to address these problems.
- to enable Members of the University Community who do not feel safe in approaching the appropriate person in a supervisory position for help to access a process that will help them to approach said person in a supervisory position or to attempt to address the problem on their own.
- to enable Members of the University Community who have approached the appropriate person in a supervisory position for help but do not feel they have received appropriate help and support, to access a process whereby they can have their concerns addressed by a neutral third party.
- to enable Members of the University Community who believe they have faced systemic discrimination in the application of the rules, policies, processes, and procedures of the University, to access help and guidance in attempting to have that systemic discrimination identified and addressed.
- to allow for the receipt and processing of written complaints where all other efforts have failed to address a problem adequately.

Roles and Responsibilities

This Policy applies to all Members of the University Community. The policy applies to all individuals at the University in their University related work or use of University resources.

This Policy applies to behaviors on University premises, off University premises but involved in the business of the University activities sanctioned by, sponsored by or representing the University (including, but not limited to, clinical placements, academic or professional conferences, volunteer activities, and academic or research field work) or off University premises where such behavior has an impact on another Member of the University Community.

This Policy shall also apply to the use of and participation in electronic or web-based activities by Members of the University Community which have an impact on another Member of the University Community, whether or not such electronic or web-based activities are entered into on University premises or make use of University facilities or equipment. Refer to the Use of Information Technology Policy and the Data Access Policy.

If, after bringing a complaint (either under the Informal Process or the Formal Process) under this Policy, a Complainant chooses to initiate a legal action or a complaint to the New Brunswick Human Rights Commission based on substantially

the same facts and involving the same Parties as the original complaint under this Policy, then the Human Resources Administrator administering the complaint shall consider whether or not the Complaint should be suspended pending the outcome of the other, external action. The decision whether or not to suspend the complaint shall be communicated to the Parties.

Definitions

Members: defined as all faculty, staff, and students of the University.

University Community: includes faculty, students, staff, and any individual performing University-related work and/or their use of University resources. Further includes students, employees, and faculty members; members of the board of governors, executive committees, and all standing and ad hoc committees; members of societies and associations; and other users, including contractors, volunteers, visitors, or guests

Discrimination can be described as any action, conduct or behaviour related to a prohibited ground that results in unequal treatment or interferes with a person's right to equal treatment. Discrimination might be manifested by unequal treatment with respect to services, accommodations or employment. Discrimination may include a refusal to provide services; exclusion from employment; and/or a refusal to work with, teach, or study with someone, where such actions are related to a prohibited ground.

Harassment means engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome. A single act or expression can constitute harassment, for example, if it is a serious violation. Harassment may be subtle or blunt. Some of the subtler forms of harassment may result in the creation of a "poisoned environment." The University does not tolerate any conduct that is contrary to an individual's right to freedom from harassment, regardless of its form. Examples of harassment include verbal or physical assault, hazing, threats, offensive graffiti, or imposing penalties or exclusion related to a prohibited ground. Harassment does not include the normal exercise of supervisory responsibilities, including training, direction, instruction, counselling, and discipline.

Sexual harassment means engaging in a course of vexatious comment or conduct of a gender-related or sexual nature that is known or ought reasonably to be known to be unwelcome. Sexual harassment may include, for example, degrading or demeaning jokes or innuendo; taunting; unwanted physical contact; display of offensive material; implied or expressed promises to reward or benefit someone in return for sexual favors; and implied or expressed threat to withhold a benefit or engage in reprisal against an individual if sexual favors are not given.

Sexual Violence/Assault means any harmful behavior perceived by the victim to be of a sexual nature which is unwanted and takes place without consent or understanding of the victim.

Policy

Beal University Canada is committed to providing a safe and respectful environment for the "University Community". Every member of the University Community can expect to learn and work in an environment free from discrimination and harassment on the prohibited grounds outlined in the applicable provincial compliance legislation. The University will not tolerate discrimination or harassment in its education, employment, or business environments.

The Human Rights Act, RSNB 2011, c 171 (<https://www.canlii.org/en/nb/laws/stat/rsnb-2011-c-171/latest/rsnb-2011-c-171.html>) of New Brunswick is founded on the principle that all persons are equal in dignity and human rights without regard to race, colour, religion, national origin, ancestry, place of origin, age, physical disability, mental disability, marital status, family status, sexual orientation, sex, gender identity or expression, social condition or political belief or activity is a governing principle sanctioned by the laws of New Brunswick. Harassment is defined as, but not limited to, any unwanted physical or verbal conduct that offends or humiliates, including gender-based harassment. It can be a

single incident or several incidents over time. It includes threats, intimidation, display of sexism, ableism, racism, anti-Black racism, anti-Indigenous sentiment, anti-Semitism, Islamophobia, homophobia, biphobia, transphobia and any other type of prejudice or hatred towards an identifiable group, unnecessary physical contact, suggestive remarks or gestures, offensive pictures, or jokes. Discrimination can be described as an action, conduct or behavior related to a prohibited ground that results in unequal treatment or interferes with a person's right to equal treatment. Discrimination might be manifested by unequal treatment with respect to services, accommodations, contracts or employment. Discrimination may include a refusal to provide services; exclusion from employment; and/or a refusal to work with, teach, or study with someone, where such actions are related to a prohibited human rights ground.

Every member of the University Community to whom this policy applies has the right to complain about discrimination and/or harassment and may access the informal and formal complaint procedures outlined in this policy. Procedures have been developed to ensure that discrimination and harassment complaints are dealt with expeditiously, using appropriate resources.

Additionally, the University's online campus creates an environment that promotes responsibility, respect, civility, and academic excellence in a safe learning and teaching environment. All persons in its learning, teaching, and working environments will:

- respect differences in people, their ideas, and opinions.
- always treat one another with dignity and respect, and especially when there is disagreement.
- respect and treat others fairly, regardless of their age, ancestry, citizenship, color, creed (faith), disability, ethnic origin, family status, gender or gender identity, marital status, place of origin, race, sexual orientation, or socio-economic status.
- respect the rights of others.
- show proper care and regard for University property and for the property of others.
- demonstrate honesty and integrity.
- respect the needs of others to work and learn in an environment free from discrimination and harassment.

Beal University Canada has a duty to maintain an environment respectful of compliance and free of discrimination and harassment for all persons served by it. It must be vigilant of anything that might interfere with this duty. The University expects that all persons in its learning/working environment will:

- be aware of and sensitive to issues of discrimination and harassment.
- support individuals who are, or have been, targets of discrimination or harassment.
- prevent discrimination and harassment through training.
- take reasonable steps to remove any discriminatory barriers in University policy and practices.
- take all allegations of discrimination or harassment seriously and respond promptly.
- provide positive role models.
- not demonstrate, allow, or condone behavior contrary to this policy, including reprisal.

Employees at Beal University Canada receive harassment and discrimination training revolving around workplace harassment, fair treatment of all individuals, and policies and procedures relating to workplace harassment at Beal University Canada.

Implementation

The Human Resources department of the University has the responsibility to designate resources for ensuring the implementation of and compliance with this policy; and will ensure that new employees receive a copy of this policy and that it is included in the orientation of new instructors and other University personnel. The Director of Human Resource Administration serves in the capacity as Human Rights Officer/Advisor under this policy.

Students who feel they have suffered harassment or discrimination are encouraged to talk to a student services

advisor; faculty members should discuss such matters with their Dean; and administrative personnel should forward their complaints to the Human Resources department. Every attempt should be made to resolve matters through an informal resolution. The first step is to inform the individual that his/her behavior is inappropriate and must stop immediately.

All those who witness discrimination or harassment directly, have received reports of discrimination or harassment incidents, or have reasonable grounds to suspect that discrimination or harassment is occurring, may initiate a complaint. Third party disclosures will only go forward to the formal stage with the victim's consent.

Employees who witness an incident of harassment should report the situation as soon as circumstances permit.

Complaint and Resolution

Full details of complaint procedures, both informal and formal resolution procedures, and possible disciplinary actions are detailed in this policy.

Formal Process

1. The University recognizes that it is imperative that Members of the University Community have access to expert, objective advice and guidance related to issues of discrimination, sexual harassment and harassment. Further, the University recognizes that Members will be much more willing to seek such advice and guidance if they feel confident that this informal consultation process will remain confidential and will not result in the creation of any obligation on their part, or on the part of the Human Rights Officer/Advisor with whom they consult, to take any action.
2. The University must take action with regard to information relating to discrimination, sexual harassment or harassment once it is brought to the attention of a person in a supervisory position. As a result, the Human Rights Advisors who are, by definition, not persons in supervisory positions, are able to provide confidential, no-obligation advice and guidance to Members of the University Community under this policy.
3. The parties to a complaint may attempt to resolve the matter through formal mediation. Mediation is a voluntary process where a neutral third party, other than the Human Rights Advisor, assists the parties in reaching an acceptable settlement of the issues in dispute through a face to face facilitated discussion of the issues.
4. Formal mediation shall not be initiated without a written statement from the complainant outlining the behavior, conduct or issue that the complainant wishes to resolve through mediation. Within 7 days of receipt of a request for mediation from the complainant, the respondent shall be provided with a copy of the written statement of complaint. Within 7 days of receipt of the invitation to mediate, the respondent must advise the Human Rights Advisor whether she/he accepts the invitation to mediate.
5. The Human Rights Advisor will arrange for mediation by a person with relevant mediation training and experience. If necessary, a mediator external to the University will be appointed, with the approval of the President or designate.
6. Mediation shall be commenced within 10 days of agreement by both parties to mediate, subject to availability of a mediator.
7. Where agreement to resolve the matter is reached in mediation, the terms of the agreement shall be written out, signed by the complainant and respondent, and countersigned by the mediator. A copy of a settlement agreement reached during mediation shall be provided to the parties to the agreement and shall be kept in the confidential files of the Human Resources department for 2 years.

Formal Mediation Process

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Formal Procedures

1. If the complainant wishes to file a Formal Complaint, the following shall occur:
 - A. If the complainant and the respondent are both students, the complainant will be directed to contact the Student Services department and the provisions and procedures under the Student Code of Conduct shall be followed and the proceedings under this Policy with regard to the particular complaint shall end.
 - B. In all other cases, the complainant will provide the Human Rights Advisor with a written signed Formal Complaint giving details of the alleged discrimination, sexual harassment or harassment, including dates, times, places, witnesses, and name of the respondent. If the complainant brought this discrimination, sexual harassment or harassment to the attention of persons in supervisory positions who failed to deal with the discrimination, sexual harassment or harassment, those persons in supervisory positions may also be named as Respondents.
 - C. Within two working days from the date of receipt of the completed Formal Complaint, the Human Rights Advisor will notify the President that a Formal Complaint has been made.
2. From this stage until a decision has been rendered according to this policy, the Human Rights Advisor shall continue to be neutral and shall assist at all stages of the processing of the Formal Complaint, so that both the complainant and the respondent can be assured that action is being taken as expeditiously as possible. Normally the Formal Procedures shall be completed within three months.
3. Once the Human Rights Advisor has informed the President of the receipt of the Formal Complaint, the University official shall be responsible for notifying in writing within five working days the respondent accused of discrimination, sexual harassment or harassment that a Formal Complaint has been lodged against them, giving a copy of the Formal Complaint, any other documentary evidence, and informing them of the right to union or other representation.
4. Where, in the opinion of the President in consultation with the Human Rights Advisor, it is deemed appropriate to do so, the President shall be responsible for arranging an investigation of the allegations contained in the Formal Complaint. The President may appoint an outside investigator to conduct the investigation.
5. An investigation under this section shall be conducted expeditiously with due regard to confidentiality for all parties concerned (the Human Rights Advisor may be contacted for advice on these matters). The Director of Compliance shall follow appropriate procedures in conducting the investigation, ensuring that due process and administrative fairness are respected throughout.
6. The investigator shall, upon completion of the investigation, produce a set of findings, which shall include whether the allegations contained in the complaint are founded, unfounded or malicious, on a balance of probabilities.
7. The findings of the Director of Compliance shall be delivered to the Vice President of Operations upon completion of the investigation. The Vice President of Operations, shall, upon receipt of the findings, review

said findings, where appropriate review the complainant's and respondent's official file (if any) and prepare a final report, complete with recommendations as to the disposition of the Formal Complaint, along with all relevant material, which final report shall be forwarded to the President.

8. Each Party shall be entitled to a copy of the Director of Compliance's findings. If discipline is being recommended against one or both parties, such party shall also be entitled to receive notice of the discipline being recommended and the information, documentation and materials upon which the recommendation for discipline has been based. No party, however, shall be entitled to receive confidential or personal information, including a recommendation as to discipline, about another party except in accordance with 13 below.
9. The President shall review all the material submitted to them and shall meet with the people concerned to discuss the Presidents report. The President shall decide whether or not a formal hearing is required. In the case of a formal hearing, the following procedure shall be followed:
 - A. The hearing shall be held in the presence of the complainant, the respondent, the appropriate President or their delegate, and any representative that may be permitted by relevant collective agreements or this policy.
 - B. The President will ask the complainant and/or the respondent to state why the findings and recommendations are not agreeable to them.
 - C. The meeting will proceed under the direction of the President based on the responses to (B) above.
 - D. Any questions of anyone present are to be directed to the President who shall determine whether the question is to be asked and, if so, of whom.
 - E. Witnesses, if any, will be excluded from the hearing until called to testify.

Questions of a witness may be directed by the President only in accordance with (C) above. In particular, the President will require prior notice as to witnesses.

10. After the requirements of 9 has been satisfied, the President shall decide upon a course of action, taking into account report of the University official and the need for consistency with decisions on discrimination, sexual harassment or harassment (as the case may be) cases previously made. They shall either confirm or amend, in accordance with the evidence presented at the hearing, the finding that the complaint is founded, unfounded or malicious and shall inform the complainant and respondent of the decision taken.
11. Should the complaint be determined to be founded, the President shall decide upon appropriate steps to be taken to address the situation, including but not limited to disciplinary sanctions and measures for remedying or mitigating any academic or employment harm or disadvantage suffered by any person(s) as the result of the incident(s) and behavior complained of. The President, in considering the possibility of disciplinary steps against the respondent, shall consider (as far as allowed under any applicable collective agreement, policy or practice) any previous disciplinary measures taken against the respondent as contained in the respondent's official file (if any). The President may, at this stage of the proceedings, consult with appropriate University officials for guidance.
12. Should the complaint be determined to be malicious, the President shall decide upon appropriate steps to be taken to address the situation, including but not limited to disciplinary sanctions and measures for remedying or mitigating any academic or employment harm or disadvantage suffered by any person(s) as the result of the malicious complaint. The President, in considering the possibility of disciplinary steps against the complainant, shall consider (as far as allowed under any applicable collective agreement, policy or practice) any previous disciplinary measures taken against the complainant as contained in the complainant's official file (if any). The President may, at this stage of the proceedings, consult with appropriate University officials for guidance.
13. Once a decision has been made by the President under 11, and 12, the President shall communicate, in writing, the decision, the reasons therefore, and the appropriate steps to be taken to the parties. Where the appropriate steps to be taken include disciplinary action against one or more individuals, information about that disciplinary action shall be omitted from the information about the decision to be given to the complainant and their Union (if any) except where necessary to ensure the comfort and safety of the complainant.

Confidentiality, Records and Use of Information

1. Subject to any exceptions provided for in this policy and to the extent required by law, all written and oral information that is created, gathered, received or compiled through the course of a complaint is to be treated as confidential by both the respondent and complainant, their representatives, witnesses, and University officials. The parties to informal or mediated complaint resolution may agree to disclose information for the purpose of restoring a department to effective functioning.
2. Information concerning a complaint may be provided to appropriate University officials on a need-to-know basis as determined by the Human Rights Advisor. This may include situations where there are security or safety issues or cases involving repeat complaints or a pattern of related behavior. Any person so informed shall be advised of the disposition of the complaint and is bound by confidentiality requirements.
3. All recorded personal information with respect to a complaint shall be kept confidential in accordance with the Right to Information and Protection of Privacy Act (S.N.B., 2009, R-10.6) and the Personal Information Protection and Electronic Documents Act (PIPEDA). Such personal information may be subject to disclosure as required by law.

Complaint Record Retention

The Human Resources department is the office of record for all matters related to the application of this policy. The complaint file (including the investigation file and record of disposition of the complaint) shall be preserved and kept confidential by the Human Rights Advisor for a minimum period of 7 years. If discipline is imposed, a record will be placed in the respondent's personnel file in keeping with any applicable collective agreement or University policy.

Related Policies and Documents

AA-003 Acceptable Use of Electronic Information Resources Policy

HR-001 Conflict of Interest Policy

AA-004 Corrective Action Policy

IT-001 Data Access Policy

HR-002 Employee Code of Conduct Policy

RE-001 Ethical Research Policy

HR-004 Equity, Diversity, and Inclusion Policy

AD-003 Personal Information Protection Policy

SA-001 Student Code of Conduct

IT-005 Use of Information Technology Policy