

## Discriminatory Harassment Policy

### Introduction

As a University dedicated to fostering the dignity of each person, Boston College strives to provide an environment that is free of discriminatory harassment. The search for truth and freedom of inquiry is integral to a Jesuit university and presumes the right of each member of the University community to be respected as a person, without regard to race, color, national origin, sex, religion, disability, age, sexual orientation, or other legally protected status. All members of the University community, especially faculty and other individuals who exercise supervisory authority, have an obligation to promote this environment.

*This policy applies only to discriminatory harassment, and is designed to establish prompt and equitable grievance procedures to address complaints of such harassment, including harassment prohibited by Massachusetts General Laws Chapter 151B, Title IX and other federal or state law. Except as otherwise provided below, harassment complaints (including complaints of sexual assault) against students will be treated as possible disciplinary violations and will be investigated and adjudicated in accordance with the policies in the Student Guide and under the student conduct system.*

*Nothing in this policy is intended to limit the authority of Boston College to make personnel decisions or take appropriate disciplinary action against any individual who violates University rules or policies, whether or not the conduct constitutes discriminatory harassment under law or this policy.*

### Definition of Discriminatory Harassment

Discriminatory harassment may occur in numerous forms, many of which are also violations of federal and state laws. Direct harassment is person to person; indirect harassment is the creation of a hostile environment. For the purposes of this policy, the following are considered discriminatory harassment.

1. Conduct that, by reference to the race, color, national origin, sex, religion, disability, age, sexual orientation, or any other legally protected status of a member or members of the University community, intentionally or recklessly abuses, mocks, or disparages a person or persons so as to affect their educational performance or living or working environment at Boston College.
2. Offensive sexual behavior whenever toleration of such conduct or rejection of it is the basis for a personnel or academic decision affecting an individual; or such conduct has the purpose or effect of creating a hostile or stressful living, learning, or working environment. Examples of behavior that may constitute sexual harassment include sexual advances, any form of retaliation or threat of retaliation against an individual who rejects such advances, sexual epithets, jokes, or comments, comment or inquiry about an individual's body or sexual experiences, unwelcome leering, whistling, brushing against the body, sexual gestures, and displaying sexually suggestive images.
3. In addition to constituting a violation of this policy, sexual harassment is unlawful. The most severe forms of such harassment, including assault and violence, are also criminal activities that may subject perpetrators to arrest and criminal prosecution as well as being subject to the procedures outlined in this policy.

### Retaliation Prohibited

It is a violation of this policy and the law to retaliate against any individual who brings a harassment complaint under this policy or who cooperates or otherwise participates in the investigation or resolution of a complaint.

## Discriminatory Harassment and Academic Freedom

Nothing in this policy should be construed to infringe on the academic freedom of members of the University community and their right to use the academic forum provided by the University either to discuss controversial subjects or to express ideas with which some or most members of the University community strongly disagree.

## Complaint Resolution Process

*Except as provided below, any complaint of discriminatory harassment against a Boston College student will be addressed through the Student Conduct System rather than this policy.<sup>1</sup> Otherwise, this Complaint Resolution Process is the exclusive means for resolving cases of discriminatory harassment.*

## Preliminary Stage

1. A student, faculty member, or employee who believes that he or she is experiencing or has experienced discriminatory harassment may initially wish to discuss the situation with a trusted friend, advisor, or colleague or with the university official to whom the alleged harasser reports or is responsible. The person whom the potential complainant consults must promptly contact the University Harassment Counselor both for information and advice and to insure uniform treatment of possible complaints during this preliminary stage. If the aggrieved individual (hereinafter the complainant) concludes that further action should be taken, he or she should directly seek the assistance of the University Harassment Counselor. The University Harassment Counselor is appointed by the President to facilitate the implementation of this policy, as well as to serve as the University's Title IX coordinator with respect to complaints of sexual harassment brought against faculty and staff.
2. The role of the Harassment Counselor at the preliminary stage is threefold: to provide advice and support; to make an initial assessment of whether the behavior in question fits within the definition of discriminatory harassment; and to explain the various options for resolution. The Harassment Counselor will also work with the complainant and University administrators to provide interim measures to address the complainant's needs while a complaint is pending; such measures may include the provision of counseling, scheduling changes, or other adjustments or accommodations of the complainant as appropriate and practicable under the particular circumstances. In extreme cases, such measures may include administrative actions required to assure the safety of the complainant, such as "stay-away" orders.
3. The Harassment Counselor will promptly conduct an informal preliminary review of the alleged discriminatory harassment within ten (10) days of learning of the complaint. If the conduct appears to be discriminatory harassment, the Harassment Counselor will review with the complainant the options for resolving the situation. If the behavior does not appear to be discriminatory harassment as defined in this policy, the complainant will be so advised and the Harassment Counselor will provide the complainant with a description of the options available to address the matter and review the complaint options as described below.

In some situations, the institutional need to prevent ongoing discriminatory harassment may require the Harassment Counselor to act even though the complainant does not personally wish to proceed. The Harassment Counselor may choose to contact the appropriate *administrator in the following circumstances:*

- when there are multiple contemporaneous complaints concerning an alleged harasser

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<sup>1</sup> Any member of the University community may, however, contact the Harassment Counselor for support, advice or guidance with respect to how to proceed with a complaint, even when the complaint is against a student or group of students.

- when the alleged harasser has a prior record of harassing conduct in the institutional memory file (see [Summary of Record Keeping](#), below)
- when the Harassment Counselor believes that an ongoing risk of discriminatory harassment within the community is present or that the University has a legal obligation to pursue an investigation of the complaint

If the Harassment Counselor determines that a charge is knowingly false, the Harassment Counselor will inform in writing the administrator in charge of the complainant's area, who will determine if disciplinary action is warranted. Where substantiated, notice that a false charge has been made will be placed in the complainant's file, recorded in the institutional memory file, and counted in the institutional tally (see [Summary of Record Keeping](#), below).

## Complaint Options

### Unwritten Complaints

An unwritten complaint is appropriate when the complainant believes that, with the help of the Harassment Counselor, the harassment can be stopped, and the Harassment Counselor determines that no ongoing risk of harassment exists. The unwritten complaint process will normally be resolved within thirty (30) days.

#### Administrative Relief

If the complainant does not wish to make the respondent aware of the complaint and if the Harassment Counselor believes that terminating the relationship in which the alleged discriminatory harassment occurs will provide relief and is not likely to expose other members of the community to harassment, the Harassment Counselor may consider such a resolution. If an administrative action appears possible and appropriate, the Harassment Counselor is empowered to request a transfer through the appropriate administrative channels. Such action does not preclude the complainant from continuing the Complaint Resolution Process at a later time. If the Harassment Counselor judges that the incident was discriminatory harassment, the case will be recorded in the institutional tally.

#### Communicating with the Respondent

If the complainant believes that the harassment can be stopped by confronting the respondent and wishes to do so, the Harassment Counselor will offer assistance and advice on how to proceed. The Harassment Counselor may also offer to act as a mediator.

At the outset, the respondent will be informed that any conduct threatening or constituting retaliation against the complainant will be treated as a separate and serious infraction.

Resolution is achieved when the complainant is satisfied that the harassment has stopped and will not recur. If resolution occurs, the case, including the names of the complainant and respondent, will be recorded in the institutional memory file and will be counted in the institutional tally.

## Written Complaints

### Format of Complaints

Written complaints take the form of a letter or memorandum describing the conduct on which the complaint is based. It will include:

- the date(s) and place(s) on which the offensive conduct occurred,

the names of any witnesses, and the name of the respondent

- any efforts to resolve the complaint and the results of these efforts
- if appropriate, the specific outcome the complainant seeks

### Filing of Complaints

Students: As noted above, complaints against undergraduate or graduate students should be filed with the Office of the Dean of Students and will be treated as disciplinary matters in accordance with the Student Conduct Procedures. Complaints against graduate students for conduct that occurs when they are performing as teaching or research assistants should be filed with the dean of the respondent's school.

Employees (union or nonunion): Complaints against employees should be filed with the dean or director responsible for the respondent's department. In cases where the complainant is uncertain with whom to file the complaint, the Harassment Counselor will advise the complainant as to the appropriate administrator.

Faculty: Complaints against faculty should be filed with the respondent's dean. In the case of respondents who serve both graduate and undergraduate programs, the complaint should be filed with the dean responsible for the program in which the complainant is enrolled.

If the person with whom a complaint would ordinarily be filed is the respondent, the Harassment Counselor will advise the complainant as to the appropriate administrator to receive the complaint.

### Notification of Respondent

Within five (5) working days of the receipt of the complaint, the dean or director receiving the complaint will notify the respondent in writing, advise the respondent of the name of the complainant, the nature of the allegations, refer the respondent to this policy, and provide a copy of the complaint. The Harassment Counselor will receive a copy of this correspondence, and, upon its receipt, will confer with the complainant and the respondent independently to review options for resolution of the complaint. The complainant, with the assistance of the Harassment Counselor, will choose the option he or she prefers, subject to the right of the respondent to request mediation or the right of the respondent or the dean or director to request the appointment of a Harassment Hearing Committee (see [Hearing Committee](#), below). The respondent will also be advised that any speech or conduct threatening or constituting retaliation against the complainant will be regarded as a serious and separate infraction.

### Options for Resolving Written Complaints

#### Mediation

Either the complainant or the respondent may request the Harassment Counselor to attempt resolution of the complaint through mediation. Either party may decline to participate, and the Harassment Counselor reserves the right to decline mediation if the Harassment Counselor deems that it is not appropriate as to the particular complaint. If the parties agree to mediate and good faith efforts to mediate the complaint are ongoing, the Harassment Counselor may suspend other complaint resolution options. If, through mediation, a settlement is agreed to by both parties and approved by the Harassment Counselor, no further option for resolution will be available. The case will be recorded in the institutional tally and institutional memory file. If no settlement is reached, the complainant may choose either the Administrative Resolution or the Hearing Committee option.

## Administrative Resolution

The complainant has the exclusive prerogative of choosing the administrative resolution option, subject to the right of the Harassment Counselor to determine that administrative resolution is not appropriate in the given case or the right of the respondent or the dean or director to request the appointment of a Harassment Hearing Committee (see [Hearing Committee](#), below). In an Administrative Resolution, the dean or director with whom the complaint is filed will review the complaint with the Harassment Counselor and the complainant and will also meet with the respondent. The dean or director will then seek to resolve any factual disputes by interviewing witnesses and reviewing documents in order to establish the credibility of the parties. The dean or director will ordinarily complete this investigation within fourteen (14) days of notification of the respondent and determine whether the preponderance of evidence indicates that harassment occurred.

After completing the investigation, the dean or director will meet with the complainant and respondent, either together or separately, to discuss an appropriate resolution of the complaint. After this meeting(s), the dean or director will prepare a statement of the facts and a conclusion.

## Possible Findings

If harassment is the finding, the Harassment Counselor will inform the dean or director of any prior history of infractions in the institutional memory file. The dean or director will then recommend a resolution in writing and deliver the recommendation to the appropriate vice president:

- for employee respondents -- to the vice president directly responsible for the respondent's department and the Vice President for Human Resources
- for faculty respondents -- to the Provost and Dean of Faculties

The vice president will review and accept or reject the dean or director's recommendation. If the vice president disagrees with the dean or director's factual findings or recommendation, the vice president may, in consultation with the Harassment Counselor, request the dean or director to review the case in whole or in part. A decision is ordinarily made within ten (10) working days of the receipt of the dean or director's recommendation. The vice president will inform in writing the complainant, the respondent, the dean or director, and the Harassment Counselor of the decision. The case will be recorded in both the institutional tally and the institutional memory file.

If it is determined that there are insufficient grounds to support the claim of harassment, the parties will be so informed in writing and the complaint will be dismissed. The complaint will be recorded in the institutional tally and in the institutional memory file.

If it is determined that a claim of harassment is knowingly false, the Harassment Counselor will inform the dean or director of any similar incidents in the institutional memory file. The dean or director will then recommend appropriate sanctions to the vice president of the complainant's area and a notation will be made in the complainant's file. The results will be recorded in the institutional tally and in the institutional memory file.

## Hearing Committee

At the request of either party, or at the dean or director's request, the vice president responsible for the respondent will appoint a Harassment Hearing Committee to review the case and, after determining the facts, to make a recommendation.

## Composition

The vice president will appoint a five-member committee and two alternates to hear the case. The vice president will choose individuals from one or more of the following pools:

- faculty members who serve on school educational policy committees
- professional staff from a pool maintained by the Vice President for Human Resources
- members of the Staff Advisory Senate
- elected representatives of the employee unions
- elected representatives of the Graduate Student Association and the Law Students Association
- undergraduate students who are members of the Student Judicial Board

The Committee will include at least one member of the same status (e.g., graduate student, faculty member) as the respondent and at least one of the same status as the complainant. The vice president will designate a chairperson and will inform the Harassment Counselor of the formation of the Committee.

#### Committee Procedures

1. The Harassment Counselor will provide Committee members with copies of the complete policy on Discriminatory Harassment; deliver to the Chairperson of the Hearing Committee a complete set of documents in the case; assist the Chairperson in scheduling a hearing, ordinarily within fourteen (14) days of the request for a hearing; assist the Chairperson in identifying the witnesses whom the complainant and respondent intend to call; and identify other persons who might assist the Committee.
2. The Chairperson will notify the complainant and respondent not less than five (5) days prior to the hearing of its location, time, and date. The Chairperson will also identify the members of the Committee and inform the parties that challenges for bias must be made not less than two (2) days prior to the hearing. The Chairperson will determine the sufficiency of the challenges, and, if appropriate, choose a replacement from the alternates. If the Chairperson is challenged, the vice president who appointed the Committee will determine the sufficiency of the challenge.
3. The hearing will be held, if possible, on consecutive working days and will be closed to persons other than those participating. However, either party may be accompanied by an advisor and/or legal counselor, with whom he or she may consult, upon request, at reasonable times during the hearing. The intention to be accompanied by legal counsel or an advisor must be communicated to the Chairperson at least two (2) days prior to the hearing. Advisors and legal counsel may neither address the Committee nor question witnesses.
4. The hearing will begin with the presentation of the complainant's case and be followed by the respondent's response. The Committee will then question both parties and give the parties an opportunity to question each other, provided, however, that upon the request of the complainant, the Committee shall establish an alternative questioning procedure if the complainant elects not to directly confront the respondent.
5. Witnesses will not be present except during their testimony. Witnesses, beginning with those of the complainant, will relate their knowledge of relevant facts through questions posed both by the Committee and by both parties. Once the Committee is satisfied that all relevant information has been presented, both parties may present summary statements and/or briefs to the Committee.
6. The Committee will meet privately to determine the facts and the extent to which they constitute discriminatory harassment under a preponderance of evidence standard.

## Possible Findings

If the Committee determines that discriminatory harassment has occurred, the respondent will be given access to the record of any prior infractions by the respondent. The Committee will then assess the seriousness of the case based on the severity of the harassment, the extent to which it was a single or repeated incident, and any record of past infractions. In consultation with the Harassment Counselor, the Committee will develop a recommendation on sanctions. (Possible sanctions include: letter of warning, letter of reprimand, mandatory counseling or training, reparation, suspension, dismissal or termination, any combination of these sanctions, as well as other appropriate alternatives.)

The Committee will communicate its report and recommendation on sanctions to the vice president who convened the Committee and to the Harassment Counselor. The vice president will then accept or reject the report, or refer the case back to the Hearing Committee for additional review. If the vice president accepts the report, the vice president, after consultation with the Vice President for Human Resources in cases involving employees, will determine and impose the sanctions. (Note: Cases involving potential dismissal of a member of the faculty as defined in Chapter II, Section I of the University Statutes will be referred to the President of the University by the Provost since only the President may dismiss a faculty member in the course of a contract.)

Where appropriate, the necessary steps will also be taken to reverse actions which the respondent may have taken in the harassment of the complainant (e.g., restoration of rights or privileges, review of academic or personnel evaluations). The vice president will send written notice of the resolution of the complaint to the respondent, the dean or director, the Chairperson of the Harassment Hearing Committee, and the Harassment Counselor within ten (10) working days after receiving the Committee's recommendation. The Harassment Counselor will inform the complainant of the final disposition and will record the case in the institutional tally and the institutional memory file. A copy of the decision will be placed in the respondent's file; no record will be made in the complainant's file.

If it is determined that there are insufficient grounds to support the claim of harassment, the parties will be so informed in writing and the complaint will be dismissed. The complaint will be recorded in the institutional tally and in the institutional memory file.

If it is determined that a claim of harassment is knowingly false, the Hearing Committee will recommend appropriate sanctions to the vice president of the complainant's area and a notation will be made in the complainant's file. This action will be recorded in the institutional tally and in the institutional memory file.

## Procedures for Appeal

Either a complainant or respondent may appeal the decision for one or more of the following reasons:

- it lacked a factual basis
- it did not conform to the procedural requirements of this policy
- it was based on bias
- it violated the respondent's academic freedom

A formal appeal must be filed in writing within fourteen (14) days after the respondent is informed of the decision. Formal appeals are available to members of the University in the following manner.

Students: Students may appeal to the Provost and Dean of Faculties who will either sustain or reverse the decision, or refer the case back to the Vice President for Student Affairs for further review and resubmission.

Faculty: For a sanction other than dismissal, faculty may appeal to the Faculty Grievance Committee (University Statutes, II.11.C and II.12.C). If the sanction is dismissal by the President during the term of a contract, faculty may appeal to the Faculty Hearing Committee (University Statutes, II.11.B.1 and II.12.A).

Employees: Employees may appeal to the Executive Vice President, who will either sustain or reverse the decision, or refer the case back to the vice president for further review and resubmission.

### Summary of Record Keeping

Institutional Tally: Once a year, the Harassment Counselor will report upon the number of discriminatory harassment complaints filed in the previous twelve (12) months. This report will not include names or identifying facts, but will include: the nature of the allegation; the status of the parties involved (e.g., faculty, staff); and whether or not discriminatory harassment was the finding.

Institutional Memory: The need to identify repeat offenders requires that the Harassment Counselor keep a central file, separate from individual files. This file will include the names of individuals involved in written or unwritten harassment complaints.

Individual Records: No notations or records will be placed in individual files in the case of unwritten complaints, whether or not the situation is resolved. In written complaints, a guilty finding and/or the sanctions imposed will be recorded in the respondent's file. Similarly, a finding that a knowingly false charge has been filed will be recorded in the complainant's file.

### Policy Dissemination

The substance of this policy is included in the University's Faculty, Employee, and Student handbooks.

The Vice President of Human Resources shall ensure that this policy is made available to each employee at the time of hire and annually thereafter.

### Education

Training is offered to faculty and staff through the Human Resources Department Employee Development programs and to students through programs sponsored by the Office of the Dean of Students, the Office of Residential Life, and other departments. Programs are held regularly to familiarize University officials likely to be involved in harassment cases.

### Contact Information for Complaints

The University Harassment Counselor may be reached via the Office for Institutional Diversity (contact information below).

Questions or concerns about this policy may also be addressed to the Executive Director for Institutional Diversity, who oversees the University's compliance efforts with respect to state and federal non-discrimination laws, including Title VI, Title IX, Section 504 and the ADA:

Boston College Office for Institutional Diversity (OID)  
140 Commonwealth Avenue (office location: 129 Lake Street)  
Chestnut Hill, MA 02467  
617-552-2323  
diversity@bc.edu



Complaints may also be addressed to state and federal agencies:

Massachusetts Commission Against Discrimination  
One Ashburton Place  
Boston, MA 02108  
617-994-6000

*Faculty, staff, or applicants for employment.*

U.S. Equal Employment Opportunity Commission  
John F. Kennedy Building  
475 Government Center  
Boston, MA 02203  
1-800-669-4000

*Students, applicants for admission, faculty, staff, or applicants for employment.*

Office for Civil Rights  
U.S. Department of Education  
5 Post Office Square  
Boston, MA 02110  
617-289-0111

Approved: William P. Leahy, S.J.  
Date: September 5, 2012