

# **Discriminatory Harassment Policy**

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# UNIVERSITY of NEW HAMPSHIRE

To: Members of the University Community

From: Ann Weaver Hart, President

The nondiscrimination policy of the University of New Hampshire demonstrates our commitment to equal employment and educational opportunity for all qualified persons. As a public institution we preserve a deep concern for the dignity and civil rights of all members of the community while sustaining a teaching, learning, and working community that fosters critical thought and debate. We acknowledge the right of individuals to hold strong personal beliefs and opinions while expecting that all individuals will be treated with respect.

This publication is intended to provide information about the university's policy on discrimination and discriminatory harassment to assure that all community members are informed of their rights and responsibilities. In addition, this document describes our process for prompt, fair, and impartial consideration of all complaints of discrimination or discriminatory harassment on the basis of race, color, religion, sex, age, national origin, sexual orientation, disability, veteran status, or marital status. The process for investigating and adjudicating complaints of discrimination or discriminatory harassment by students is detailed in the *UNH Student Rights, Rules and Responsibilities* publication.

Anyone who has a question or feels s/he is being treated unfairly or abusively should talk to her/his supervisor, counselor, adviser, or any one of the campus resources listed in this document. The Affirmative Action Office has a special responsibility for assuring an equitable campus and can be consulted at any time by any individual with a question or concern. Seeking advice from the affirmative action director does not obligate anyone to file a formal complaint.

I ask that you join me in a determined effort to keep the campus free from discrimination and harassment by following the spirit as well as the letter of our policies.

OFFICE OF THE PRESIDENT

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## LETTER FROM PRESIDENT ANN WEAVER HART

<b>PREAMBLE</b> .....	<b>4</b>
<b>POLICY</b> .....	<b>4</b>
Policy Eligibility .....	5
<b>GUIDELINES FOR INTERPRETING THE POLICY</b> .....	<b>5</b>
Illustrations of Harassment.....	6
<b>PROCEDURES FOR IMPLEMENTING THE POLICY</b> .....	<b>7</b>
Resources.....	7
Campus .....	7
External.....	7
Options for Resolution.....	7
Informal.....	8
Time Limits .....	8
Formal .....	8
Record Keeping.....	11
Retaliation.....	11
Ongoing Education .....	11

## PREAMBLE

The University of New Hampshire is committed to establishing and maintaining an environment that puts concern for the dignity of its members among the central ethical dimensions of its intellectual enterprise. Discriminatory harassment, including sexual harassment, unjustifiably interfere with members of the academic community and create a circumstance in which access to education and work is diminished.

The University is committed as well to the free and open exchange of ideas, active discourse, and critical debate so necessary to a university. Accordingly, all members of the University of New Hampshire community have the right to hold and vigorously defend and promote their opinions. The exercise of this right may result in members of the community being exposed to ideas that they considered unorthodox, controversial, or even repugnant.

To enable members of the University community to act in ways consistent with these two areas of commitment, this booklet sets forth three important components of the University of New Hampshire's position with regard to discriminatory harassment:

1. A concise statement of policy;
2. Guidelines for interpreting that policy; and
3. Procedures for implementing the policy.

## POLICY

It is the policy of the University of New Hampshire to uphold the constitutional rights of all members of the university community and to abide by all United States and New Hampshire State laws applicable to discrimination and harassment.<sup>1</sup> In accordance with those laws, all members of the UNH community will be responsible for maintaining a university environment that is free of intimidation and harassment. Therefore, 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.

<sup>1</sup>This body of law incorporates federal and state statutes, agency regulations and guidelines, and any judicial opinions interpreting or applying those laws. Generally, discrimination and harassment complaints related to race, color, religion, age, sex, national origin, or sexual orientation, are addressed by Title VII of the Civil Rights Act of 1964 and/or New Hampshire's Law Against Discrimination (RSA 354-A). Equal Employment Opportunity Commission (EEOC) regulations under Title VII and the Office of Civil Rights (OCR) regulations under Title IX of the Education Amendment of 1972 deal with sex discrimination and sexual harassment. EEOC and OCR also regulate Sections 503 and 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 to address complaints of physical, mental and learning disabilities. Categories not included under Federal or State law but included in university policy are treated the same way as protected categories.

## POLICY ELIGIBILITY

The University of New Hampshire's Policy on Discriminatory Harassment covers all UNH community members, whether student, staff, or faculty.

- This publication covers the process for investigating and adjudicating complaints of discrimination or discriminatory harassment by faculty or staff.
- The process for investigating and adjudicating complaints of discrimination or discriminatory harassment by students is detailed in the student code of conduct and judicial process as set forth in the *UNH Student Rights, Rules and Responsibilities* publication.
- Student complaints of discrimination or discriminatory harassment by graduate assistants can follow the process outlined in this document or the judicial process set forth in *the UNH Student Rights, Rules, and Responsibilities* publication. For further student information, contact the Judicial Programs Office at 862-3377.

## GUIDELINES FOR INTERPRETING THE POLICY

This policy covers discriminatory harassment, including sexual harassment, as established by the federal and state laws cited on the previous page. Such harassment may take the form of unwelcome sexual advances, graffiti, jokes, pranks, slurs, insults, threats, remarks made in the person's presence, interference with the person's work or academic life, vandalism, assignment of unpleasant duties, or even physical assault directed against any member of a protected class.

The requirements of federal and state law determine the definition of discriminatory harassment. The relevant body of law stipulates that any behavior may be considered to be harassing when:

- 1) submission to or rejection of such behavior by an individual is used as a basis for employment or academic decisions affecting that individual; or
- 2) submission to such behavior is made either explicitly or implicitly a term or condition of an individual's employment or academic work; or
- 3) such behavior unjustly, substantially, unreasonably and/or consistently interferes with an individual's work or academic performance or creates an intimidating environment.

Verbal or physical conduct directed at the complainant's race, color, religion, sex, age, national origin, sexual orientation, disability, veteran status, or marital status, is a consideration in the determination of discriminatory harassment. The university will consider the totality of the complaint and its circumstances, the private or public environment of the behavior, the intensity or severity of the actions, the pattern of behavior and the power relationship, if any, between the parties.

Discriminatory harassment does not include comments that are made in the classroom that are germane to the curriculum and a part of the exchange of competing ideas.

A single incident that creates a distractingly uncomfortable atmosphere on a given day does not constitute discriminatory harassment. However, isolated or sporadic acts that

are severe may. It is possible for a series of individual incidents, each minor in itself, to have the cumulative effect of becoming pervasively harassing behavior.

Factors to be weighed in the determination of discriminatory harassment include conduct that purposefully places or threatens to place another in fear of imminent bodily injury, and threatens to commit any crime against a person with a purpose to terrorize.

Unjust, substantial, unreasonable, and/or consistent interference with an individual's participation in university life may be signified by responses such as:

- avoiding areas of the campus where the behavior in question typically takes place; or,
- academic performance or work assignments becoming more difficult because of the behavior in question, including absenteeism; or,
- leaving the university because of the behavior in question.

In determining whether discriminatory harassment exists, the University will evaluate the evidence from the standpoint of a reasonable person's reaction and perspective under the circumstances presented.

## ILLUSTRATIONS OF HARASSMENT

Every instance of alleged discriminatory harassment must be considered in the context of its specific and unique circumstances. However, the following are examples of behaviors that may be judged to be harassing:

- repeatedly directing racial epithets at an individual
- hanging a noose in an African-American's work place or dormitory
- painting a Nazi swastika on the door of a Jewish individual
- repeatedly sending unwelcome, sexually-explicit e-mail messages
- taunting a person about his or her sexual orientation, disability, or religion
- making unwelcome sexual propositions
- repeatedly telling derogatory gender-based or ethnic-based jokes
- displaying sexually suggestive objects or pictures in the workplace except as those items may be part of legitimate pedagogical pursuits
- giving unwelcome hugs or repeatedly brushing or touching others

# PROCEDURES FOR IMPLEMENTING THE POLICY

## RESOURCES

**If your complaint involves physical assault, contact:**

**SHARPP (Sexual Harassment and Rape Prevention Program) 862-3494**

**University Police 862-1427**

If you believe you are experiencing discriminatory harassment, you may want to seek advice and support from any one of the on-campus resources listed below. These individuals/departments can provide you with information on the many options available to you. They may provide you with information and support whether you choose to seek formal or informal resolution. The Sexual Harassment and Rape Prevention Program (SHARPP) offers assistance and confidential support 24 hours a day. You are encouraged to seek support where you feel most comfortable.

### Campus Resources

Academic Department Chair or the College/School Dean ACCESS (for students with a disability) (Accessing Career Challenges in Education through Specialized Services)	862-2607
Affirmative Action Office	862-2930
Director of Academic Counseling, UNH at Manchester	629-4102
Director of Advising, Division of Continuing Education	862-1548
Graduate School Dean or Associate Dean	862-3005
International Students and Scholars Office	862-3491
Judicial Programs Office (for students only)	862-3377
Multicultural Student Affairs Director	862-2050
Personnel Services	862-0500
President's Commission on the Status of People of Color	862-2338
President's Commission on the Status of Women	862-1058
SHARPP Coordinator (Sexual Harassment and Rape Prevention Program)	862-3494

### External Resources

At any time during the process, the complainant may also choose to consult with the following resources:

**EQUAL EMPLOYMENT  
OPPORTUNITY  
COMMISSION (EEOC)**  
One Congress Street  
10th Floor  
Room 1001  
Boston, MA 02114  
617-565-3200  
617-565-3204 (TTD)

**OFFICE FOR CIVIL RIGHTS  
(OCR)**  
US Department of  
Education  
McCormack Federal Bldg.,  
Room 222  
Boston, MA 02109-4557  
617-223-9687  
617-223-9324 Fax

**STATE OF NEW HAMPSHIRE  
COMMISSION FOR HUMAN  
RIGHTS (HRC)**  
2 Chenell Drive  
Concord, NH 03301-8501  
603-271-2050  
603-271-6339 Fax

## OPTIONS FOR RESOLUTION

The University is strongly committed to maintaining an environment free from discriminatory harassment. The university has a legal obligation to assure learning and

work environments that are free of discrimination, prohibited by institutional policy, and state and federal law. If you believe you are being subjected to discriminatory harassment and you want to take action, you may address the complaint informally with the person you believe is harassing you, or you can choose the formal process, directly.

### Informal Processes

1. Resolve the problem directly with the person, either through a one-on-one meeting or a letter, stating your concerns. Detail why the behavior offends you, how it made you feel, and ask him/her to stop the offending behavior.

AND/OR

2. If you would like help in resolving the complaint, seek the assistance of the supervisor, manager, academic department chair, director, or dean of your department/college. This person will not play the role of your advocate. Rather, s/he will assist you in resolving the complaint informally. You will need to provide this person with a description of the behavior that offended you, its impact on you, and what you would like to happen next. With your cooperation, it is this person's responsibility to ensure that your complaint is followed through and resolved.

If an informal resolution is unsuccessful in stopping the offensive behavior, you may choose to pursue the complaint through a formal process. Information that is part of the informal resolution may become part of the university's formal investigation of the complaint. You are not required to first pursue a complaint informally before filing a formal complaint.

You may find informal resolution unsuccessful, impractical, or otherwise undesirable. If this is the case, you will follow the official university procedures for filing a complaint.

### Time Limits

Time limits for filing a formal complaint are as follows.

For faculty or staff:	Sixty (60) calendar days
For students:	Twelve (12) months

In special circumstances, time limits may be waived by the Special Assistant to the President for Affirmative Action, where doing so will best serve the purposes of this policy. The Special Assistant's reasons for allowing the waiver will be conveyed in writing to both parties.

NOTE: If you are not satisfied with, or choose not to utilize informal or formal campus-based resolution of your complaint, you have the right to use legal processes outside the university. State and federal agencies that can assist you in legal action are listed on the previous page. Information that is part of either the informal or formal university complaint procedure may be included as evidence in a legal case.

### Formal Process

**STEP ONE:** Meet directly with the Special Assistant to the President for Affirmative Action or with any one of the resource people listed above. Once contact has been made, the Affirmative Action Office must be notified of the complaint. A support person who is a USNH employee and who is not an attorney may accompany the complainant. The support person should not be someone who may have a direct or

indirect role in implementing or monitoring any proposed solution to the complaint. Information describing the role of a support person is available from the Affirmative Action Office.

**STEP TWO:** The Special Assistant will make a preliminary assessment about the behavior in question.

- If the behavior does *not* meet the criteria defining discriminatory harassment, and the complainant disputes that judgement, then the complainant should contact the President's Office. The President, or the President's designee, will review the complaint and determine whether or not the Special Assistant should conduct an investigation.
- If it is determined that discriminatory harassment *may have* occurred, but the complainant *does not wish* to pursue the complaint further, the Special Assistant will take necessary action to protect the interests of the university and in accord with the accused's rights to due process.
- If the assessment is that discriminatory harassment *may have* occurred, and the complainant *wishes to proceed* with the complaint, the Special Assistant will oversee an investigation of the complaint.

**STEP THREE:** The investigation will begin with the complainant submitting to the Affirmative Action Office a written, signed complaint. Before informing the accused of the complaint, the Special Assistant will notify the appropriate administrator at or above dean or director level who has supervisory responsibility for the accused. This administrator may elect to participate with the Special Assistant in all or any stages of the investigation. The Special Assistant will then promptly interview the accused. A support person who is a status employee of USNH but not an attorney may accompany the accused. The support person should not be someone who may have a direct or indirect role in implementing or monitoring any proposed resolution to the complaint. A copy of the complainant's signed complaint will be given to the accused. Thereafter, a reasonable effort will be made to investigate disputed facts of the case, using corroborating sources of information identified by the complainant and the accused. The Special Assistant will complete the investigation as promptly as is reasonably possible, in most cases within twenty (20) working days. Written, dated, confidential records will be maintained throughout the investigation.

**STEP FOUR:** Through discussion with the complainant and the accused separately or together, the Special Assistant may be able to resolve the matter to the satisfaction of all persons involved. If a resolution is reached, dated, written copies of the terms of the resolution shall be given to the complainant, the accused, and the administrator at or above dean or director level who has supervisory responsibility for the accused. A copy of the resolution should be kept in a file to be located in the Affirmative Action Office, unless the resolution specifies otherwise. The record shall be kept for a period of five years, at which time it will be destroyed, providing there are no recurring incidents.

**STEP FIVE:** If a resolution is not possible, the Special Assistant must convey a formal, written statement of the charge to the accused. Thereafter, the Special Assistant should make a recommendation about the extent to which the complaint meets the criteria for discriminatory harassment to the administrator at or above dean or director level who has supervisory responsibility for the accused. The administrator

will then render a judgment about the case. This judgment should be reached as promptly as is reasonably possible, in most cases ten (10) working days. The administrator must communicate the judgment in writing to the complainant, the accused and the Special Assistant. The judgment will fall into one of two categories:

- a) Unfounded, i.e., in the informed judgment of the administrator, the offense did not meet the criteria of discriminatory harassment and/or the accused did not commit the offense; or
- b) Founded, i.e., in the informed judgment of the administrator, the offense did meet the criteria for discriminatory harassment and was committed by the accused. In this case, the administrator, with advice from the Special Assistant, will impose appropriate disciplinary sanctions, which may include but are not limited to an oral reprimand, a written reprimand, reassignment of duties, suspension with pay, suspension without pay, or termination.<sup>2</sup>

<sup>2</sup>Special procedures are required if suspension without pay or termination is contemplated for an accused that is a member of the faculty collective bargaining unit (see collective bargaining agreement).

#### **STEP SIX:**

- If the accused is unsatisfied with the administrator's judgment and/or the imposed sanctions, s/he may grieve through the appropriate faculty or staff grievance procedures.
- If the complainant is unsatisfied with the administrator's judgment and/or imposed sanctions, within ten (10) working days of receiving that judgment s/he may appeal in writing to the next highest administrator.
- That administrator, or his/her designee, will review all materials and make the final determination. That final determination will be made as promptly as is reasonably possible, in most cases within twenty (20) working days. The administrator must communicate the determination in writing to the complainant, the accused and the Special Assistant to the President for Affirmative Action.

## **RECORD KEEPING**

A confidential record of the complaint and its resolution or sanctions will be filed in the Affirmative Action Office, and retained for five years, at which time it will be destroyed, providing there are not recurring incidents. All cases, including both founded and unfounded judgements, minus information that would identify the parties involved, should be reported in summative, annual, public releases about the incidence of and institutional response to discriminatory harassment.

## **RETALIATION**

Reprisals or retaliation against any person bringing a complaint through this process or against any person assisting or participating in an investigation will not be tolerated, whether or not the complaint is ultimately judged to be consistent with the criteria determining discriminatory harassment. Examples of retaliation include, but are not limited, to:

- assigning of inappropriately low grades,
- punitive change in work assignment,
- giving a lowered performance evaluation,
- withholding of deserved support for promotion.

The university will pursue administrative action against those found to have retaliated against any individual participating in the complaint process.

The bringing of capricious or reckless complaints will also not be tolerated.

## **ONGOING EDUCATION**

The Affirmative Action Office is responsible for ongoing educational efforts in the form of presentations, workshops, and focused discussions for students, faculty, and staff. This effort seeks to ensure that:

- All parties in a potential complaint are aware of their rights;
- All members of the university community are aware of behavior that is proscribed by the policy; and
- All administrators are aware of the proper procedures for addressing complaints of violations of the policy.