THE ALBERT EINSTEIN COLLEGE OF MEDICINE
OF YESHIVA UNIVERSITY

Procedures Regarding Complaints of Unlawful Harassment

The Albert Einstein College of Medicine is committed to maintaining an environment for research, learning and teaching that is free of unlawful harassment. The College has adopted a policy of zero tolerance with respect to unlawful harassment as being antithetical both to the academic values of the College and the need for a work environment that is free from even the appearance of unlawful harassment or coercion. Unlawful harassment in any form is a violation of College policy.

I. Definitions

Unlawful Harassment

Unlawful harassment includes harassment based on race, religion, color, creed, age, national origin or ancestry, sex, marital status, physical or mental disability, sexual orientation, or any other basis made unlawful by any applicable law, ordinance, or regulation.

Unlawful harassment may be found in a single episode, as well as in persistent behavior. Sexual harassment is a form of unlawful harassment.

Sexual Harassment

The Equal Employment Opportunity Commission (EEOC) has developed guidelines that define and describe sexual harassment. The American Medical Association (AMA) has adapted them to provide guidance to students and faculty, as well as employees about their legal rights. The definition by the AMA states that "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when:

1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic success,

2. submission to or rejection of such conduct by an individual is used as the basis for employment or academic decisions affecting such individuals, or

3. such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile, or offensive working environment."

Although it may sometimes be unclear where sexual slurs, insults, or even unwelcome sexual jokes actually fall within the definition of sexual harassment, it is clear that such conduct may contribute to a hostile working and learning environment and is unacceptable at Einstein. In addition to behaviors that may constitute sexual harassment, consensual sexual relationships between two individuals in a supervisory relationship (e.g., faculty members and their trainees or supervisors and their employees) represent inappropriate conduct to the extent that, even though characterized by mutual consent, they may raise ethical concerns because of their potential for sexual exploitation by one of the parties or, because of the possibility that the faculty member or the supervisor's objectivity may be compromised.

II. Examples

A. Sexual Harassment

Within the context of the above definition, examples of verbal or physical conduct which may constitute sexual harassment include, but are not limited to:
1. verbal comments of an overtly sexual nature, whether in the form of jokes, innuendoes, slurs, or other statements
2. the use of sexist teaching materials or comments of a sexual nature not relevant to the material being taught or any other academic purpose
3. remarks of a sexual nature about a person's clothing or body
4. remarks speculating about sexual orientation, activity or previous sexual experiences
5. verbal harassment or abuse of a sexual nature
6. failure to provide equal consideration, acknowledgement or access to educational or professional opportunities on the basis of gender
7. the display of sexually offensive photographs, drawings, graffiti, computer graphics or programs when sexual content is not justified by an academic purpose
8. non-verbal behaviors of a sexually degrading or offensive nature, such as gesturing, leering or staring
9. unnecessary or unwanted touching, hugging, or brushing against a person's body
10. requests, demands or persistent pressure for sexual favors, particularly when accompanied by offer of rewards or threats of retaliation concerning work, grades, promotions or tenure
11. sexual assault, including rape

B. Other Types of Unlawful Harassment

Within the context of the definition above, the following are examples of behaviors which may constitute unlawful harassment on the basis of the protected classes listed in Section I above.

1. epithets
2. slurs
3. negative stereotyping
4. intimidating or hostile acts
5. denigrating jokes
6. display or circulation in the workplace of written or graphic material that denigrates or shows hostility or aversion toward an individual or group
7. failure to provide equal consideration, acknowledgement or access to educational or professional opportunities.

III. General Procedures and Guidelines

Anyone who becomes aware of a complaint of unlawful harassment is obligated to report such complaint to the Affirmative Action Office (AAO) or a member of the Panel on Unlawful Harassment.

A complaint may be brought either to the Affirmative Action Office or to a member of the Panel on Unlawful Harassment (see V below) for assistance in understanding available options for dealing with the problem. The complainant will be immediately advised of the policies and procedures of the school for dealing with unlawful harassment, as described herein, and may choose to proceed with the informal approach (see VI below) or to pursue a formal complaint (see VII below). The treatment of complaints will be guided by the following principles, which are intended to protect the rights of all persons concerned.
A. Every effort will be made, consistent with the need to discharge the College's legal responsibilities, to respect the wishes of the complainant regarding further investigation. A complaint will not be pursued without the complainant's explicit authorization unless the College is legally obligated to do so or, in its judgment, the allegations are serious enough to warrant further action.

B. Any attempt to penalize a complainant for initiating a good faith complaint through any form of retaliation is strictly prohibited and will be treated as a separate incident subject to review. (See VIII below). Where, however, a complaint is determined to have been initiated in bad faith and/or on a knowingly false basis, such action may be the basis for appropriate disciplinary action against the complainant.

C. A complaint should be filed promptly after the alleged incident. Complainants should recognize that as time goes by an investigation becomes more difficult. Memories may become unreliable, information and witnesses may become unavailable. Promptness in filing complaints is therefore encouraged as it may be essential to proper and fair resolution.

D. The procedures outlined in this Policy do not apply when a party seeks resolution of a complaint in a court or administrative agency.

IV. Affirmative Action Office

A. Role in Informal Complaints

Members of the College community may seek advice from the Affirmative Action Administrator on alternative methods of resolving perceived acts of unlawful harassment. The Affirmative Action Administrator may provide such advice in an informal manner unless the allegations are serious enough to warrant further action.

B. Role in Formal Complaints

Formal complaints of harassment which may result in disciplinary action must be directed to the Affirmative Action Office. Upon receipt of a formal complaint, the AAA will commence an investigation. When appropriate the AAA in his/her judgment will contact a member of the Dean's staff to participate in the investigation in accordance with the procedures outlined in Section VII below. The Associate Dean for Academic Affairs will participate in investigations concerning faculty and the Associate Dean for Students will participate in investigations concerning students.

In the event that a Hearing Board is appointed (see VII C below), the AAA will serve as staff to that Board.

C. Contact Information

The Affirmative Action Office is located in Room 1206 Belfer Educational Center for Health Sciences, Phone: (718) 430-2552, Fax: (718) 430-8783, For the names of Current Affirmative Action staff members click on URL.

V. The Panel on Unlawful Harassment

A. The Charge:

The Panel is appointed by the Dean and charged to provide advice about possible courses of action available to any member of the College community who feels personally pressured or uncomfortable because of behavior that is perceived as unlawful harassment (see I above). If the person wishes to pursue an informal resolution of the complaint a Panel Member can provide a nonadversarial setting in which the problem can be considered or solved, through confidential counseling and, when appropriate and acceptable to both parties, mediation between the complainant and the alleged harasser. In the course of such activity, the Panel Member may also assist by clarifying misunderstandings, and helping to assure that situations do not occur in the future that may be construed to be unlawful harassment.
Within the principles set forth in Section VI below, Panel Members may receive complaints of perceived unlawful harassment against a faculty member, student, postdoctoral fellow or member of the staff of AECOM, in which the complainant seeks advice about a problem or assistance in resolving the situation. All employees of other institutions are subject to the policies of their respective employer institutions which retain primary authority and responsibility in this area. In cases involving accusations against employees or agents of another entity or institution, the College may proceed as it deems appropriate consistent with the facts and circumstances involved, including notifying appropriate institutional authorities of the alleged harassment.

C. Composition of the Panel:

The Panel will consist of members of the College community, designated by the Dean from time to time. The Dean's appointments will be guided by considerations of continuity, experience and sensitivity to the concerns of those most likely to be affected by unlawful harassment.

To view the list of Current Panel Members, click on Current Panel Membership.

VI. Informal Resolution

A. Wherever appropriate, mediation and conciliation will be emphasized as the courses of choice. Discreet inquiry, persuasion and trust will be stressed in dealing with complaints that are brought for consideration. Confidentiality will be respected unless otherwise required by law as determined by counsel for the University. When a complainant wishes to be informed, the Panel Member will hold his or her files and notes in a confidential manner to the extent permitted by law.

B. The Panel Member may recommend or facilitate informal means of addressing the issues, such as:

1. Informal, private direct discussion between the complainant and the accused.

2. Informal direct discussion between the complainant and the accused in the presence of the Panel Member who received the complaint.

3. Informal discussion with the accused by a Panel Member.

4. Request for additional education for the area or department to which the complaint relates.

C. A complainant may wish to remain unidentified to the respondent but request assistance in informing the latter that a problem has been raised concerning his/her conduct. Under such circumstances, the respondent may be advised as to the existence of a complaint without identifying the complainant, unless otherwise required by law as determined by counsel for the University.

D. The complainant may replace his/her informal complaint with a formal complaint. The formal complaint must be made to the Affirmative Action Office (AAO) (see VII below).

E. The accused may decline to participate in the informal process and may insist that a formal complaint be filed if the matter is to be pursued. No negative implication may be inferred from such a request.

F. Where a Panel Member is unable or unwilling to undertake the review of a complaint, for example because of a conflict of interest, the complainant may select another Panel Member.

G. Where acceptable to both parties to the complaint, the Panel Member involved may request that an additional Panel Member and/or the AAA be present for the discussions.

VII. Formal Review
A. Filing of Formal Complaint

An individual who wishes to initiate a formal complaint as described herein must file a complaint of unlawful harassment with the Affirmative Action Office (AAO) preferably in writing, stating the nature of the alleged harassment, the individual(s) accused and the relief requested. It is recognized that there may be times when individuals for various reasons will want to protect their own identities and yet initiate formal action against someone who they believe has subjected them to unlawful harassment. While this desire may be understandable, fairness generally requires that the complainant identify herself or himself in a complaint before the initiation of any investigation. When a person wishes to postpone for a limited period of time rather than to refuse such identification for cogent reasons (e.g., until after a promotions review or until the end of a course), the request will generally be honored and the complaint investigated after the complainant identifies herself or himself. If the person making the complaint withdraws it before such identification, no further action will be taken and no formal record kept, unless the College is legally obligated to do so or the allegations are serious enough to warrant further action.

B. Procedures and Investigation

1. The AAA will provide the complainant with a copy of these guidelines and advise the complainant to provide, generally within ten working days of the AAA’s request, a description of the incident, preferably in writing, all of the facts that bear on the allegation of unlawful harassment, including specific details of all aspects of the accusations in the complaint, the names of possible witnesses, and the nature and description of possible evidence. The complainant is to share with the AAA any supplemental information that subsequently becomes available.

2. Upon receipt of a formal complaint, the AAA will explain that the College will attempt to ascertain whether the allegation of unlawful harassment is valid. Where appropriate in the judgment of the AAA, the AAA may at any time invite both the complainant and the respondent to consider agreement to a proposed settlement.

3. The AAA will ask the respondent to the complaint to respond to the accusations, preferably in writing, if the facts of the incident were provided in writing within 10 working days of the AAA’s request. Such response may include any and all possible evidence including the names of witnesses. The respondent will share with the AAA any supplemental data that subsequently becomes available.

4. Both parties will be advised by the AAA that every effort will be made by the College to ensure confidentiality and that communications about this complaint will be limited to those who the AAA believe have a genuine need to know.

5. The AAA will endeavor, as promptly as feasible, to interview relevant witnesses who have been named by the complainant and/or the respondent and to locate and review evidence cited by either.

6. In addition to the witnesses and evidence suggested by the two parties, the AAA will also consider other witnesses and evidence that may have bearing on the complaint, including but not limited to the following:
   a) Corroborative evidence from persons other than named witnesses who may have relevant information;
   b) Evidence that either party may harbor hostility toward the other for unrelated reasons;
   c) The timing of the complaint;
   d) Any previous history of involvement by the complainant or respondent in unlawful harassment complaints.

7. The AAA will seek to conclude the investigation within 45 working days of the time the formal complaint was first filed with the College.

8. At the conclusion of the AAA’s investigation, the AAA will verbally advise the complainant and the respondent of the tentative findings of the investigation and will reiterate that such tentative findings are to remain
   a. The Affirmative Action Administrator shall issue a Report which may include recommended disciplinary action.
   b. The Report will generally include (a) the complaint and response; (b) the facts as found by the AAA and the determination of whether unlawful harassment has taken place along with any other conclusions drawn from the facts; (c) a summary of the testimony that was heard in closed session and relied upon in reaching the conclusion(s); and, (d) what actions, if any, are recommended.
   c. A copy of the Report will be provided to both parties who, within 10 working days of receipt, may submit their comments to the AAA. The comments may also include the identification of ameliorating circumstances.
   d. Promptly after the deadline for comments has passed the AAA will refer its Report (and all attachments thereto) along with all comments received to the appropriate responsible party (see below).

10. Findings and recommendations concerning students will be referred to the Committee on Student Promotions and Professional Standards ("CSPPS") for further adjudication in accordance with CSPPS Bylaws in consultation with the Graduate Division as appropriate.

11. Findings and recommendations regarding postdoctoral trainees will be referred as appropriate to the Director of the Belfer Institute or the Associate Dean for Clinical Affairs and Graduate Medical Education who may then refer it to a Hearing Board (see C below).

12. Findings and recommendations regarding all non-faculty, non-represented employees will be referred to the Director of Human Resources for further disposition.

13. Findings and recommendations regarding represented employees will be subject to the provisions of the appropriate collective bargaining agreement.

14. In the event the respondent is a faculty member, within 10 working days of being advised of the tentative conclusion of the AAA’s investigation, unless a mutually acceptable resolution has been achieved, either party may present a request in writing to the Dean for a hearing before a Hearing Board (see below). If no such request for a hearing is received within the allotted time, the AAA will complete a written Report which will be forwarded to the Dean for further disposition.

C. The Hearing Board

1. Composition

   In cases involving harassment by a Faculty Member or postdoctoral fellow, if either party to the dispute or the Affirmative Action Administrator requests a hearing, the Dean will appoint a five member Hearing Board that will include at least one member of the faculty and at least one person from the same category as the complainant, e.g., faculty member, postdoctoral trainee, employee, student, etc. The Dean will appoint one member of the Hearing Board to serve as Chairperson. The complainant and the respondent will be advised of the names of the proposed members of the Hearing Board. Each will have the right, within 10 working days after being advised of these names, to challenge the participation of an individual based on conflict of interest or bias. If the challenge is accepted by the Dean, an alternate Hearing Board member will be selected by the Dean.

2. Proceedings

   a. Both the complainant and the respondent may be accompanied by counsel (or a non-attorney representative) of their choice who may attend the hearing(s) but may not participate in the discussion or question witnesses.

   b. At such hearing(s), the AAA, serving as staff to the Hearing Board, will organize and seek to expedite
the hearing. In that regard, the AAA will present the Hearing Board with a description of evidence and a list of individuals whose testimony the AAA considers relevant to the investigation. The complainant and the respondent will be asked to supplement the evidence and witnesses suggested by the AAA.

c. The Hearing Board will seek to obtain the testimony of individuals suggested by the complainant and the respondent as well as of any other individual(s) suggested by the AAA whose testimony it deems relevant. Both the complainant and the respondent may, as the Hearing Board determines, either themselves question adverse witnesses directly or submit questions to be asked on their behalf by the Hearing Board. However, the Hearing Board does not have the ability to compel testimony.

d. It is noted that these proceedings are not those of a court of law, and the Hearing Board is not bound by strict rules of evidence. It will at all times seek to protect the rights of both parties, and to maintain the confidentiality of the proceedings to the fullest degree possible.

e. A representative of the University Counsel's Office will attend all meetings of the Hearing Board and provide direction on all legal matters to ensure that University requirements for due process and other legal obligations are met, and to protect the interests of the University but not as an advocate for either the complainant or respondent.

f. The Hearing Board is expected to complete the hearing(s) within 60 working days from the date the Board was appointed.

g. A tape or stenographic record will be made of the hearing(s) and provided to the complainant and the respondent. At the conclusion of the hearing(s), the Hearing Board may allow both parties a set time for submission of summary statements of their positions.

3. Written Report of the Hearing Board

1. The Hearing Board shall issue a Report which may include recommended disciplinary action.

2. The Report will generally include (a) the complaint and response; (b) the facts as found by the Hearing Board, and their determination of whether unlawful harassment has taken place along with any other conclusions drawn from the facts; (c) the testimony that was heard in closed session and relied upon in reaching the conclusion(s); and (d) what actions, if any, are recommended that the Dean undertake.

3. A copy of the Report will be provided to both parties who, within 10 working days of receipt, may submit their comments to the Hearing Board. The comments may also include the identification of ameliorating circumstances.

4. Promptly after the deadline for comments has passed the Board will refer to the Dean its Report (and all attachments thereto) along with all comments received.

5. The Dean must receive a written report about each formal complaint that is lodged regardless of the determination of whether or not unlawful harassment took place and whether or not sanctions have been recommended.

4. Decision by the Dean

In a case involving a faculty respondent, the Dean will review the Report and comments received. The Dean may request further investigation or supplemental information from the AAA or the Hearing Board as the case may be, in which instance such further investigation will be completed within the time set by the Dean. Upon receiving all such data as the Dean considers relevant, the Dean will issue the decision of the College regarding the complaint.
The procedures described herein shall supersede Sections 5.03 and 5.04 of the Rules and Regulations for a System of Appointment, Titles and Compensation Arrangements of the Albert Einstein College of Medicine of Yeshiva University.

In the event that the Dean believes that it is appropriate to do so, the Dean to the extent practicable will implement actions to restore the reputation of the respondent. If the Hearing Board judges that the allegation was not made in good faith or was made with malicious intent, the Hearing Board is to make recommendations to the Dean which may include disciplinary action against those responsible.

5. Appeal of the Dean’s Decision

In a case involving a faculty respondent, a final appeal of the Dean’s decision may be made to the Vice President for University Life who can be reached at Wilf Campus, 500 West 185th Street, New York, NY 10033, Belfer Hall, 1204. The appeal must be made in writing no later than 30 days after the Dean's decision. The Vice President for University Life or his/her designee will review all relevant data and may consult with the Dean and the Office of the General Counsel in reaching a decision. The Vice President for University Life will decide the appeal within 45 days after the appeal is filed. The decision of the Vice President for University Life is final.

VIII. Protection from Retaliation

The College will take all reasonable action to protect from retaliation or reprisal all individuals who in good faith filed a formal or informal complaint and/or were involved in the investigation of a complaint. It is noted that even if a complaint is not sustained, no individual should be subject to retaliation so long as the filing of the complaint and testimony in support thereon were in good faith. Should this principle be violated, upon submission of a complaint of retaliation, the AAA will review the facts and recommend appropriate action to the Dean.

IX. Re-evaluation

The University reserves the right to review and change these procedures periodically. Proposed changes will be recommended to the Dean who will review them with the Office of the University Counsel. These Policies and Procedures are available to the entire faculty, staff and student body of Albert Einstein College of Medicine and Sue Golding Graduate School, either on the AECOM website or from various campus offices including the Affirmative Action Office and the Human Resources Department.

The time periods referred to throughout this document may be extended as determined by the AAA or the Hearing Board, for such reasons as the unavailability of witnesses, school vacations, etc.

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