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| bulogo | Discrimination and Harassment Prevention Policy | ***First Approved:***  *June 24, 2017* |
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| ***Board of Governors***  ***Policy*** | ***Approved by*** *Board of Governors*  ***Administered by*** *Vice-President, Administration & Finance* | ***Reviewed:*** |

1. **Introduction**

Brandon University is committed to maintaining a productive and respectful work and learning environment and believes it is the right of all employees and students to work and study in an environment free of discrimination and harassment. To this end, the University will make best efforts to prevent the occurrence of discrimination and harassment through education, training, and early resolution of conflict in the workplace.

In positive terms, all members of the University community should strive to:

1. respect and value the diversity of people, values and beliefs represented;
2. preserve the dignity of others in all interactions;
3. act in a courteous manner at all times;
4. engage in communication that is solution-focused; and
5. collaborate with colleagues where appropriate.

When a concern is brought forward, the first step will be for the Diversity and Human Rights Advisor (DHRA) to determine if the issue is best dealt with under the processes outlined in the *Guide to Resolving Conflict at Brandon University* or if it falls under the *Discrimination and Harassment Prevention Policy*.

1. **Responsibilities Under this Policy**

Brandon University is committed to combatting discrimination and harassment through raising awareness and providing training to employees and students on the *Manitoba Human Rights Code* (*MHRC*), the *Workplace Safety and Health Act and Regulations* (*WSH Act and Regulations*), and responding to incidents of discrimination and harassment.

Brandon University has a responsibility to prevent acts of discrimination and harassment and to address them when they happen. Even in cases where no report has been filed, the University has a duty, under the *WSH Act and Regulations*, to respond to incidents that appear to be discriminatory or harassing in nature. For example, a University initiated investigation may be necessary in situations where there are repeated concerns about the same individual or where there is evidence of an unhealthy work environment in an area of the University.

Where a member of the University community, especially anyone in a leadership, management or supervisory role, is aware of acts of discrimination or harassment and fails to take action to address the behaviour they may be subject to penalties under this policy or under the *WSH Act* *and Regulations*.

1. **Responsibilities of All Individuals**

Every member of the University community must adhere to University policies and support the aim of the University to create a climate of understanding and respect for the dignity and rights of all. Every member of the University community is expected to respect the rights of academic freedom and freedom of thought, inquiry and expression and also to support the University’s efforts to ensure that the working and learning environment is free of discrimination and harassment.

1. **Responsibilities of President’s Executive Council**

The President’s Executive Council (PEC) at Brandon University includes the President, Vice Presidents, and the Chief Human Resources Officer. These leaders are ultimately responsible for providing and supporting a work and learning environment which is free from harassment and discrimination. PEC will provide resources for the education of members of the University community, lead by example by carrying out their duties in a respectful manner, and ensure that there are policies and procedures in place for addressing instances of discrimination and harassment.

1. **Responsibilities of Managers and Supervisors**

Managers and supervisors are those who, by virtue of their position at Brandon University, are responsible for overseeing others in the workplace. Managers and supervisors must monitor the work and learning environment for signs that harassment or discrimination are taking place, and take early action to address any concerns they are aware of, even in the absence of a complaint. Managers and supervisors must ensure that their employees are aware of this policy and related procedures and that they are provided opportunities to participate in education and training related to harassment and discrimination. When complaints have been made and corrective actions recommended to address them, it is the manager’s or supervisor’s responsibility to ensure these corrective actions are implemented and to monitor the situation. Managers and supervisors are expected to take part in learning opportunities, or to consult with the DHRA, to ensure they are appropriately addressing issues of human rights, discrimination, and harassment.

1. **Responsibilities of People in Authority**

Even those who do not hold a formal leadership or supervisory role hold authority in certain circumstances, and therefore have a responsibility under this policy. For example, faculty members hold authority over students in a classroom and employees who oversee the activities of volunteers hold authority in that context. People in authority are expected to participate in training to ensure they understand their responsibilities in preventing and addressing incidents of discrimination and harassment. People in authority must also ensure, to the extent practicable, that those they oversee are aware of human rights issues and their rights and responsibilities.

1. **Responsibilities of the Diversity and Human Rights Advisor (DHRA)**

The DHRA is responsible for developing and facilitating education and prevention initiatives around issues of discrimination, harassment, equity, diversity, and human rights. The DHRA provides advice and assistance to all members of the University Community on matters relating to human rights, equity, and diversity. The DHRA may consult, provide guidance for early resolution of issues, provide educational opportunities, facilitate conversations, mediate between parties in conflict, conduct workplace assessments and internal investigations, or coordinate the services of an external facilitator or group in providing any of these services.

1. **Manitoba Legislation and this Policy**

At Brandon University the *Discrimination and Harassment Prevention Policy* and related procedures are informed and guided by the *MHRC* and the *WSH Act and Regulations*. These two pieces of legislation apply to and prevail over all provincial legislation (with few exceptions), as well as over University policies and collective agreements. Subject to applicable legislation, all processes in this policy shall be pursued in accordance with the respective collective agreements entered into between the University and its employees and all University Policies and Procedures.

The *MHRC* governs any discrimination or harassment that is based on the “prohibited grounds” listed in the Code. The *WSH Act and Regulations* prohibit both harassment based on the prohibited grounds, and what will be termed here as “Personal Harassment”, and also speaks to what is not considered harassment.

1. **Discrimination and Harassment (Prohibited Grounds)**

All members of the Brandon University community have the right to be free of discrimination and harassment. We recognize that all people have the right to fair and equal treatment, and to be protected from discrimination and harassment on the basis of the following grounds:

1. ancestry, including colour and perceived race;
2. nationality or national origin;
3. ethnic background or origin;
4. religion or creed, or religious belief, association or activity;
5. age;
6. sex including sex-determined characteristics or circumstances;
7. gender identity and gender expression\*;
8. sexual orientation;
9. marital or family status;
10. source of income;
11. political belief, political association or political activity (including union affiliation or activity);
12. physical or mental disability or related characteristics or circumstances; and
13. social disadvantage.

Where an individual is mistreated because of a relationship or association with someone identified as belonging to any of the above groups, this also infringes on their right to be free from discrimination and harassment.

\*Although gender expression is not explicitly mentioned in the *MHRC*, Brandon University recognizes it as a protected characteristic.

1. **Personal Harassment**

Under the *WSH Act and Regulations*, personal harassment is objectionable or severe conduct that negatively impacts an individual’s mental or physical wellbeing. It can be one act or comment, but is usually a course of actions, which have the effect of humiliating or intimidating someone. Personal harassment does not need to be linked to any of the grounds listed above.

1. **Not Harassment**

It is important to note that not every interaction that is perceived as negative in the work or learning environment constitutes harassment. For example, the *WSH Act and Regulations* explicitly states that appropriate use of legitimate authority by a supervisor responsible for functions such as performance appraisals, discipline, and directing the work of others is not considered harassment. By extension, the appropriate use of legitimate authority by faculty in determining grades, identifying and preventing inappropriate classroom behaviour, and recommending discipline is not harassment. Interpersonal conflict or disagreements in the work and/or learning environment are not harassment; for assistance in determining if a situation is conflict or discrimination/harassment please see the *Guide to Conflict Resolution at Brandon University*.

1. **Guiding Principles**
2. **Shared responsibility**

Preventing and stopping discriminatory/harassing behaviour at Brandon University requires that all members of the University community work together to behave in a respectful and collegial manner, and to address disrespectful or unproductive behaviour when it happens.

1. **Laws of Natural Justice**

The implementation of this policy will be conducted based on the laws of natural justice. This means that the respondent has the right to know the allegations against them in full detail, and the right to reply to these allegations. It also means that anyone investigating a concern or complaint must endeavour to remain neutral and avoid allowing any personal bias to influence their decisions. Remedial or punitive actions resulting from the implementation of this policy will be based on evidence, and that evidence will be shared with both the complainant and respondent.

1. **Problem solving versus punitive action**

The main purpose of the *Discrimination and Harassment Prevention Policy and Procedures* is to assist with resolving issues. While it is recognized that sanctions are sometimes necessary and effective, a process that encourages discussion and a negotiated agreement is preferred where possible.

1. **Scope and Application of This Policy**

Every member of the Brandon University community has both the right to work and study in an environment that is free from discrimination and harassment, and the responsibility to maintain a discrimination and harassment free environment. This policy applies to all members of the Brandon University community, which includes all employees, students, contractors and suppliers of services, volunteers, visitors, and individuals who are connected to any University initiatives. This policy applies to all members of the University community in their interaction with other members of the University community. The context of the interaction need not be University-related if the parties’ primary relationship is through their mutual connection to the University.

Behaviours which constitute discrimination and harassment, which impact the work and/or study environment of a member of the Brandon University community, may be covered by this policy even though they may occur outside the normal working hours, or during off-campus activities such as work, athletic, or academic related travel, campus related social functions, or work or academic assignments or placements. Conduct on social media or communication through electronic means may constitute a breach of this policy.

It is important to note that a harassing or discriminatory act can be unintentional, and still warrant action under this policy. Where the actions of an individual or group have the effect of harassing or discriminating against a member of the University community, whether intended or not, the “reasonable person test” may be used to determine whether they should have known that their actions were unwelcome and would cause harm to the member.

1. **Education and Communication**

The cornerstone of prevention efforts is education. Brandon University is committed to promoting the principles of diversity and human rights through education and conversation in many forums and formats throughout the community on an ongoing basis. The DHRA will coordinate and deliver a program that raises awareness of:

1. forms of discrimination, including both direct and systemic discrimination,
2. the damage that discrimination and harassment cause to both the individual and to the University,
3. how to prevent discrimination and harassment, and
4. what to do about discrimination and harassment when they occur.
5. **Confidentiality**

Brandon University recognizes the importance of confidentiality, and issues brought to the DHRA will be treated as confidential. Confidentiality must be balanced with the University’s legal obligations to address discrimination and harassment, so at times information will need to be shared in order to investigate a matter, to address a risk or threat, or to comply with requests from legal entities. This confidentiality extends to any member of the University community who may be privy to information or who possesses documentation about a complaint or investigation. Breaches of confidentiality may be subject to penalties.

Confidentiality should not be confused with anonymity. Those who bring forward a concern and wish for action to be taken on their concern must be prepared to be identified as the complainant. The University will make every attempt to ensure that there are no reprisals against anyone making a complaint under this policy or participating in an investigation.

The DHRA will provide a summative report of issues dealt with under the *Discrimination and Harassment Prevention Policy and Procedures* to the President on a yearly basis. This report will not include personal information about the complainant, respondent or other parties to an incident or investigation. It will not include other details, such as department or job titles, which could lead to the identification of any of the parties.

1. **Malicious Complaints and Retaliation**

Maliciously and deliberately making a false complaint under this policy or any other Brandon University policy will be considered an act of harassment and will be treated as such. Retaliating against someone who has made a complaint in good faith under this policy or any other University policy, against someone who has cooperated in good faith in an investigation under this policy or any other University policy or legislation, will also be treated as harassment.

1. **Academic Freedom**

Brandon University recognizes that, as an academic and free community, it must uphold its fundamental commitments to academic freedom and freedom of thought, inquiry and expression. Therefore, this policy will not be interpreted, administered or applied to infringe upon these freedoms. These freedoms, however, must be exercised in a responsible manner and are subject to limits prescribed by law, including those related to human rights, and workplace safety and health legislation. Members of the University community, in exercising their academic freedom and freedom of thought, inquiry and expression, shall respect the rights and dignity of others, and not engage in actions that deny equality to, or harass others.

1. **Definitions**
2. **Complainant** is a person who discusses a concern and/or makes a complaint (an allegation, whether oral or written) of harassment or discrimination under the policy.
3. **Discrimination** is the differential treatment of people particularly in the areas of employment, living accommodations and access to services.Discrimination can be **direct** or **systemic**. Discrimination can be intentional or unintentional, and is judged to be discriminatory based on the effect it has on the complainant, not based on the intentions of the respondent.
4. **Direct discrimination** meansthe differential treatment of a person based on their actual or presumed membership in one of the protected groups defined in the *MHRC*.
5. **Systemic discrimination** refers to discrimination rising out of a set of actions, policies and/or procedures which combine to disadvantage a protected group. Each of the actions, policies and/or procedures is not discriminatory on its own; rather it is the combined effect which creates the discrimination.
6. **Harassment** is a course of abusive behaviour which the harasser should reasonably know is unwelcome. Harassment may be written or verbal, a physical act or gesture, or a display of offensive material. Harassment may also mean the intentional exclusion, undermining or sabotaging of a person or persons. A single act may be determined to be harassment if it is severe in its effect and/or the harasser is aware of the effect of the behaviour on the other person. Harassment can be **discrimination-based, sexual, or personal.** Sexual harassment is defined here, but is covered under the Brandon University Sexualized Violence Policy.
7. **Harassment (Prohibited Grounds)** isa course of abusive and unwelcomed behaviour or comments made against someone based on their actual or presumed membership in one the protected groups defined in the *MHRC*. It may also be based on their association or relationship with someone who belongs to one of these groups.
8. **Sexual Harassment** is a series of objectionable or unwelcomed sexual solicitations or advances. It can also be a sexual solicitation or advance made by a person who is in a position of power or control over the recipient of the solicitation or advance, if the person making the solicitation or advance knows or ought to reasonably know that it is unwelcome. Sexual harassment can also be a reprisal or threat of reprisal for rejecting a sexual advance or solicitation.
9. **Personal Harassment** is objectionable conduct that adversely affects a person’s psychological or physical well-being and may cause them to be humiliated or intimidated. Usually personal harassment is repeated, serves no legitimate work or academic related purpose and has the effect of creating an intimidating, humiliating, hostile or offensive environment.
10. **Reasonable Person Test** is a standard used to decide if an individual used due care in their words or actions. In other words, should that person reasonably have expected their actions or words would do harm to another.
11. **Respondent** is a person against whom a complaint has been made under this policy or is the subject of allegations of harassment or discrimination under the policy.
12. **Review**

As is required by Workplace Safety and Health Legislation, this policy and the associated procedures will be reviewed, at a minimum, every 3 years, with any changes requiring approval by the Board of Governors. In the intervening time periods between these reviews, the procedures document may be updated or revised by the DHRA as needed, following consultation with unions and other stakeholders. Changes to both the policy and procedures will be tracked and summarized in an attached document.

1. **Related Policies and Procedures**
2. Discrimination and Harassment Prevention Procedures
3. Guide to Resolving Conflict at Brandon University
4. Manitoba Human Rights Code, C.C.S.M. c. H175;
5. Workplace Safety and Health Act and Regulation of Manitoba 217/2006.
6. Sexualized Violence Prevention Policy
7. Collective Agreements
8. Guide to Investigations at Brandon University
9. Records Management Policy

*This document is available in PDF and Microsoft Word format on the Brandon University website.  A printed copy can be attained from the Diversity and Human Rights Office, Room 333 Clark Hall.  Persons involved with the processes outlined in this policy (complainants, witnesses or respondents) may conduct their involvement verbally or with the assistance of an interpreter upon request.*