Discriminatory Harassment Policy

Purpose

Boston College advances its mission through the contributions of a diverse faculty, staff, and student body and strives to provide a welcoming environment informed by respect for all persons regardless of race, color, national origin, sex, religion, disability, age, or sexual orientation. Discriminatory harassment has no place in this environment. All members of the University community, especially individuals who exercise supervisory authority, have an obligation to address such harassment when it occurs and to take action, including disciplinary action when appropriate, to prevent its recurrence. This policy describes the University's response to complaints of discriminatory harassment, including the University's grievance procedures.

General Provisions

- Application. This policy applies to all students, faculty, and staff of Boston College, whether participating in University programs or activities on or off-campus, and addresses the University's response to complaints of discriminatory harassment against faculty and staff (as well as for some categories of students, such as teaching and research assistants, with regard to behavior linked to the responsibilities of their assistantships) with the exception of (i) complaints of sexual harassment subject to Title IX, which are addressed in accordance with the Title IX Harassment Policy, and (ii) other harassment complaints against students, which are addressed in the Student Code of Conduct (which may, however, refer to the definitions included in this policy). This policy also provides information about reporting options and resources available to members of the University community who experience discriminatory harassment or sexual misconduct.

- Related Policies. This policy is intended to address discriminatory harassment and to establish prompt and equitable procedures to address complaints of such harassment, including harassment prohibited by Massachusetts General Laws Chapter 151B, Title VII, and other federal and state law. The University has promulgated a number of separate policies to address complaints of discrimination, including the Discrimination Grievance Policy and the Title IX Harassment Policy.

- University Right to Discipline Employees. The procedures outlined in this policy are intended as resources for the prompt and equitable resolution of complaints of members of the Boston College community who believe they have been subject to discriminatory harassment committed by Boston College employees. This policy is not intended to limit or condition the authority of Boston College as an employer to take disciplinary action against any employee who is reasonably determined to have engaged in harassment or other inappropriate workplace conduct, whether or not the conduct

constitutes discriminatory harassment under this policy. The University may elect to respond to a harassment complaint as described in this policy, as an employee disciplinary matter, and/or in accordance with any other applicable University policies. In addition, nothing in this policy will be deemed to limit the University's right to place an employee on leave before complaint is fully resolved under this policy, or otherwise.

- 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. The Student Sexual Misconduct Policy includes specific examples of conduct that may constitute retaliation (and would apply to retaliation under this policy, whether the person retaliating is an employee or student). Instances of retaliation may lead to disciplinary action up to and including termination.

- 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.

Definition of Discriminatory Harassment

For the purposes of this policy, the following are considered discriminatory harassment:

- 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, abuses, mocks, or disparages a person or persons so as to unreasonably interfere with the person's education or work performance or create an intimidating, hostile, or offensive educational, work, or living environment.

- Under this policy, except to the extent the conduct constitutes Title IX sexual harassment (which is addressed under the Title IX Harassment Policy), sexual harassment is defined as:

  Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (1) submission to the conduct is made either explicitly or implicitly a term or condition of a person's employment or education, (2) submission to or rejection of such conduct by a person is used as the basis for employment or educational decisions affecting the person, or (3) the conduct has the purpose or effect of unreasonably interfering with a person's education or work performance or creating an intimidating, hostile, or offensive educational, work, or living environment.

  Examples of behavior that may constitute sexual harassment under this policy include sexual advances, any form of retaliation or threat of retaliation against an individual

who rejects such advances, sexual epithets, jokes, or comments, comments, or inquiry about an individual's body or sexual experiences, unwelcome leering, whistling, brushing against the body, sexual gestures, and displaying sexually suggestive images.

- Sexual misconduct, which is defined under Massachusetts law (M.G.L. ch. 6 section 168D) as sexual violence, dating violence, domestic violence, gender-based violence, violence based on sexual orientation or gender identity or expression, sexual assault, sexual harassment, or stalking.

Responding to Discriminatory Harassment

Report and Initial Review

1. Any student, faculty member, or employee who believes that he or she has experienced discriminatory harassment by a member of the University community or in connection with a University program or activity or University employment may report the harassment to the University Harassment Counselor or the Executive Director of the Office for Institutional Diversity, who coordinates the University's response to discrimination complaints, provided, however, that any sexual harassment should be reported to the Title IX Coordinator or deputy as described in the Title IX Harassment Policy. Any University employee or student who becomes aware of a complaint or occurrence of discriminatory harassment should promptly contact the University Harassment Counselor or the Executive Director of the Office for Institutional Diversity so the University can respond appropriately.

2. Upon receiving a report, the Harassment Counselor will promptly contact the complainant to gain a preliminary understanding of the allegations. Within a timely manner (normally within seven (7) days), the Harassment Counselor will conduct an initial review of the matter, consulting with the University Title IX Coordinator and other administrators as appropriate, to assess whether the alleged conduct would likely constitute discriminatory harassment under this policy if it occurred as described by the complainant or other reporting parties. This preliminary review will not normally include notifying or interviewing the respondent.

3. If the conduct would constitute discriminatory harassment under this policy if it occurred as alleged, the Harassment Counselor will review with the complainant the options for pursuing the complaint. 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 may assist the complainant in resolving the matter informally, or may refer the complainant to another University administrator who could provide appropriate assistance to the complainant. If the Harassment Counselor, in consultation with the Executive Director of the Office for Institutional Diversity (who also serves as the University Title IX Coordinator) determines that the alleged behavior may constitute sexual harassment under Title IX, the matter will be addressed in accordance with the

Title IX Harassment Policy, unless it is dismissed under that policy or, as explained in that policy, the matter implicates this policy and/or other University policies.

4. If the complainant believes the Harassment Counselor has erred in dismissing the complaint, the complainant may consult with the Executive Director of the Office for Institutional Diversity, who will review the matter and make a determination. The Executive Director's decision will be final.

Additional Reporting Options and Resources

Any member of the University community who experiences violence or sexual misconduct or who has a medical or safety concern is encouraged to call 911 or the Boston College Police at 617-552-4444.

Employees who experience discriminatory harassment or sexual misconduct, whether or not in connection University programs or activities, may utilize the services of the Faculty/Staff Assistance Program, which includes the services of a confidential resource provider. The confidential resource provider will provide the employee with support and information about the employee's reporting options, as well as referral to other resources on a confidential basis. Employees may also report sexual harassment or misconduct to the University on an anonymous basis through the Sexual Misconduct Reporting Form Confidential Sexual Misconduct reporting form.

A list of available on- and off- campus resources, many of which are available to students and employees, is included in the Student Sexual Misconduct Policy.

Interim Measures

The Harassment Counselor will work with the complainant and other University administrators to address any immediate concerns of the complainant while a report or formal complaint is pending under this policy. The Harassment Counselor will coordinate these interim measures, which may include referrals to University and outside support resources, and other measures that the University deems to be reasonable and appropriate in the circumstances, such as academic accommodations, scheduling changes, and no-contact orders. The Faculty/Staff Assistance Program's confidential resource provider is also available to assist employees with these interim measures.

Administrative Referral by Harassment Counselor

If the complainant does not wish to pursue a complaint, the Harassment Counselor, in consultation with the Executive Director of the Office for Institutional Diversity, may determine that the University's interests in preventing ongoing discriminatory harassment will require a University response regardless of the complainant's

participation. In such a case, the Harassment Counselor will notify the complainant. The University's response may include using the procedures under this policy or taking other measures, such as referring the matter to the respondent's supervisor and other University administrators.

Informal Resolution

If the Harassment Counselor determines mediation or another informal process is appropriate and the complainant and respondent agree to participate in an informal process, the Counselor may facilitate a mediation or other informal resolution. The complainant and respondent can choose to end the mediation or informal resolution process at any time prior to the conclusion of the process and proceed with a formal process described below. Informal resolution may include a written agreement, and it may result in disciplinary measures. If harassment reoccurs following an informal resolution, the complainant or the Harassment Counselor may proceed with a formal grievance procedure described below or the Harassment Counselor may proceed with an administrative referral as described above.

Formal Grievance Process

1. Bringing the Complaint. If the complainant wishes to proceed with a formal complaint, the complainant may provide a written or verbal complaint to the Harassment Counselor requesting that it be addressed formally, under the grievance procedures described below. The complaint should describe the offensive conduct, specify the date(s) and place(s) on which the conduct occurred, and if possible, provide the names of the respondent and any witnesses.
2. Referral and Notification of Respondent. Promptly upon receiving the complaint, the Harassment Counselor will inform the cognizant Dean[1] or Vice President responsible for the respondent's department. The Harassment Counselor, Dean, or Vice President will promptly notify the respondent of the allegations and the alleged policy violations, including the date, time, and location of the alleged conduct, if known. This notice will include a copy of this policy and will describe the process to be used for addressing it (as described below) in a timely manner, normally within seven (7) days of the formal complaint being received. The respondent is presumed to be not responsible for the alleged conduct until a determination has been made at the conclusion of the University's resolution process.
3. Resolution Procedures. Upon notice of a formal complaint, the Dean or Vice President will promptly consult with the Executive Director of the Office for Institutional Diversity and the Office of the General Counsel, as well as other University officials as appropriate, to determine if the complaint will be investigated by the Harassment Counselor or other internal investigator, an external investigator, or some combination of these. In cases involving allegations of sexual misconduct, the individual(s) conducting

[1] For complaints against a Dean, the Harassment Counselor will notify the Provost.

the investigation shall have received annual training on issues relating to sexual conduct, and investigatory and hearing procedures. Findings will be made based on a preponderance of evidence.

Investigations. The Vice President, Dean, and/or the Office of the General Counsel will designate the investigator(s). In cases in which the Harassment Counselor is not acting as investigator, the Harassment Counselor will provide the investigator with all relevant information previously gathered by the Harassment Counselor. The investigator will interview the parties, any witnesses, and gather any other relevant evidence available; the parties will not directly question each other. Both parties will have equal opportunity present evidence and witnesses, and to inspect and review evidence obtained as part of the investigation that is directly related to the allegations. After the completion of the investigation, the investigator will prepare a written report that will include the investigator's determination as to whether the respondent's conduct violated this policy, outlining the investigator's factual findings supporting the determination. The report will then be provided to the Dean of the respondent's School or College (if a faculty member), the Provost (if the complaint includes allegations against a Dean), or the relevant Vice President. The University will endeavor to complete the investigation within sixty (60) days of notification of the respondent, though the process may take longer depending on the complexity of the case and the availability of the parties and witnesses.

Advisors. Each party may, but is not required to, be accompanied by an advisor or support person at any meeting, interview or hearing under this policy. The advisor of support person may not speak, other than to consult privately with the party outside of the meeting, interview, or hearing.

Disciplinary Sanctions. After review of the Investigative Report, the Dean (with the approval of the Provost), Provost, or relevant Vice President will, if a violation of this policy has been found, make a final determination as to the appropriate disciplinary sanction, consulting with other University administrators as appropriate. Both parties will receive written notice of the results of the investigation no later than seven (7) business days after such final determination, not including any time for appeal, unless there is good cause for additional time. Prior to any disciplinary action, the respondent will be afforded an appeal, as described below. The Dean or Vice President will consult with the Harassment Counselor and the Executive Director of the Office for Institutional Diversity as necessary to determine whether other measures are appropriate to address any discriminatory effects of the harassment on the complainant and others, and prevent recurrence. 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.

4. Appeals. The complainant or the respondent may appeal the outcome of the complaint process if (i) the party identifies new, relevant evidence that was unavailable to the

appealing party at the time of the investigation or hearing and that would likely affect the outcome of the case; or (ii) if the party has a reasonable basis to believe that the outcome was the result of a material failure to comply with the procedural requirements of this policy. A faculty member may also bring an appeal if the faculty member reasonably believes the outcome constitutes a violation of academic freedom. An appeal must be filed in writing within ten (10) days after the respondent is informed of the decision. Except in the case of appeals filed by faculty, appeals should be in writing and filed with the Executive Vice President, who will either sustain or reverse the decision, or refer the case back to the appropriate Dean or Vice President for further review. Faculty may appeal decisions pursuant to applicable provisions of the University Statutes.

Recordkeeping

A record of all complaints, including their disposition, will be maintained by the Harassment Counselor and the Office for Institutional Diversity.

A record may also be kept with a respondent's personnel file. For informal complaints, no notations or records will normally be placed in an individual personnel file if no finding was made, unless the matter was addressed with the respondent and documented by the employee's supervisor or Dean. For formal complaints, a record of a finding of responsibility and the sanctions imposed will be kept in the respondent's personnel file. If the University reasonably determines that a complaint was knowingly false and made in bad faith, a record of the false complaint may be recorded in the complainant's personnel file or, if the complainant is a student, by Student Affairs.

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 of the Office for Institutional Diversity, who oversees the University's compliance efforts with respect to state and federal non-discrimination laws, including Title VI, Title VII, 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: August 1, 2021
August 12, 2021 rev (to update for M.G.L. ch. 6 section 168D)