

# DISCRIMINATION AND DISCRIMINATORY HARASSMENT POLICY



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AUGUST 2005

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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 <http://usnholpm.unh.edu/UNH/V.Pers/>).

## **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.<sup>1</sup> 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, veteran status, or marital status.<sup>2</sup> 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.

<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 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.

<sup>2</sup>Familial status is subject to NH law, but only in regard to housing.

### **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. 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** The 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 the *UNH Student Rights, Rules and Responsibilities* policy.

**5.3.4** 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, the Judicial Programs Office should be contacted.

#### **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, 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; (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.

**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 that are severe may do so. 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** Unjust, substantial, unreasonable, and/or consistent 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. 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 Judicial Process for student misconduct). 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. 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 Community 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. They 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
- \* Access Office (support services for students with disabilities)
- \* Counseling Center
- \* Directors of Academic Counseling
- \* International Students and Scholars Office
- \* Judicial Programs Office
- \* Office of Multicultural Student Affairs
- \* Human Resources

\* President's Commissions on the Status of Women, Status of People of Color, and Status of GLBT Issues

\* University Police

**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.

## **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 accused perpetrator, the process for adjudicating a complaint is through Judicial Programs, 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 is serious or may be criminal (e.g., sexual assault, serious threats), 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 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 accused person is in that supervisor's reporting chain.

## **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 some phone calls, a short meeting, or other informal and direct steps.

**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. That course of action is encouraged in all cases, and is required in cases where a student complains of sexual harassment by an employee. The responsible person will normally collect information regarding the behavior, and work with the accused member'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 accused party 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 accused party, 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 accused party, 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 accused party (or as much as may be appropriately disclosed under confidential personnel or comparable policies). The complainant and accused person 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.** 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.** 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 accused'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.** The investigation will begin with the complainant submitting to the Affirmative Action and Equity Office a written, signed complaint. Before informing the accused of the complaint, the Director of the Affirmative Action and Equity Office 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 Director of the Affirmative Action and Equity Office in all or any stages of the investigation. The Director of the Affirmative Action and Equity Office will provide a copy of the complainant's signed complaint to the accused person, together with information as to the policy. The Director of the Affirmative Action and Equity Office will then promptly interview the accused. A support person may accompany the accused. 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 accused. The Director of the Affirmative Action and Equity Office 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.

**5.9.6 Step Four.** Through discussion with the complainant and the accused 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. 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 and Equity Office, unless the resolution specifies otherwise.

**5.9.7 Step Five.** If a resolution is not possible, the Director of the Affirmative Action and Equity Office must convey to the accused a formal, written statement of the charge being forwarded to the appropriate administrator for action. The Director of the Affirmative Action and Equity Office will provide 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 accused. 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 accused 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 accused 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 accused. 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.<sup>3</sup>

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

**5.9.8 Step Six. Appeals and actions on appeals.** An accused 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 accused and the Director of the Affirmative Action and Equity Office.

## **5.10 Record Keeping and Reports**

**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 five years, at which time it will be destroyed, providing there are not recurring incidents.

**5.10.2 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.

## **5.11 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.** The bringing of capricious or reckless complaints 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. The process provided for formal or informal complaints will be utilized.

## **5.12 Education**

The Affirmative Action and Equity Office, with the assistance of the Human Resources Office 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.