Discrimination and Discriminatory Harassment

Keene State College Policies and Procedures
Discrimination and Discriminatory Harassment Policy

Section Menu

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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 benefiting 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;
Step Two: Routing of Intake for Complaint Resolution

Upon receipt of a written complaint, the Intake Officer will make a report to the appropriate Executive Officer, who will review the complaint.

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.
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. If so, the complaint

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.”

- In determining 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
Keene State College will maintain records of all discrimination and harassment reports to identify campus needs for information and training and possible patterns of 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.

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.

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