

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

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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 biennially.

Purpose

The Harassment and Discrimination Policy provides the guidelines for all Members of the University Community to ensure a safe and respectful community through the prevention and prompt resolution of workplace harassment and/or discrimination.

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 in their University related work or use of University resources.

This Policy applies to conduct 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 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 Director of Human Resource Administration, serving in the capacity as Human Rights Officer/Advisor under this policy and who is 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.

- a) Duties of University Community and Members
 - i. Promptly report incidents of apparent harassment and or/discrimination of which they have knowledge to the immediate supervisor and/or to the Human Rights Officer.
 - ii. Cooperate, when requested, in the investigation and/or resolution of complaints under this policy.
 - iii. Understand and comply with this policy and all related procedures.
 - iv. Participate in applicable education and training programs.
- b) Duties of Management
 - i. Act on observations or upon receiving reports alleging discrimination and/or harassment.
 - ii. Promote a working environment that is free of discrimination and harassment.
 - iii. Review all reported incidents of harassment and/or discrimination in a prompt, objective, and sensitive manner.
 - iv. Ensure that all those for whom this policy applies are aware of its existence and the issues it addresses.

Definitions

Discrimination can be described as any action, conduct or behaviour related to one or more of the prohibited grounds as defined by the New Brunswick Human Rights Act, that results in unequal treatment or interferes with a person's right to equal treatment or that results in unfavourable or adverse treatment which negatively affects or could negatively affect the employment status of an employee or the status of a student. 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 may include, but is not limited to, gestures, remarks, jokes, taunting, innuendo, display of offensive materials, offensive graffiti, verbal or physical assault, hazing, stalking, threats, 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. Workplace harassment does not include:

- a) Performance management, coaching, feedback, performance appraisals, and performance improvement plans.
- b) Appropriate and justifiable disciplinary action.
- c) Providing fair and reasonable constructive feedback or evaluation.
- d) Assigning additional work.
- e) Voicing differences of opinion.
- f) Showing frustration or annoyance, where such behavior is objectively justified and displayed in a respectful manner without any threat of violence, intimidation, or other reprisals, and where it is shown only on an occasional basis.

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

Reprisals or Retaliation: means adverse action taken against an individual for invoking this policy or for participating or cooperating in an investigation under this policy or for associating with someone who has invoked this policy or participated in the policy's procedures.

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.

University Community: includes faculty, students, staff, and any individual performing University-related work and/or their use of University resources. Further includes 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.

Policy

Beal University Canada is committed to providing a safe and respectful environment for the "University Community" in keeping with the rights and freedoms protected by the Canadian Charter of Rights and Freedoms. 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. Beal University Canada maintains adherence to WorkSafe NB requirements and all related legislation.

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 and 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 Resolution Process

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

1. Any employee who believes they have been the subject of any discrimination, sexual harassment, or harassment may lodge a complaint.

2. In general, the Complaints Resolution Process must be initiated no later than six (6) months from the date of the incident, barring exceptional circumstances and at the discretion of the University.
3. 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.
4. 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.
5. 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 they accept the invitation to mediate.
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 a minimum of 7 years.
8. A complainant may, at his or her discretion, decide to withdraw a complaint at any point in the complaints process. In the event of a withdrawal, the University may, at its discretion, continue to investigate the complaint.
9. In some circumstances, the University may be obligated to proceed with an investigation in the absence of a formal written complaint if it becomes aware of allegations or facts which constitute a serious violation of the University's policy. In these cases, the University will proceed with either informal resolution or an investigation, with the intent of stopping the alleged behavior and/or preventing further incidents. In such cases, a particular individual will not be compelled to proceed with a complaint.
10. The complainant should carefully record details of all incidents including the date and time of the incident, the nature of the incident, and the names of any individuals who may have been witnesses to the incident(s).
11. Where there are multiple complainants, the University shall have the discretion to determine whether the complaints shall be addressed as a single complaint or individual complaints, for the purposes of the Complaint Resolution Process.

Informal Complaint Process (optional)

1. The University recommends that, initially, provided the complainant is willing and able to do so, that they approach the respondent on an informal basis to identify the conduct of concern and explain to the respondent that it is unwelcome.
2. The complainant and the respondent may meet to discuss the nature of the concern and suggest/discuss ways in which it might be resolved. The parties may consult with any member of management or the Director of Human Resource Administration.

Mediation (optional)

3. Either party may make a request to the Human Rights Officer, that an external mediator be engaged to assist with the resolution of the complaint. The Human Rights Officer shall coordinate the selection and engagement of external mediators, in consultation with the parties.

4. The mediator will meet with the relevant parties to gather information and suggest/discuss ways in which the complaint might be resolved. All discussions throughout mediation are privileged and confidential in the event a formal complaint is pursued.

Formal Complaint Process

1. If the harassment complaint cannot be resolved informally or through mediation, a written complaint may be filed to the employee's manager. The senior manager will be notified that a complaint has been received.
2. 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.
3. 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. Formal Procedures shall be completed within three months.
4. 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 other representation.
5. 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.
6. 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 Compliance department shall follow appropriate procedures in conducting the investigation, ensuring that due process and administrative fairness are respected throughout.
7. 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, and/or malicious.
8. The findings of the Compliance department 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 shall be forwarded to the President.
9. Each Party shall be entitled to a copy of the Compliance department'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 14 below.

10. 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 President or their delegate, and any representative that may be permitted by 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.

11. After the requirements of 10 has been satisfied, the President shall decide upon a course of action, taking into account the report of the University official and the need for consistency with decisions on discrimination, sexual harassment, or harassment. They shall either confirm or amend, in accordance with the evidence presented at the hearing, the finding that the complaint is founded/unfounded. and/or malicious and shall inform the complainant and respondent of the decision taken.
12. 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 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 and Board of Governors for guidance.
13. 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 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 and Board of Governors for guidance.
14. Once a decision has been made by the President, 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 except where necessary to ensure the comfort and safety of the complainant.
15. President will inform Board of Governors resolution of all formal complaints at the annual board meeting.

Remedies and Sanction

The University shall have complete discretion to impose remedies and sanctions as appropriate, including disciplinary action up to and including dismissal for just cause, where:

- a) Any member of the University Community subjects another member of the University Community to harassment or discrimination, or otherwise violates this policy;
- b) A complaint is found to be frivolous, vexatious, or made in bad faith;
- c) There is a reprisal or retaliatory measure against an employee who, in good faith, raises a complaint of harassment or discrimination within the meaning of this policy and/or cooperates in the investigations of a complaint.

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.
4. Employees are expected to fulfill their responsibility to other members of the University Community by assisting and cooperating with the investigation of complaints, including sharing information with administrators.
5. Unwarranted breaches of confidentiality will result in disciplinary action. Discussion about an incident will not be tolerated.
6. All records relating to a complaint must be stored in a secure manner.

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

New Brunswick Occupational Health and Safety Act: 1983: <https://laws.gnb.ca/en/pdf/cs/O-0.2.pdf>

Canadian Charter of Rights and Freedoms: 1982 <https://laws-lois.justice.gc.ca/eng/const/page-12.html>

WorkSafe NB: <https://www.worksafenb.ca/workers/health-safety/your-rights/>