

DISCRIMINATION AND DISCRIMINATORY HARASSMENT POLICY



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POLICY

(Note: The section references in this policy correspond to the University System of New Hampshire On-Line Policy Manual, which contains this Discrimination and Discriminatory Harassment Policy as adopted by the University of New Hampshire. This policy may be found on-line at <https://www.usnh.edu/policy/unh/v-personnel-policies/b-affirmative-action-and-equity>.)

B. Affirmative Action and Equity

5. Discrimination and Discriminatory Harassment Policy, Interpretation, and Implementation Procedures

5.1 Preamble

5.1.1 The University of New Hampshire is committed to supporting and affirming the dignity of its members. Discrimination and discriminatory harassment (including sexual harassment) dishonor the academic community and create a circumstance in which full access to education and work is diminished or denied.

5.1.2 The University is committed to academic freedom as a value of the University, and is committed as well to the free and open exchange of ideas, active discourse, and critical debate. 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 consider to be unorthodox, controversial, or even repugnant.

5.1.3 To enable members of the University community to act in ways consistent with these two commitments, this document sets forth three important components of the University of New Hampshire's position with regard to discrimination and discriminatory harassment: (1) a concise statement of policy; (2) assistance in interpreting that policy; and (3) procedures for implementing the policy.

5.2 Statement of Policy

5.2.1 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 and University System of New Hampshire and University of New Hampshire policies

applicable to discrimination and harassment.¹ In accordance with those laws and policies, all members of the UNH community will be responsible for maintaining a university environment that is free of discrimination and harassment based on race, color, religion, sex, age, national origin, sexual orientation, gender identity or expression, disability, genetic information, veteran status, or marital status.² Therefore, no member of UNH may engage in discriminatory or 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.

5.3 Application of Policy

5.3.1 The University of New Hampshire Policy on Discrimination and Discriminatory Harassment covers all members of the UNH community, faculty, staff, and students. It applies to applicants for employment and admission to the extent provided by law. Regardless of the process used to investigate and adjudicate complaints, any complaint may be filed with the Affirmative Action and Equity Office, and in many cases, complaints must be monitored by that office.

5.3.2 This policy covers the process for investigating and adjudicating complaints of discrimination or discriminatory harassment by any employee: faculty, staff, or administrator.

5.3.3 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 *UNH Student Rights, Rules and Responsibilities*. Further information about the student code of conduct can be provided by the UNH Community Standards Office:

¹ 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 VI and 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 for 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 Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 to address complaints of physical, mental, and learning disabilities. Discrimination complaints related to age are addressed by the Age Discrimination in Employment Act of 1967 and/or the Age Discrimination Act of 1975. Some categories are limited to employment, others to education, and still others are not included under Federal or State law or USNH policy. Any categories included in University policy are treated as protected categories. Inquiries about the application of any of the above-cited laws or their implementing regulations may be referred to the applicable government agency, the UNH Title IX Coordinator or both.

² Familial status is subject to NH law, but only in regard to housing.

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5.3.4 Complaints of discrimination or discriminatory harassment by graduate assistants in their role as instructors follow the process outlined in this policy, while complaints against them in their role as students follow the judicial process set forth in *UNH Student Rights, Rules, and Responsibilities*.

5.4 Interpretation of Policy

5.4.1 This policy covers acts of discrimination and discriminatory harassment (including sexual harassment) as established by cited federal and state laws or by USNH and University policy.

5.4.2 Discrimination refers to actions which may deny a member (or in some cases, a potential member) of the community employment, promotion, transfers, access to academic courses, housing, or other University benefits and entitlements due to a member's protected class status.

5.4.3 Harassment may take the form of unwelcome sexual advances or other verbal or physical conduct of a sexual nature, 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. Behavior is considered to be harassment 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 has the purpose or effect of unreasonably interfering with an individual's work or academic performance or creating an intimidating, hostile or offensive environment.

5.4.4 Verbal or physical conduct directed at the complainant's protected class 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.

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

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

5.4.6 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.

5.4.7 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.

5.4.8 Unreasonable interference with an individual's participation in university life may be signified by responses such as (1) avoiding areas of the campus where the behavior in question typically takes place; (2) academic performance or work assignments becoming more difficult because of the behavior in question, including absenteeism; or, (3) leaving a job, a class, or the University itself because of the behavior in question.

5.4.9 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. The standard of evidence to be used to determine responsibility is the preponderance of the evidence standard. If there are any questions, the Director of the Affirmative Action and Equity Office should be consulted to assist in determining whether the behavior may fit the legal proscription.

5.5 Illustrations of Discrimination and Discriminatory Harassment.

5.5.1 Discrimination may take many forms, and can include (among a very few examples): (1) in the hiring process, failure to consider a candidate because he is too old, or because she has a partner, or because he is Transgender, or because of her religion, or because he is disabled yet can do the job, with or without an accommodation; (2) in the academic realm, failure to take students seriously in particular academic classes because of their gender, race, or national origin; or assignment of a lower grade to a qualified student with a learning disability because the student received academic adjustments or modifications; or (3) on the job, lack of acceptance by a supervisor of a woman in a construction trades position, or failure to promote a gay employee because of his sexual orientation.

5.5.2 Discriminatory 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 are likely to be judged to be harassing: Repeatedly directing racial, homophobic, or sexual epithets at an individual; hanging a noose in an African-American's work place or residence hall; painting a Nazi

swastika on the door of a Jewish student, professor, or staff member; repeatedly sending unwelcome, sexually-explicit e-mail messages to another; surrounding with a group and taunting another student about his or her sexual orientation or religion; making unwelcome sexual propositions, especially by a person in a supervisory or instructor relationship; repeatedly telling derogatory gender- 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 another's body; mimicking the manner of speech or movement of an individual with a disability, or interfering with that person's necessary auxiliary aids or services (e.g., interpreter, assistive service animal).

5.6 Procedures for Implementing Policy

5.6.1 Responsibilities. The Director of the Affirmative Action and Equity Office is responsible for the monitoring of the policy, and has oversight of all processes that are covered by the policy (including the process for student misconduct involving discriminatory harassment). The Director is the Title IX Coordinator, and has special responsibility for actions regarding sex discrimination and sexual harassment in an institution of higher learning; pursuant to this Policy and in accordance with UNH Student Rights, Rules and Responsibilities, the Director has designated the Director of the UNH Community Standards Office to conduct specified functions of the Title IX Coordinator in addressing allegations of sexual harassment between UNH students. The Director of the Affirmative Action and Equity Office (Title IX Coordinator) may also designate other appropriate administrators to perform duties that are described in this policy as responsibilities of the Title IX Coordinator. In addition, there are state legal requirements that any instance of sexual harassment of a student by an employee (faculty, administrator or staff) that comes to the attention of another employee must be reported; at UNH, reporting will be to the Director of the Affirmative Action and Equity Office. The ADA Compliance Officer, whose position is located in the Affirmative Action and Equity Office, is directly responsible for disability compliance, and monitors all such complaints and issues.

5.6.2 Support Resources. Members of the UNH community who believe they are being subjected to discriminatory practices or discriminatory harassment may want to seek advice and support from certain on-campus resources. These individuals/departments can provide complainants with information on the many options available. UNH may provide information and support whether or not a complainant chooses to seek formal or informal resolution. Any University community member, whether student, faculty, or staff, may always contact the Director of the Affirmative Action and Equity Office with a discrimination or harassment complaint, including sexual harassment. The Sexual Harassment and

Rape Prevention Program (SHARPP) offers assistance and confidential support 24 hours a day. Complainants are encouraged to seek support where they feel most comfortable. Other resources include:

- * Academic Department Chair, or any College/School Dean or Associate Dean
- * Student Accessibility Services (support services for students with disabilities)
- * Psychological and Counseling Services
- * Directors of Academic Counseling
- * International Students and Scholars Office
- * Community Standards Office
- * The Beauregard Center (working closely with underrepresented and ally students)
- * Human Resources
- * University Police

The Director of the Affirmative Action and Equity Office will offer supportive measures to both complainants and respondents. Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the university's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the university's educational environment, or deter discriminatory harassment.

5.6.3 External Resources. At any time during the process, a complainant may also choose to consult with one or more of these external agencies: Equal Employment Opportunity Commission, the Office for Civil Rights, or the New Hampshire Commission for Human Rights. Since they have differing time limits for filing, which are in some cases dependent on filing with another agency, complainants are urged to obtain that information early in the process. The time limits for filing claims with these agencies generally run from the last date of unlawful harassment, not from the date that the complaint to UNH is resolved.

5.7 Filing and Resolution of Complaints Within UNH

5.7.1 The University not only has a strong commitment to maintaining learning and work environments free from discrimination and discriminatory harassment, it has a legal obligation to do so. Any members of the University community who believe that they are being discriminated against, or subjected to discriminatory harassment, and who want to take action, may address the complaint informally or through the

formal process. In complaints in which a student is the respondent the process for adjudicating a complaint is detailed in *UNH Student Rights, Rules & Responsibilities*, but a complaint may always be filed initially with the Affirmative Action and Equity Office. In any case, complainants are encouraged to seek advice and assistance from the Director of the Affirmative Action and Equity Office, ADA Compliance Officer, or other resource person, and to tell a trusted friend, peer, or colleague about the behavior. It is always useful to document concerns, especially if a pattern of behavior exists. If the behavior poses a threat to safety or may be criminal, assistance should be sought immediately.

5.7.2 A support person who is a UNH employee or student (not an attorney) may accompany the complainant and the respondent in any of the complaint processes described. The support person should not be someone who may have a direct or indirect role in investigating a complaint, or in implementing or monitoring any proposed solution to the complaint. For example, a co-worker might be appropriate, but not a supervisor if the complainant or respondent is in that supervisor's reporting chain.

5.7.3. Procedures for Responding to Sexual Violence, Sexual Harassment and Related Offenses. Legal requirements dictate special procedures that must be applied when UNH receives reports of violations of this policy that states a colorable claim of sexual harassment under Title IX. The Title IX procedures are detailed in Appendix A of this policy.

5.8 Informal Complaint Process

5.8.1 This process, while not "formal" in terms of this policy, is not casual or taken less seriously. It is normally utilized when a complainant just wants the behavior to stop, and where an objective analysis reveals that a matter may be taken care of through informal and direct steps. UNH will not require or encourage waiver of the right to an investigation and adjudication of formal complaints, or require the parties to participate in an informal resolution process.

5.8.2 Direct (unassisted) action: The complainant may be comfortable resolving the problem directly with the person whose behavior is in question. This may be accomplished either through a one-on-one meeting, phone call, letter, or email, stating the complainant's concerns. Whichever method is used, complainant should state why the behavior is offensive or inappropriate, how it makes the complainant feel, and include a request asking the offender to stop the behavior. Before doing this, the complainant is encouraged to seek advice from the Director of the Affirmative Action and Equity Office, ADA Compliance Officer, or other resource person, and to tell a trusted friend, peer, or colleague about the

behavior. A complainant is never required to confront the person believed to be discriminating or harassing, or to seek an unassisted resolution.

5.8.3 Assisted action: A complainant who desires assistance in resolving the complaint may seek the assistance of a supervisor, manager, academic department chair, director, or dean of the department/college, the Director of the Affirmative Action and Equity Office, the ADA Compliance Officer, or similar responsible person. This person will not play the role of complainant's advocate, but rather, will assist in resolving the complaint informally. (Complainant's support person may be part of this process.) The complainant will need to provide this person with a description of the offending behavior, its impact, and a hoped-for course of action and resolution. With complainant's cooperation, it is this person's responsibility to ensure that the complaint is followed through and resolved. Most complaints are, in fact, resolved in this manner. For example, an employee might go to her supervisor for assistance, or a student to his Residence Hall Director. The responsible person should seek the assistance of the Director of the Affirmative Action and Equity Office (or the ADA Compliance Officer in disability cases) if the complainant has not already done so. The responsible person will normally collect information regarding the behavior, and work with the respondent's supervisor, chair, dean, or senior administrator to seek a solution. If that person is not able to do so, the Director of the Affirmative Action and Equity Office should be contacted to arrange for the assistance of another responsible person, or to assist directly. All actions taken should be documented. Complainant and respondent may each use the assistance of a support person during this process. The Director of the Affirmative Action and Equity Office or ADA Compliance Officer is available to assist in any case, and to provide information about the process to the complainant, the respondent, and to the responsible person. They may take primary responsibility for the case in some instances; they normally work with the responsible persons, the complainant, and the respondent, in any cases they are involved in.

5.8.4 Timelines and Outcomes. An informal complaint proceeding ordinarily should be concluded within three weeks from the beginning of informal process. The complainant must be advised of the outcome, and of action taken against the respondent (or as much as may be appropriately disclosed under confidential personnel or comparable policies). The complainant and respondent may always contact the Director of the Affirmative Action and Equity Office or ADA Compliance Officer for information and explanation. A complaint file will be maintained in the Affirmative Action and Equity Office.

5.9 Formal Complaint Process

5.9.1 Selecting Process. If an informal resolution is unsuccessful in stopping the discriminatory, harassing, or offensive behavior, or in reaching an appropriate solution, complainant may choose to pursue the complaint through the formal process. Information that is part of the informal resolution may become part of the University's formal investigation of the complaint. Complainants are not required to first pursue complaints informally before filing formal complaints, and they may terminate the informal process and file a formal complaint at any time during the informal process.

5.9.2 Time Limits. Faculty and staff have up to sixty (60) calendar days following an incident to file a complaint with the Affirmative Action and Equity Office. Student complaints must be submitted within twelve (12) months of the incident. In special circumstances, time limits may be waived by the Director of the Affirmative Action and Equity Office, where doing so will best serve the purposes of this policy. The Director of the Affirmative Action and Equity Office's reasons for allowing the waiver will be conveyed in writing to both parties.

5.9.3 Step One: Intake. Complainant should meet directly with the Director of the Affirmative Action and Equity Office, the ADA Compliance Officer, or with any resource person or department. Once contact has been made, the Affirmative Action and Equity Office must be notified of the complaint. A support person may accompany the complainant.

5.9.4 Step Two: Preliminary Assessment. The Director of the Affirmative Action and Equity Office will make a preliminary assessment about the behavior in question.

-If it is the assessment of the Director of the Affirmative Action and Equity Office that the behavior does *not* meet the criteria defining discrimination and/or discriminatory harassment, and the complainant disputes that judgment, 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 Director of the Affirmative Action and Equity Office should conduct an investigation.

-If it is determined that discrimination and/or discriminatory harassment *may have* occurred, but the complainant *does not wish* to pursue the complaint further, the Director of the Affirmative Action and Equity Office will take necessary action to protect the interests of the university and in accord with the respondent's rights to due process. Any immediate measures that are needed to protect the complainant will be taken.

-If the assessment is that discrimination and/or discriminatory harassment *may have* occurred, and the complainant *wishes to proceed* with the complaint, the Director of the Affirmative Action and Equity Office will oversee an investigation of the complaint.

5.9.5 Step Three: Investigation. The investigation will begin with the complainant submitting to the Affirmative Action and Equity Office a written, signed formal complaint. Before informing the respondent of the complaint, the Director of the Affirmative Action and Equity Office will notify the appropriate administrator who will be the decision-maker in the case; the decision-maker will be an employee at or above dean or director level who has supervisory responsibility for the respondent. The decision-maker must be free of bias or conflict of interest. The Director of the Affirmative Action and Equity Office will provide both parties with a Notice of Allegations that includes a copy of the complainant's signed complaint. The Notice of Allegations will include a summary of available resources, the contact information for the Title IX Director, a link to this policy and a caution against retaliation. The Director of the Affirmative Action and Equity Office or their designated investigator will then promptly interview the respondent. A support person may accompany the respondent. Thereafter, a reasonable effort will be made to investigate disputed facts of the case, using corroborating sources of information (including witnesses) identified by the complainant and the respondent. The Director of the Affirmative Action and Equity Office will complete the investigation as promptly as is reasonably possible; while the amount of time that it will take to complete the investigation will depend on the particular circumstances, in most cases it will be completed within twenty (20) working days. Written, dated, confidential records will be maintained throughout the investigation.

5.9.6 Step Four: Agreed Resolution. Through discussion with the complainant and the respondent separately or together, the Director of the Affirmative Action and Equity Office may be able to resolve the matter to the satisfaction of all persons involved. UNH will not require or encourage waiver of the right to an investigation and adjudication of formal complaints, or require the parties to agree to a resolution. If a resolution is reached, dated, written copies of the terms of the resolution shall be given to the complainant, the respondent, and the administrator at or above dean or director level who has supervisory responsibility for the respondent. A copy of the resolution should be kept in a file to be located in the Affirmative Action and Equity Office, unless the resolution specifies otherwise.

5.9.7 Step Five: Adjudication. If a resolution is not possible, the Director of the Affirmative Action and Equity Office must convey to both parties a copy of the investigative report, prior to forwarding it to the appropriate administrator for action. The Director of the Affirmative Action and

Equity Office will provide investigative findings, a conclusion regarding the extent to which the complaint meets the criteria for discriminatory harassment, and a recommendation for action, to the administrator at or above dean or director level who has supervisory responsibility for the respondent. The administrator will then render judgment in the case. This judgment should be reached as promptly as is reasonably possible, and in most cases within ten (10) working days. The administrator must communicate the judgment in writing to the complainant, the respondent and the Director of the Affirmative Action and Equity Office. The judgment will fall into one of two categories: (1) Unfounded, i.e., in the informed judgment of the administrator, the offense did not meet the criteria of discriminatory harassment and/or the respondent did not commit the offense; or, (2) Founded, i.e., in the informed judgment of the administrator, the offense did meet the criteria for discriminatory harassment and was committed by the respondent. In this case, the administrator, with advice from the Director of the Affirmative Action and Equity Office, 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.³

5.9.8 Step Six: Appeals. Appeals and actions on appeals. A respondent who is unsatisfied with the administrator's judgment and/or the imposed sanctions may grieve through the appropriate faculty or staff grievance procedures. A complainant who is unsatisfied with the administrator's judgment and/or imposed sanctions may, within ten (10) working days of receiving that judgment, appeal in writing to the next highest administrator. The administrator or 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 respondent and the Director of the Affirmative Action and Equity Office.

5.10 Record Keeping, Reports and Confidentiality

5.10.1 Keeping and Destruction of Records. A confidential record of any complaint, informal or formal, including any resolution or sanctions, will be filed in the Affirmative Action and Equity Office and retained for seven years, at which time it will be destroyed, providing there are not recurring incidents. Records include any audio or audiovisual recording or transcript, any appeal and the results therefrom, all supportive measures (and basis for denying any requested supportive measures)

³ Special procedures are required if suspension without pay or termination is contemplated for a respondent who is a member of the faculty collective bargaining unit (see collective bargaining agreement).

5.10.2 Public Reports. All cases, including both founded and unfounded judgments [excluding 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.

5.10.3 UNH will protect the confidentiality of harassment allegations to the extent possible, as required by law. An employer cannot guarantee complete confidentiality, since it cannot conduct an effective investigation without revealing certain information to the alleged harasser and potential witnesses. However, information about the allegation of harassment will be shared only with those who need to know about it.

5.11 Retaliation and False Complaints.

5.11.1 Reprisals or Retaliation. Any such action directed 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 discrimination or 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, or withholding of deserved support for promotion.

5.11.2 False Complaints or Statements. The bringing of capricious or reckless complaints, or providing any false statements or evidence will also not be tolerated.

5.11.3 Process. The university will pursue administrative action against both those found to have retaliated against any individual participating in the complaint process, and those who have made a false complaint or presented false statements or evidence.

5.12 Education

The Affirmative Action and Equity Office, with the assistance of the Human Resources Office, the Community Standards Office, SHARPP and other University offices which may be designated, 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.

APPENDIX A

Title IX Procedures

The Affirmative Action and Equity Office, in collaboration with appropriate administrators, will apply the procedures in this Appendix A to address allegations that an employee of the university engaged in sexual harassment in violation of Title IX (34 C.F.R. 106), or that a graduate student engaged in such conduct in the course of performing an instructional role at UNH. Sexual harassment claims that are outside of the jurisdiction of Title IX (including claims that may fall under Title VII (29 C.F.R. 1606) will be addressed using the protocols otherwise set forth in the policy.

Protocols: The Title IX Coordinator may establish public protocols to guide the Affirmative Action & Equity Office as it implements these procedures. The protocols will include rules of decorum and rules of evidence for hearings. The Title IX Coordinator may assign a designee to perform any of the duties that are ascribed to the Coordinator by this policy.

1. University Response and Definitions:

The University will respond promptly under Title IX when it has actual knowledge of sexual harassment in its education programs or activities against a person in the United States.

Educational Programs or Activities under Title IX includes locations, events, or circumstances over which the University exercises substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

Sexual harassment under Title IX means conduct on the basis of sex that satisfies one or more of the following:

- (a) An employee or graduate student conditioning the provision of an aid, benefit, or service of the university on an individual's participation in unwelcome sexual conduct;
- (b) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the university's education program or activity; or
- (c) "Sexual assault" as defined in 20 U.S.C. 1092(f)(6)(A)(v), "dating violence" as defined in 34 U.S.C. 12291(a)(10), "domestic violence" as defined in 34 U.S.C. 12291(a)(8), or "stalking" as defined in 34 U.S.C. 12291(a)(30).

2. **Report and Disclosure:** Any member of the University community and any person may report or disclose incidents of sexual discrimination or sexual harassment at any time in person, by mail, by telephone, or by electronic mail. The report or disclosure may be made to the Title IX Coordinator. Responsible employees are required to report to the Title IX Coordinator all disclosures made to them alleging sexual harassment of a UNH student. Individuals are encouraged to report sexual harassment as soon as possible after the incident occurs to maximize the University's ability to respond promptly and effectively. Prompt reporting allows the University to obtain the most reliable information, be able to contact relevant witnesses (if any), and provide reasonable assistance and supportive measures for affected parties. The University does not limit the time for reporting sexual harassment incidents or filing a report of violation, however, and in all cases, a decision will be made on existing facts to determine if an investigation and hearings are necessary to comply with the law and to serve the University community.
3. **Outreach, Supportive Services, and Intake:** When the Title IX Coordinator receives a report of sexual harassment they will offer information to the impacted individual about the right to make a formal complaint for a violation of the policy, to receive supportive services and to participate in an intake. If the reporting person is not the impacted individual, only the impacted individual may make a formal complaint; provided that in limited circumstances the Title IX Coordinator can sign a formal complaint as well. The Title IX Coordinator will notify other administrators and UNH police as required and to the extent permitted by law.
4. **Formal complaint:** The formal complaint is a document filed and signed by the complainant (physical or digital signature, or signed by Title IX Coordinator) alleging sexual harassment against a respondent and requesting that UNH investigate the allegations of sexual harassment.
 - 4.1. The Title IX Coordinator will review the formal complaint to determine whether the conduct alleged would constitute sexual harassment as defined in 34 C.F.R. §106.30. If the alleged conduct meets those requirements, it shall be processed as provided in this Appendix. If the conduct does not constitute sexual harassment under Title IX but otherwise alleges misconduct that would violate the policy (including alleged sexual harassment under Title VII), the complaint will be processed as otherwise provided in the policy under the Informal or Formal Processes detailed therein.
 - 4.2. The Title IX Coordinator will notify the complainant and the respondent of the results of the review conducted under section 4.1. The complainant or respondent may appeal the finding that the conduct alleged does not meet the requirements of 34 C.F.R §106.
5. **Notice of Allegations:** The Title IX Coordinator will provide all parties who are known with a notice of allegations that will include a copy of the formal complaint. The notice will state that the respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the hearing process, and will include a summary of available resources, the contact

information for the Title IX Coordinator, a link to this policy and a caution against retaliation or knowingly making false statements or submitting false information. The notice of allegations will provide the respondent with sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment, and the date and location of the alleged incident, if known. The notice of allegations will inform the parties that they may have an advisor of their choice (who may be, but is not required to be, an attorney), and that they will be able to inspect and review evidence as provided in this Title IX process. The university will not limit the presence or choice of an advisor for either the complainant or respondent in any meeting or hearing, except: 1) only one advisor and one support person may accompany a party; and 2) the advisor and support person may not participate in any way except as specifically permitted in this policy or as required by law.

6. Investigation and Investigation Report: After completion of any appeal of the determination under section 4.2, the Title IX Coordinator will appoint an investigator, who shall work under the direction of the Title IX Coordinator to complete a thorough, prompt, and impartial investigation. The investigator will be trained in their responsibilities under Title IX and this policy, and be free from conflicts of interest or bias.

- 6.1. Draft Investigative Report: The investigator shall prepare a written report of the investigation that fairly summarizes relevant evidence. The investigator shall provide an initial draft of the report to the Title IX Coordinator, who shall review the report for thoroughness and fairness. This draft shall be treated as a confidential document, subject to the governmental decision maker and other available legal privileges.

- 6.2. Review of Evidence and Comment Draft: The Title IX Coordinator shall provide a comment draft of the report to both the complainant and the respondent, and at the same time provide both parties with access to (or copies of) any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint. The parties will be provided with ten days to submit a written response containing suggestions to make the report more accurate. The investigator shall consider the written response(s) but is not required to accept any proposed change from either party.

- 6.3. Final Report: The investigator shall prepare a final investigative report and submit it to the Title IX Coordinator.

7. Report of Policy Violation: The TIX Coordinator shall prepare a report of violation to be used to guide the parties to prepare for the hearing and to assist the decision-maker to understand the evidence presented at the hearing. The report of violation shall provide fair notice of the alleged facts and shall specify the provisions of this policy or other UNH or USNH policy that are alleged to have been violated. The report of violation, together with a copy of the final investigative report, shall be conveyed to the parties at least 10 days before the hearing. The report of violation

will state that the respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the hearing process.

8. Permissive Dismissal: UNH may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing:

- 8.1 A complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein;

- 8.2 The respondent is no longer enrolled or employed by UNH; or

- 8.3 Specific circumstances prevent UNH from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

9. Hearing Procedures: UNH will provide for a live hearing with the decision-maker to adjudicate policy violation involving sexual harassment as provided by Title IX. The decision-maker will be free of conflicts of interest or bias. Such violations shall be decided as other offenses under this policy, subject to the following adjustments.

- 9.1. The Title IX Coordinator will assign an advisor, free of charge, to both parties, although either party may at their own cost select a different advisor of their choice. Each advisor shall be aligned with one party and responsible for advising that party on preparing for the hearing, reviewing evidence, and conducting cross examination. The complainant and the respondent have a right to choose to bring their own legal counsel as an advisor; advisors may be present at any meeting or hearing. Legal counsel shall provide the Title IX Coordinator with 24 hours' notice that counsel will be present at any hearing or meeting. University counsel may be present at any meeting or hearing as well. Advisors shall abide by the rules of decorum at every meeting or hearing and shall not disrupt any meeting or hearing.

- 9.2 The decision-maker will have been trained in their responsibilities under Title IX and this policy. The decision-maker will not be the same person as the Title IX Coordinator or the investigator.

- 9.3 The decision-maker will have an advisor to assist them to rule on the admissibility of evidence.

- 9.4 The complainant and the respondent have a right to have an advisor present at any meeting or hearing and to have access to appropriate advice about the hearing process. The parties must speak on their own behalf at hearings, except that only advisors (and not the parties themselves) may conduct cross examination of witnesses and the other party.

- 9.5 The Title IX Coordinator and the decision-maker shall assure that the complainant and respondent have the opportunity to present witnesses and argument, either in writing or in person as required, to reach a fair and accurate determination of the matter.

9.6 The Title IX Coordinator may conduct preliminary meetings separately with the complainant and respondent. The Title IX Coordinator may permit or require the parties to be in separate rooms or behind a screen during the hearing itself, and hearings may be held virtually, provided, however, that the respondent's right of confrontation shall be given appropriate weight and protection in fashioning protections for the complainant.

9.7 The decision-maker will issue a written determination regarding responsibility. The Title IX Coordinator will provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that UNH provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

10. Appeal:

10.1 Either party may appeal 1) a decision by the TIX Coordinator to dismiss a Title IX complaint under Articles 4 or 8; or 2) a responsibility determination by the decision-maker. Parties have ten (10) working days in which to file such an appeal. Both parties will have ten (10) working days following receipt of notice of appeal in which to submit a written statement in support of, or challenging, the outcome. Subject to extension for good cause, appeals will be decided within twenty (20) working days thereafter.

10.2 The TIX Coordinator will notify both parties in writing when an appeal is filed and implement appeal procedures equally for both parties.

10.3 The decision-maker(s) for the appeal may not be the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator. The appellate decision-maker will issue a written decision describing the result of the appeal and the rationale for the result. The Title IX Coordinator will provide the written decision simultaneously to both parties.

10.4 Basis for Appeal: An appeal can **only** be based on one or more of the following purposes:

10.4.1 Procedural Error: To determine whether the original hearing was conducted in conformity with the procedures contained in this policy.

10.4.2 Newly Available Evidence: To consider whether there is new evidence, sufficient to alter a decision, provided, however, that the evidence was not reasonably known to the person appealing at the time of the original hearing.

10.4.3 Legal error: To determine whether there was bias, conflict of interest or other legal error in the investigative or adjudicative process that a court would likely recognize as requiring a new hearing.

11. Informal Resolutions of Sexual Harassment Allegations: Informal resolution cannot be utilized when a student alleges sexual harassment by an employee. UNH may not offer an informal resolution process unless a formal complaint is filed. Subject to these limitations, at any time prior to reaching a determination regarding responsibility the Title IX Coordinator may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that UNH—
- (i) Provides to the parties a written notice disclosing: The allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations (provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint); and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared; and
 - (ii) Obtains the parties' voluntary, written consent to the informal resolution process.
12. Time Frames for Resolution: Any formal complaint will be investigated and adjudicated in a reasonably prompt time, generally 180 working days. Informal resolutions must be concluded in the same time frame as would apply to investigation and adjudication of a formal complaint. Temporary delay of the grievance process or the limited extension of time frames is permitted for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Just cause may include considerations such as the absence or unavailability of a party, a party's advisor, or a witness; concurrent law enforcement activity; the need for language assistance or accommodation of disabilities.