Discrimination and Discriminatory Harassment

Keene State College Policies and Procedures

Discrimination and Discriminatory Harassment Policy

Section Menu

Approved November 3, 2015 Updated: June 12, 2018

Purpose:

Keene State College is committed to creating and maintaining a community in which students, faculty, and staff can work together in an environment free of all forms of discrimination and discriminatory harassment. Discrimination and Discriminatory Harassment (including sexual harassment) is antithetical to the standards, values, and mission of Keene State College and will not be tolerated. Such conduct interferes with the mission of the College by diminishing access to education and employment; compromising the free and open exchange of ideas; and impeding relationships among students, faculty, and staff.

This policy discusses the processes related to allegations of discrimination or discriminatory harassment made against any employee: faculty, staff, or administrator. The process for investigating and adjudicating complaints of discrimination or discriminatory harassment made against students is detailed in the student code of conduct and the sexual misconduct policy.

The protections of the First Amendment must be carefully considered in all complaints involving speech or expressive conduct. The fact that speech or expressive conduct is offensive is not, standing alone, a sufficient basis to establish a violation of this policy. Students and faculty in an educational environment have robust speech rights, including the right to freely examine, exchange, and debate diverse ideas. The exercise of these rights may result in members of the community being exposed to ideas that they consider

unorthodox, controversial, or even repugnant. Speech or expressive conduct that constitutes sexual harassment is neither legally protected expression nor the proper exercise of academic freedom.

The legal standards for harassment, including sexual harassment, in the workplace environment are different than in the educational environment. This is because students and faculty in the educational environment have robust speech rights, including the right to freely examine, exchange, and debate diverse ideas, both inside and outside of the classroom. The same is not necessarily the case in the workplace environment, where employees are subject to their employers' reasonable restrictions.

Scope:

This policy applies to all members of the College community - faculty, staff, and students. It applies to applicants for employment and admission. This policy applies to all forms of discrimination and discriminatory harassment (including sexual harassment) committed by or against a member of the Keene State College community when: the conduct occurs on campus; the conduct occurs off campus but in the context of College employment, education, research, or activities; or the conduct occurs off campus but has any continuing effects on campus or in an off campus program or activity and is creating or contributing to a hostile environment. The College reserves the right to assert its jurisdiction in certain off-campus incidents when specific actions by Keene State College community members adversely affect the College community and/or its mission.

Policy:

In accordance with University System of New Hampshire policy and applicable state and federal laws, discrimination and discriminatory harassment are expressly prohibited at Keene State College.1

All persons shall have equal access to the College's programs, facilities, and employment without regard to race, color, religion, sex, age, national origin, sexual orientation, gender identity, gender expression, marital status, veteran's status, disability or other legally protected characteristic. No

member of the campus community may engage in behavior within the jurisdiction of the College that unjustly interferes with any individual's required tasks, career opportunities, learning, or participation in campus life. All members of the campus community share responsibility for preventing and reporting discrimination and harassment, cooperating in any investigation which might result, and maintaining confidentiality.

Definitions

Discrimination refers to actions which deny a member (or in some cases, a potential member) of the community employment, promotion, transfers, access to academic courses, housing, or other College benefits and entitlements because of a member's protected class status, including race, color, religion, sex, age, national origin, sexual orientation, gender identity, gender expression, marital status, veteran's status, disability or other legally protected characteristic. Discrimination may take many forms, and can include

- 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;
- 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 singling a student out in class for ridicule; or on the basis of being an underrepresented student and being asked to represent his/her race or religion given a presumption of familiarity with the works of underrepresented thinkers; or
- 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.

Discriminatory harassment is any severe, pervasive or objectively offensive conduct directed to an individual or group of individuals because of

race, color, religion, sex, age, national origin, sexual orientation, gender identity, gender expression, marital status, veteran's status, disability or other legally protected characteristic such that:

- The conduct has the effect of unreasonably interfering with an individual's work performance or creating a hostile, intimidating, or offensive working and/or academic environment;
- Submission to or rejection of such conduct by an individual is used as the basis for employment and/or academic decisions affecting that individual;
- Submission to the conduct is made either explicitly or implicitly a term or condition of an individual's employment and/or academic work;
- Such conduct unreasonably interferes with an individual's ability to participate in or benefit from an educational program or activity.

A "Hostile Environment" exists when the conduct is sufficiently severe, persistent, or pervasive that it unreasonably interferes with, limits, or deprives an individual from participating in or benefitting from the College's education or employment programs and/or activities. Conduct must be deemed severe, persistent, or pervasive from both a subjective and an objective perspective. In evaluating whether a hostile environment exists, the College will consider the totality of known circumstances, including, but not limited to:

(i) the frequency, nature and/or severity of the conduct;
(ii) whether the conduct was physically threatening;
(iii) the effect of the conduct on the Reporting Party's mental or emotional state;
(iv) whether the conduct was directed at more than one person;
(v) whether the conduct arose in the context of other discriminatory conduct;
(vi) whether the conduct unreasonably interfered with the Reporting Party's educational or work performance and/or College programs or activities; and
(vii) whether the conduct implicates concerns related to academic freedom or protected speech.
(viii) The extent to which a power differential, if any, exists

A Hostile Environment can be created by persistent or pervasive conduct or by a single or isolated incident, if sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to

prove a hostile environment, particularly if the conduct is physical. A single incident of Sexual Harassment, for example, may be sufficiently severe to constitute a hostile environment. It is also possible for a series of individual incidents, each minor in itself, to have a cumulative effect of becoming pervasively harassing behavior. In contrast, the perceived offensiveness of a single verbal or written expression, standing alone, is typically not sufficient to constitute a hostile environment.

Harassing conduct includes, but is not limited to the following, when it rises to the standards set forth above:

- Epithets, slurs, jokes, negative stereotyping or threatening, intimidating or hostile acts that relate to a person’s race, color, religion, gender, national origin, age or disability.
- Scaring or intimidating an African-American student by hanging a noose on their residence hall room door
- Written or graphic material which demeans or shows hostility or aversion toward an individual or group because of race, color, religion, gender, national origin, age or disability and is posted on walls, bulletin boards, e-mail or elsewhere on the campus.
- Offending female students , faculty, or staff by posting sexually suggestive pictures in a visible location that they must pass by or through
- Submission to or rejection of such conduct by an individual is used as the basis for decisions affecting an individual’s employment or grades.

Retaliation

Retaliation means any adverse action taken against a person for making a good faith report of prohibited conduct or participating in any proceeding under this policy. Retaliation includes threatening, intimidating, harassing, coercing or any other conduct which would discourage a reasonable person from engaging in an activity protected under this policy. Retaliation may exist even when the underlying complaint in determined to be ‘unfounded.’ Retaliation does not include good faith actions lawfully pursued in response to a complaint.

Contacts for Assistance and Information

Individuals who have a concern about incidents or behaviors which may constitute harassment or discrimination should contact any of the Intake Officers listed below for information about the College’s discrimination and harassment policies, available support services, procedures for making a complaint, and/or assistance in resolving the situation informally or formally.

Intake Officers

- Associate Vice President for Institutional Diversity and Equity
- Title IX, Discrimination and Harassment Coordinator
- Director of Human Resources

Confidentiality

Keene State College will maintain confidentiality where, and to the extent, legally and reasonably appropriate, with the facts made available only to those with a compelling need to know for purposes of investigation or resolution of complaints. Confidentiality cannot be unconditionally guaranteed under any circumstances. The College has a responsibility to act where it knows of a policy violation. All parties including intake officers, responsible administrative officers, investigators, aggrieved parties, accused parties, and witnesses are required to maintain confidentiality.

Process for Addressing Reports of Discrimination or Discriminatory Harassment

Step One: The Intake Interview

Members of the community who have been impacted by unwanted behaviors are encouraged to seek relief from such behavior. The Reporting Party should

contact an Intake Officer as noted below. The Intake Officer will interview the Reporting Party to obtain as much information about the alleged harassment as is possible and will inform the Reporting Party about the policies and procedures for handling discrimination and harassment complaints, including the College's responsibility to take action in situations where it believes discrimination and harassment may have occurred. If a Responding Party (alleged harasser) is known and named in the intake interview, the Intake Officer will encourage the Reporting Party to either submit a written statement describing the alleged behavior or identify the desired outcomes if the Reporting Party desires to pursue an informal resolution.

The Intake Officer will protect the privacy of the Reporting Party to the extent legally and reasonably appropriate and, assist the Reporting Party in pursuing a complaint, through either this policy if there is a potential violation of this policy or through other avenues if the behaviors are not covered by this policy. The Intake Officer will complete an Intake Form on all intakes; and send to the appropriate Executive Officer.

Step One-B Submission of Written Complaint

The Reporting Party may submit a dated and signed complaint to an Intake Officer. The complaint should be as specific as possible, including dates, times, locations, a description of the alleged harassing and/or discriminatory behavior, and the name(s) of the alleged harasser(s). The statement should identify any person(s) who may have information that would be helpful to the resolution of the complaint.
Upon receipt of a written complaint, the Intake Officer will make a report to the appropriate Executive Officer, who will review the complaint.

Step Two: Routing of Intake for Complaint Resolution

Depending on the desires of the Reporting Party, the specificity of the report, and the nature of the allegations, a process will be identified for resolving the complaint:

- If a formal complaint is filed against a College employee (including faculty) alleging sexual harassment that falls under Title IX regulations, then the

College will follow the process as outlined in the Sexual Misconduct Policy, in accordance with any applicable Collective Bargaining Agreement.

- When a student is accused of sexual misconduct, the procedures outlined in the KSC Student Sexual Misconduct Policy will be followed.
- When a student is accused of discrimination or discriminatory harassment that is not sexual misconduct, then the procedures outlined in the KSC Student Code of Conduct will be followed.
- If a Responding Party (alleged harasser) is known but not identified in the intake interview, the information will be recorded on the intake form and the needs of the Reporting Party will be addressed.
- If the Responding Party is unknown to the Reporting Party, the intake information will be shared with the Executive Officer who will evaluate the circumstances and if appropriate, order an investigation and address the needs of the Reporting Party.
- If a written complaint is submitted, a formal review process will be initiated (see below).
- If the Reporting Party does not choose to submit a statement in writing, the College's response will depend on the circumstances and the Reporting Party's willingness to cooperate with an investigation.
- If the Executive Officer overseeing the complaint feels that the alleged behavior may constitute discriminatory harassment, an investigation will be conducted without a signed statement and the complaint will be handled through the "Formal Complaint" process described below.
- In some instances, the Executive Officer will initiate an informal resolution, if the circumstances suggest that this type of resolution is appropriate. If so, the complaint will be handled by the "Informal Complaint" process described below.
- If the alleged target of student harassment is a member of the faculty, the Provost and Vice President for Academic Affairs and the Title IX, Discrimination and Harassment Coordinator will be notified.
- If the alleged target of student harassment is a member of the staff, the Executive Officer who oversees the division in which the individual is employed and the Title IX, Discrimination and Harassment Coordinator will be notified.

- If the responsible administrator is unable to assume the duties as defined, the President will assign an alternate Responsible Administrator.
- If the described behaviors are not a violation of this policy, a referral to other policies will be made, such as the KSC Complaint and Grievance process.

Roles and Responsibilities

Regardless of whether an informal or formal process is accessed for processing a complaint, the responsibilities of the institutional representatives are defined as follows:

The Executive Officer assigned to a complaint will

- review the intake summary
- take necessary interim measures to protect the Reporting Party and prevent retaliation or interference with the investigation
- appoint an investigator if necessary
- seek informal resolution of the Reporting Party where appropriate
- determine the extent to which the complaint meets the criteria for discrimination and discriminatory harassment and render the appropriate administrative judgment
- determine the appropriate course of action
- communicate appropriately with the Reporting Party, the Responding Party, and Intake Officer

The Executive Officers are assigned to handle complaints/reports as follows:

- The Vice President for Student Affairs when the Responding Party is a staff member in Student Affairs
- The Vice President for Academic Affairs when the Responding Party is a member of the faculty or teaching staff or a staff member in Academic Affairs
- The Vice President for Finance and Planning when the Responding Party is

a member of staff of the Finance and Planning division

- The Vice President for Enrollment Strategy, Marketing and Communications when the Responding Party is a member of staff of the Advancement Division
- The President when the Responding Party is a member of the staff of the Executive Division

An Investigator assigned to assist with a complaint will:

- Conduct a full, fair and timely investigation of alleged complaint, including reasonable effort to corroborate sources of information.
- Prepare a written, dated report for the Executive Officer.
- Refer to the Sexual Misconduct Policy when the Responding Party is a student.

Formal Complaint Process

The formal complaint process is used when either a written complaint is submitted or when an initial review of an informal complaint suggests that the nature of the incidents may be serious, pervasive, or severe and when the Responding Party is an employee of Keene State College.

1. The Executive Officer will coordinate supportive measures to protect the Reporting Party and prevent retaliation or interference with the review.
2. If the Responding Party is a member of a bargaining unit, complaint procedures outlined in the collective bargaining agreement will be followed. While the procedures for managing the complaint are subject to the Collective Bargaining Agreement, the standards by which the complaint will be reviewed or determinations made will be consistent with this policy and are the same for all members of the community.
3. If the Responding Party is a non-student, campus employee other than faculty, the following procedures will be followed: A copy of the signed complaint will be given to the Responding Party within 14 calendar days of its receipt. An exception to the time requirement may be granted when both the Reporting Party and Executive Officer agree that the complaint

should be handled after the close of the academic semester.

4. In all Formal Complaint responses, the College shall conduct a full and fair investigation of the alleged complaint, including a reasonable effort to corroborate sources of information identified by the Reporting Party and the Responding Party. The investigation will be completed as promptly as is possible. Written, dated, confidential records will be maintained throughout the investigation.
    - a. At the conclusion of the investigation, the investigator will present a written report which will include the allegations, the review process, the evidence in the case, the persuasiveness of the evidence, the consistency of the testimony, and the credibility of the witnesses and supporting documentation.
    - b. In cases where the Responding Party acknowledges responsibility for the behaviors reported, the Executive Officer may choose to suspend the investigatory step.
5. If the Responding Party is a Keene State College non student employee, the Executive Officer, in consultation with the Title IX, Discrimination and Harassment Coordinator, shall review the investigation report, determine the extent to which the complaint meets the criteria for harassment, and render a judgment about the case.
    - a. In determining whether discriminatory harassment exists, the Executive Officer will evaluate the evidence from the standpoint of a reasonable person’s reaction and perspective under the circumstances presented and may consult with legal counsel and other administrators to determine a “reasonable person standard.”
    - b. The Executive Officer 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.
6. Judgment will be defined as sustained, not sustained, or unfounded.
    - a. **SUSTAINED**, i.e., in the informed judgment of the Executive Officer, the behavior did meet the criteria of discrimination or harassment and was committed by the Responding Party. The Executive Officer will communicate this decision in writing to the Reporting Party, the Responding Party, the direct supervisor of the Responding Party, and

the personnel file of the Responding Party. The Executive Officer will determine appropriate sanctions based on the nature and severity of the offense and the extent of the findings. Sanctions may include but are not limited to an oral or written reprimand, reassignment of duties, mandatory counseling, suspension with or without pay, probation, or termination.

- b. **NOT SUSTAINED**, i.e., in the informed judgment of the Executive Officer, the behavior did not meet the criteria of discrimination and harassment and/or there is insufficient information available to prove or disprove the offense. In this case, the Executive Officer will report this finding in writing to the Reporting Party, the Responding Party, and the supervisor of the Responding Party. If the Executive Officer determines that the behavior in question is inappropriate, even though it may not meet the criteria of discrimination and harassment, the Executive Officer will report the findings to the supervisor. The Executive Officer may impose appropriate sanctions based on the nature and severity of the offense and the extent of the findings. Any sanctions imposed should be done so only in consultation with Director of Human Resources.
- c. **UNFOUNDED**, i.e., in the informed judgement of the Executive Officer the allegation is false/not factual and/or the Responding Party did not commit the offense

7. **Appeals and Grievances** Individuals have the right to appeal the judgment against them using the appropriate grievance procedures described in applicable collective bargaining agreements. Non-affiliated staff may submit a written appeal to the Keene State College President within 14 calendar days of receipt of the written finding. The President will review all documentation and materials and make a final determination.

Informal Complaint Process

The Reporting Party may request that the College seek to address the complaint informally. This process, while not “formal” in terms of this policy, is not casual or taken less seriously. It is often used in circumstances when a Reporting Party does not wish to submit a signed complaint but wants the behavior to stop, when an analysis reveals that the situation can be resolved

through conversation or other informal and direct steps, or when the report of discrimination or harassment is received from a third party and the alleged victim is unwilling to participate in the complaint process. In instances when a student Reporting Party accuses an employee Responding Party of sexual misconduct, an Informal Process is not permitted.

As in the formal process, the Intake Officer will report the concern to the appropriate Executive Officer and Title IX, Discrimination and Harassment Coordinator. The Executive Officer will evaluate the information and, in consultation with the Title IX, Discrimination and Harassment Coordinator, determine the appropriate course of action. Keene State College has a responsibility to take action in situations where it believes discrimination and harassment may have occurred, even when no written complaint has been filed. Courses of action may include:

- assisting the Reporting Party in addressing the problem directly with the person whose behavior is in question. This may be accomplished either through a one-on-one meeting, phone call, or letter. A Reporting Party is never required to confront the person(s) believed to be discriminating or harassing.
- addressing the person whose behavior is in question directly or indirectly through that individual’s supervisor.
- appointing an investigator and proceeding with the formal process described above.

If the information indicates a possible pattern of inappropriate conduct or if the conduct is judged to be serious, the Executive Officer will:

- advise the supervisor or dean of this judgment.
- appoint an investigator and proceed with the formal process described above.

If the information does not suggest the conduct rises to the level of discrimination or discriminatory harassment but the behavior is otherwise judged to be inappropriate, the Executive Officer will discuss this complaint with the supervisor or dean, who in turn will address the alleged incident with the Responding Party to ensure that the Responding Party understands

expectations for appropriate behavior and to assure appropriate sanctions are imposed.

- If the named individual is an employee other than a faculty member, the supervisor will document their discussion with the employee in a letter to the employee's permanent personnel file. The Executive Officer or direct supervisor may choose to impose sanctions for the inappropriate behavior in consultation with Human Resources
- If the Responding Party is a member of the faculty represented by a collective bargaining unit, contract guidelines will be followed.

Time Limits

Prompt reporting of discrimination and harassment is in the best interest of the entire Keene State College community. Individuals are encouraged to report incidents of alleged discrimination and harassment in a timely fashion. Faculty and staff are provided with 60 days to file a formal complaint.

Under special circumstances, the Executive Officer may waive the time limits, when doing so serves the purposes of this policy. The Executive Officer will document the reasons for such a decision and convey the information, in writing, to the Reporting Party and the Responding Party.

Non-retaliation

Retaliation against anyone reporting a harassment issue is strictly prohibited. Reprisals or retaliation against any person reporting discrimination and harassment or bringing a complaint of discrimination and harassment will not be tolerated, whether or not the complaint is ultimately judged to be consistent with the criteria determining harassment. Keene State College reserves the right to discipline individuals who engage in any activity determined to be retaliatory.

False Claims

Intentionally false claims of discrimination and harassment will not be

tolerated. No complaint will be considered false solely because it cannot be corroborated.

Keene State College reserves the right to discipline members of the College community who intentionally bring false complaints of discrimination and harassment. If evidence is presented that exonerates an individual who had been found responsible for engaging in harassing behaviors, Keene State College will take action to restore the status of that individual, including removing documentation about the original complaint from their personnel file.

Employee Obligation to Report

A ‘Responsible Employee’ is a College employee who has the authority to redress misconduct, who has the duty to report incidents of sexual misconduct or other misconduct, or who a person could reasonably believe has this authority of duty. A responsible employee must report to the Title IX coordinator all relevant details about the discrimination or discriminatory harassment shared by the reporting party. At Keene State College, all faculty and staff, with the exception of those who exist in a legally recognized confidential relationship to the reporting party, have a duty to report discrimination and discriminatory harassments[2][2] . To the extent possible, information reported to the responsible employee will be shared only with people responsible for handling the College’s response to the report. All reports shall be made within 24 hours of receipt of the information, absent extraordinary circumstances.

Intake Forms

Keene State College will maintain records of all discrimination and harassment reports to identify campus needs for information and training and possible patterns of discrimination or harassing behavior. Intake forms will remain private and will be maintained by the following individuals:

- The Title IX Office when the alleged harasser is a student
- The Vice President for Academic Affairs when the alleged harasser is a member of the teaching staff

- The Director of Human Resources when the alleged harasser is a staff member
- The Vice President for Finance and Planning when the alleged harasser is a member of contract staff

Annual Report

Responsible administrators will provide reports of each incident as described. The Director of Human Resources and the Associate Vice President for Institutional Diversity and Equity will prepare an annual summary to be reviewed by the President. It should list all informal and formal discrimination and harassment complaints received, the general nature of the concern, and outcomes or continuing status. It will not include information which identifies the Reporting Party or Responding Party. The purpose of this report is to identify possible patterns of inappropriate behaviors and to identify campus needs for information, education, training, and policy changes.

[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 System policy are treated as protected categories.

[2]:The only College employees who exist in a confidential relationship are employed in the Counseling Center and certain employees in the Center for

Health and Wellness.

Approved by Cabinet: June 12, 2018