

BIAS RESPONSE PROTOCOL

I. INTRODUCTION

In a letter dated March 1, 2006, Provost Bruce Mallory and Vice President for Student and Academic Services Mark Rubinstein requested that a Bias Response Protocol be organized. Specifically, the charge is to define severity levels of bias incidents that should guide communication decisions to stakeholder groups and the University community at large. They asked that “consideration...be given to the importance of maintaining a sense of perspective on...incidents, according each its proper weight and notification necessary.” This draft outlines a campus-wide protocol and notification system, based on input from stakeholder groups at UNH and models of best practice across the country. This is not meant to override the responsibilities of offices such as Conduct and Mediation, UNH Police, or Affirmative Action and Equity to respond to incidents reported to them. It will, however, complement the work of these offices and fill in a gap in response that currently exists for incidents that occur outside the residence halls.

II. VISION

Every community member should be aware of our collective commitment to maintaining a safe and welcoming environment through periodic public reports on the outcomes of report of acts of hate or bias. In its Statement of Nondiscrimination, the University makes clear that it does not discriminate against persons because of their race, color, religion, sex, age, national origin, sexual orientation, gender identity or expression, disability, veteran status, or marital status. Furthermore, the Discrimination and Discriminatory Harassment Policy states that “no member of UNH may engage in harassing behavior within the jurisdiction of the university that unjustly interferes with any individual’s required tasks, career opportunities, learning, or participation in university life”. And finally, the UNH Code of Conduct is to protect the “university’s educational mission of teaching, research, and public service, as well as to promote every student’s academic achievement and personal development.” (www.unh.edu/student/rights)

This vision is aligned with the third Core Value of commitment to community and diversity in the Academic Plan (www.academicplan.unh.edu/), and Division of Student and Academic Services Strategic Plan, Goal 1, Action Step 1.3.

III. PURPOSE

The Bias Response Protocol provides an organized response to bias incidents or hate crimes when they occur, and a mechanism to inform the person or group harmed and the community about the outcomes.

IV. APPLICATION OF PROTOCOL

This Protocol covers the UNH campus and may be initiated when an incident occurs off campus if it adversely affects the University Community and/or the pursuit of its objectives. (Code of Conduct, Article III, Section A. Jurisdiction of the University).

It may also be implemented in areas such as the residence halls or Memorial Union Building (MUB) if an incident rises to the severity that necessitates campus-wide action. Currently, the Residential Life staff follows a response protocol that is well designed for high-density living areas of primarily traditional aged students (18-22). Access to these areas is much more restricted and supervised than other areas of campus. As well, MUB staff also currently follow a protocol that is well designed to respond to incidents that occur in the student union building.

V. STRUCTURE

a) Build a **Bias Response Team** consisting of the “**Core Team**” and the “**Responders**” to address incidents of bias and hate on campus.

Core Team members are charged to receive and examine reports of incidents of hate and bias, devise response strategies when appropriate, and report out the findings and responses.

- This team will include the Director of Affirmative Action and Equity, the Senior Assistant Vice President for Student and Academic Services, the Director of the Office for Multicultural Student Affairs, (OMSA), the Chief of UNH Police (or designee), and a student representative from the Diversity Support Coalition.
- The **Core Team** will immediately examine the severity of all reported bias incidents and review options for an appropriate response following University policies and procedures and federal and state laws. Assessment of the severity of a bias incident will take into consideration (1) threats to safety, (2) the public nature of the incident, and (3) the appearance of premeditation of the incident (see Appendix D Definitions). If deemed appropriate, the **Core Team** may call together some or all of the **Responders** and/or contact them via an email distribution list serve. The purpose of the contact will be to pass along information (subject to privacy laws and policies) about an incident, if it involves any form of threat to public safety, physical violence to an individual or group, appears to be pre-meditated and created for public display and attention, or is large-scale in its impact.
- Personally identifying information about students is subject to the Family Education Rights and Privacy Act. FERPA was designed to protect the privacy of student education records. When a report of an incident that contains personally identifiable information about students comes to the attention of any **Core Team** member, that information will remain confidential under the following circumstances. FERPA permits disclosure to school officials with a legitimate educational interest. A school official is a person employed by the University in an administrative, supervisory, academic or research support staff position (including law enforcement unit, personnel and health staff). USNH General Counsel advises that UNH is not authorized to disclose personally identifiable information to students serving in capacity such as the Bias Response Protocol **Core Team**.
- When Residential Life, the MUB, reportit!, or other campus agencies that have internal reporting mechanisms submit a report that contains personally identifiable information, the Director of Affirmative Action and Equity and the Student and Academic Services Senior Vice President will determine who among **Core Team** members have a legitimate educational need to know.

Responders are charged with informing their constituencies by providing accurate information and, as appropriate, devising response strategies.

- **Responders** may include: President’s Commissions’ Chairs or designees, Vice Provost for Diversity, Conduct and Mediation Programs, Residential Life representative, Chair of the Student Senate Community Change Council, Chair of the Diversity Support Coalition, Sexual Harassment and Rape Prevention Program (SHARPP), Academic Support Services, Student Athletic Advisory Committee, Health Services, Counseling Center, Diversity Team in Student and Academic Services, UNH-Manchester representative, Office of International Students and Scholars, and Facilities representatives (such as building managers for academic buildings) and Student and

Academic Services (SAS) representatives for student facilities (for example the Directors of the MUB, Hamel Recreation, etc). Inclusion of any **Responder** may depend on the location/severity of incident. (Dean's Council is appropriate to suggest representation).

b) Reporting: In November and April of each academic year, the **Core Team**, along with the President's Commissions, Residential Life Representative, the Office of International Students and Scholars, Dean of the Graduate School or designee, Vice Provost for Diversity, a UNH-Manchester representative, and the Diversity Support Coalition and Senate Chairs will convene to review reports of bias and hate acts that have been collected and maintained by the Affirmative Action and Equity Office (AAEO). Each representative would then take the data and share with appropriate constituencies. This data base will be comprised of information collected from the AAEO, Conduct and Mediation Programs Office, Residential Life, UNH Police Department, and SHARPP.

c) Educate the community about how to report incidents and what happens when students report them.

d) Compile data into a semester-based letter to the community to update everyone on what is happening, how incidents are being handled, and how everyone can be a part of the solution. We recommend that the President sign it.

VI. REPORTING OPTIONS FOR COMMUNITY MEMBERS

- Contact the Director of the Office of Conduct and Mediation to discuss the incident and determine if it rises to a violation of the Code of Conduct. Anyone in the community may act as complainant and receive technical assistance. (www.unh.edu/ocm 862-3377)
- Report to the UNH Police (www.unh.edu/upd 862-1427) or Durham Police (www.durhampolice.com 868-2324) for criminal investigation.
- Report an incident to the Affirmative Action and Equity Office to discuss whether it meets the definition of discriminatory harassment. (www.unh.edu/affirmativeactionandequity 862-2930 v/tty)
- Report to the Office of Vice President for Student and Academic Services (862-2053), Dean's Office, or other SAS office. (www.unh.edu/vpsas/) (www.unh.edu/academic-affairs)
- Report to a Clery Act Campus Security Authority if the incident is relevant to the Act. www.unh.edu/upd/clery.pdf
- Contact a staff member in SHARPP (Sexual Harassment and Rape Prevention Program) (<http://www.unh.edu/sharpp/> 862-3494)
- Contact a member of the Health Services staff. (862-1530 or 862-0807 tty)
- reportIt! (www.reportit@unh.edu)
- See additional support offices in Appendix E.

VII. RESPONSE GUIDELINES

- **First Amendment:** Respond with the First Amendment in mind. In many instances, conduct that is protected by the First Amendment is not actionable under law, or the UNH Student Code of Conduct. However, there are limits to free speech, as well as consequences for protected, but threatening-sounding/offensive speech.
- **Location:** In considering the First Amendment, we must look at location. A limited public space, like Thompson Hall lawn, is a traditional location for protected speech. At UNH, there are no “speech zones.” Restrictions of time, place, and manner are placed on students, faculty, and staff, but such restrictions must remain content-neutral and cannot interfere with the message. Non-public fora include offices and related corridors. If there were to be a sit-in at the President’s Office, for example, it would not be constitutionally protected.
- **Context:** Threats are assessed by looking at context. Vague expressions that are not directed at an identifiable individual or group of individuals (such as a campus organization) may be protected.
- **Consultation:** As deemed appropriate, the person or group harmed may be consulted when formulating a response, and informed of the outcome. His/Her/Their participation in any outcome should be voluntary.
- **Safety:** Police and SHARPP may be consulted to assist in providing the person or group harmed with custom-designed safety plans, and can also provide safety programming and information to groups, following an incident. This is not a guarantee of safety, nor can an officer or SHARPP staff member typically be assigned to personally protect any individual or group. However, officers can and do step up patrols, and their visibility, in certain areas or during events.
- **Response:** Offices such as AAEO, UNH Police, Conduct and Mediation, etc, are designated to receive reports, and respond to incidents and complaints of alleged discrimination and discriminatory harassment. They will continue in this capacity. When incidents occur that are deemed a threat to public safety, of a graphic public nature, and/or are large-scale in nature, the **Core Team** will immediately notify **Responders**. Simultaneously, the designated members of the **Core Team** will notify the University Spokesperson. The University Spokesperson will work with the Core Team on all media inquiries.
- **Privacy and Due Process:** Respond with the privacy rights and due process rights of the person or group harmed and the accused in mind.
- **See also Appendix A and B.**

VIII. FACTORS AND INTENSITY SCALES

(To be considered in determining an appropriate response)

- a. **Bias incident or hate crime:**
Factors to be considered in assessing the severity of an incident include: evidence of unprivileged or unwanted verbal or physical contact; unsolicited verbal or electronic

contact; size and graphic nature of vandalism, graffiti, or display; egregiousness and persistence of behavior; interference with another person's right to education; academic or employment opportunities; evidence that behavior was motivated by bias, prejudice, or hate. (Adapted from FIRE's Guide to Free Speech on Campus".)

Examples from least to most intense

- Off-hand statement lacking any threat.
- Offensive name called in the heat of an argument.
- Offensive word written on memo board, not targeted, easily erased.
- Offensive action that is disruptive or interferes with the benefits and entitlements of participation in the community (ex. yelling, pounding, slamming doors).
- Offensive word intended for members of a protected category, regardless of perceived intention.
- Symbol of violence (ex; swastika or cross burning) targeted at a member of a protected class of people.
- Calling someone at 2:00AM for several days and saying offensive words.
- Destroying or vandalizing personal property of a member of an historically protected category of people, with offensive references.
- Stalking and referencing a person or group's protected category.
- Violence.

b. Threat to safety:

Specificity of method, time, place, target group or individual, detail of plan or thought. The more specific, the more likely the threat may be real.

Examples from least to most intense

- Short verbal altercation that ends in apology.
- Threatening words against a person or group within a protected class that are vague regarding time, place, or method.
- Specific threats against a member's or members' protected class status. This can include any one, combination, or all of the following: time, place, method.
- Unprivileged or uninvited physical contact.
- Violence.

c. Public nature:

Buildings, sidewalks, thoroughways that are open and accessible to the public, websites that are not password protected, electronic communication that is mass-distributed.

Examples from least to most intense

- Within a dorm or apartment room. Between participants only.
- In a lounge or hallway of a dorm.
- In a classroom or academic building.
- Outside, and/or with loud voices, or large graffiti.
- In public areas where the voice or writing, or symbolism cannot be ignored.

d. Appearance of pre-meditation:

Vandalism that is pervasive, incidents that lack evidence of spontaneity, violation of password protected electronic communications and websites, individuals or groups identified by name.

From least to most intense

- Impromptu, blurting out, or using non-permanent materials (pencil) to write or mark.

- Writing an Instant Message.
- Writing an email.
- Posting to a blog or other social networks such as FaceBook, MySpace, YouTube.
- Waiting for someone to emerge from a class, dorm, or other facility.
- Sending a letter.
- Using visual aids and materials.

IX. EXAMPLES OF RESPONSES AND ACTION STEPS

(Core Team makes direct contact with all Responders)

- Initiate an education campaign targeted to either a specific area, or the entire campus, that outlines what happened, why it is being investigated, how information about the incident can be reported and to whom.
- Provide support and information for the person or group harmed. Provide counseling and resources available on campus and in the community at large. Provide information about a safety plan, or programming on safety strategies.
- Reach out to the Deans and appropriate support staff to offer talking points for bringing up incidents that occur in academic buildings. Adapt talking points and share with other staff around campus.
- Provide classroom or group/individual based talking points for follow-up discussions.
- Conduct a threat assessment with UNH or Durham Police. Follow through with safety recommendations.
- Offer mediation through the Office of Conduct and Mediation.
- Establish direct contact with the person or group involved in the incident. This can happen with a member of the VPSAS staff, Associate Dean, Athletic staff, UNH Police, or other University office or authority, as appropriate.
- Write forum article or letter to *The New Hampshire* editor outlining the incident and campus/community response to it.
- Pursue disciplinary action or investigation by the Affirmative Action and Equity Office, the Director of Conduct and Mediation Programs, or Human Resources.

APPENDIX A

WHAT CONSTITUTES A “THREAT”

“Hateful expression does not necessarily constitute an unlawful "threat." Many court opinions have defined the word "threat" and they typically distinguish between provocative or boorish expression (typically protected by the First Amendment) and true threats, which may lawfully be punished. Additionally, courts have held that the perception of a threat must be "objective" (that is from the standpoint of a "reasonable person"), not the subjective impression of a complainant.”
(Stop Hate CD, ACUI, 2003)

APPENDIX B

PROTECTIONS UNDER THE FIRST AMENDMENT

What is protected by the First Amendment

1. Offensive and hurtful expressions that are vague and do not convey a specific and imminent threat of harm.
2. Calling someone a bad or derogatory name in an isolated or single event.
3. Parody, ridicule, and satire.
4. Political, religious, and commercial speech.

What is not protected by the First Amendment

1. Speech that could produce imminent lawless action or cause a panic. You can't exclaim that you have a bomb on a plane, or yell "fire" in a theater.
2. Harassment that is severe, pervasive, and interferes with others. You can't call someone in the middle of the night for a week and repeatedly call the person a bad name.
3. Expressions directed at identifiable individuals or groups of individuals that promote the imminent prospect of actual violence or harm, such as face to face invitation to fight, terroristic threats, obscenity, or criminal trespass.
4. Slander and libel. A provably false allegation of fact.
5. Evidence of unprivileged contact, unsolicited verbal or electronic contact, size and graphic nature of vandalism, graffiti, or display. Incidents or behaviors that are so awful, persistent, and focused on a person's race, gender, etc. that reasonable people recognize them as so. Behavior that interferes with another person's right to education. Speech that is repeated and uttered at inappropriate times and places. (Adapted from "FIRE's Guide to Free Speech on Campus").

APPENDIX C

LAWS OF PROTECTION

What other laws provide protection against hate-motivated violence? General Criminal Laws: Hate crimes can sometimes be prosecuted under existing criminal laws, such as assault and battery, assault and battery with a dangerous weapon, murder, etc. These generic laws do nothing to address the fact that an assault was hate-motivated, but they provide for some level of criminal accountability. But New Hampshire does allow a sentence to be increased when the crime is bias-motivated.

http://www.glad.org/rights/newhampshire_lgbt.shtml#harassment/violence

APPENDIX D

DEFINITIONS

Community member: Any person including students, faculty, staff, visitors to campus and participants in University activities, stakeholders. (Note: this pertains to reports made by non-UNH members.)

Bias, prejudice, and hate: These terms are used interchangeably around the country, and in government documents, such as the Department of Justice. There is no clear trend or preference for any of the three terms. Our choice to use “bias” does not discount our understanding that hatred for people, just because of their status, is an outrage and affront to us all. Using “bias” simply gives the UNH community one common term from which to act.

Bias incident: Any conduct, speech or expression that demeans, degrades or harasses an individual or group based upon their membership in a protected category as recognized by law or UNH policy. Bias incidents may be handled through the campus grievance procedure or conduct system. In some instances they may occur with no clear path or procedure for recourse.

Examples: anonymous acts of vandalism to public posters, targeted vandalism on a student’s door directed at his/her protected status, directing slurs at a group or individual (whether in person or electronically), harassment that interferes with a person’s educational experience or employment.

Hate Crime: A crime in which the defendant’s conduct was motivated by hatred, bias, or prejudice, based on the actual or perceived race, color, religion, national origin, ethnicity, gender, sexual orientation or disability of another individual or group of individuals. The Clery Act requires UNH to report as “hate crimes” the offenses of criminal homicide, sex offenses, robbery, aggravated assault, burglary, motor vehicle theft, arson, and any other crime involving bodily injury reported to local police agencies or to a campus security authority, that manifests evidence that the victim was intentionally selected because of the perpetrator’s bias. The categories of bias for purposes of Clery Act reporting are: race, gender, religion, sexual orientation, ethnicity/national origin, disability. New Hampshire hate crime legislation creates penalty enhancements for pre-existing crimes when those crimes were substantially motivated by hatred, bias, or prejudice, based on the victim’s inclusion in one of several legally-specified protected categories. Thus commission of a hate crime requires that two elements be proven. First, it must be shown that the defendant committed an enumerated predicate offense, such as assault, robbery, manslaughter, or kidnapping. Second, it must be shown that the defendant had illegal motivations based on the victim’s legally-protected status. NHRSA 651:6 I-g.

See Appendix C for more information about NH laws regarding hate-motivated violence.

APPENDIX E

CAMPUS SUPPORT OFFICES

The Office of Conduct and Mediation (OCM) provides resources, education, and services that help support the academic mission of the University and foster a community where students can succeed academically, socially, and emotionally. Staff are available to provide alternative dispute resolution mechanisms for resolving claims of harassment. OCM also provides free and confidential mediation services for students, creating a professional, safe, and neutral environment that is conducive to successful and constructive conflict resolution.

(www.unh.edu/ocm). 862-3377

The Department of Residential Life staffs the residence halls with professional Residence Hall Directors, Senior Resident Assistants in large halls, a Babcock Hall Manager, and 134 student Resident Assistants. They are available at any time when the dorms are open, to discuss issues of climate, safety, personal responsibility, and University policies. (www.unh.edu/residential-life). Apartments in Gables and Woodside also have Managers who are available to assist students. 862-2268.

The Affirmative Action and Equity Office (AAEO) oversees the University's compliance efforts with affirmative action, Title IX, disability laws and regulations (including ADA and Section 504), equal employment laws, and campus initiatives aimed at creating a diverse, welcoming and equitable campus. This office also advises campus constituencies, responds to complaints of discrimination or harassment under the Discrimination and Discriminatory Harassment Policy, and represents the University with federal and state agencies.

(www.unh.edu/affirmativeaction) 862-2930.

SHARPP (Sexual Harassment and Rape Prevention Program) offers culturally competent awareness and prevention programs to the UNH community, group training and consulting, policy and procedure development, in addition to free and confidential advocacy and direct services to all survivors of sexual violence and their allies. (www.unh.edu/sharpp). 862-3494.

OMSA (Office of Multicultural Student Affairs) creates opportunities for people to participate in an inclusive community and to explore and understand diversity, injustice and equity. Staff provide support and development for African American/Black, Latina/o, Native American and Asian/Pacific Islanders, as well as lesbian, gay, bisexual, transgender, queer, and questioning students. Their work is grounded in understanding diversity that includes people of all abilities, ages and ethnicities, genders, nationalities, races, religions/spiritual traditions, socio-economic classes and sexual orientations. (www.unh.edu/omsa). 862-2050.

SOS (Student and Organization Services Office) encourages UNH students to get involved in co-curricular activities, reaches out to student organizations in order to help them grow organizationally, and provides on-going training and support to all student organizations recognized by the university. Student organizations are actively encouraged to seek out SOS staff when they need help with anything - from leadership development, to organizational consulting, to conflict mediation, to simple logistical information. The SOS Office is a unifying agent among all recognized student organizations at UNH, setting the stage for collaboration and partnerships. (www.unhmub.com/sos/). 862-4764.

University of New Hampshire Police Department is a 24 hour, 7 day per week service. All officers are sworn police officers with full arrest authority. The mission of the University of New Hampshire Police Department is to support the University in creating an environment that is

conducive to higher education by protecting life and property and assisting members of the University community. (www.unh.edu/upd) 862-1427

The Counseling Center is the primary mental health facility on campus. They offer a variety of services that are designed to enhance students' ability to fully benefit from the University environment and academic experience. This includes providing counseling and therapy for students who may be experiencing situational or ongoing psychological difficulties, providing programming to meet the developmental needs of the student population, and encouraging a University atmosphere conducive to personal and intellectual growth and psychological well-being. They are fully funded by student fees and clinical services are available to all students who have paid the Health Services/ Counseling fee. The Counseling Center is sensitive and committed to diversity and the richness of human differences. Their service and training missions require that staff and clients alike are treated with respect and value across all differences. Thus, the Center's policies, procedures, activities, relationships and interactions with individuals and groups in the campus community are consistent with these values. Faced with increasing global diversity in our everyday lives, The Counseling Center challenges themselves, their clients, and the University community to develop qualities of adaptability, flexibility and versatility so that we may all learn to work effectively with those different from ourselves. They are committed to celebrating the diversity that gender, gender identity and gender expression, ethnicity, race, culture, sexual orientation, age, religious beliefs, class, appearance, and abilities bring. Further, they are committed to confronting prejudice, discrimination, and oppression and facilitating healing in our lives, and in the lives of those we serve and train. (<http://www.unhcc.unh.edu/>) 862-2090

Health Services promotes, maintains and improves the health and well-being of the University Community in support of the institution's academic mission. This is accomplished by providing primary health care services, by teaching health care consumerism, illness prevention and health promotion, by providing co-curricular learning opportunities, and through its public health role. Services are student-focused, accessible, cost effective, and provided in a caring and professional manner. Health Services continuously improves the quality of its care and services. (<http://www.unh.edu/health-services/index.cfm>) 862-1530

Office of International Students & Scholars (OISS) promotes international education at the University by facilitating the enrollment and employment of foreign nationals and by providing them with essential support services. (<http://www.unh.edu/oiss/index.html>) 862-1288