

## CIVIL RIGHTS/EQUITY

### VII. CIVIL RIGHTS/EQUITY

#### A. Discrimination and Harassment

All employees need to be alert to issues of discrimination and harassment that may arise not only between professional colleagues but also between employees and students. By reviewing the Statement of Nondiscrimination found in the front of all major NHTI publications, employees will learn the categories protected by State and Federal laws, including (but not limited to) New Hampshire RSA 354-A, Title VII of the Civil Rights Act of 1964, Title IX of the 1972 Education Amendments to the Higher Education Act, and the Americans with Disabilities Act. The protections provided in these laws extend to all employees, students, and campus visitors. They also extend to students who are involved in educational experiences at off-campus locations, such as clinical or internship sites.

The responsibilities of all employees under these laws include:

- Understanding the college's "fiduciary duty" to its students (see below);
- Ensuring that all professional interactions with students, other faculty/staff, and visitors are free from harassment and/or discrimination;
- Ensuring that academic course content that deals with potentially sensitive issues is presented professionally and that students involved in related discussions conduct themselves in a professional manner;
- Understanding and signing the *State of New Hampshire Policy on Sexual Harassment* (see Section VII.C below);
- Reviewing the examples of sexual harassment found in the Student and Employee Handbooks;
- Reading and understanding the New Hampshire Technical Institute's *Statement on Consensual Relationships* (see Appendix);
- Reviewing the Civil Rights/Equity Grievance Reporting and Handling Procedure found in both the Employee Handbook and the Student Handbook (see Section VII.B below);
- Learning the name, location, and contact information of the college's Civil Rights/Equity Coordinator (see below);
- Advising the Civil Rights/Equity Coordinator or your supervisor if you have reason to believe harassment or discrimination of any sort is occurring in any campus setting.

In a widely publicized case involving Plymouth State College, the New Hampshire Supreme Court determined that colleges, as stated above, have a "fiduciary duty" to their students. The Court stated that "the relationship between students and those that teach them is built on a professional relationship of trust and deference, rarely seen outside the academic community" and that colleges must create an environment in which students can pursue their education free from harassment by faculty members. While this particular case spoke specifically to sexual harassment,

the concept of “fiduciary duty” extends across the entire college/student relationship. Thus, the Court holds colleges and faculty (and all college employees) to the highest standards of behavior in their interactions with students.

The most common complaints against employees at NHTI arise from issues of sexual harassment (most often of the “hostile environment” type), gender discrimination, and discrimination based on disability. The following guidelines may help prevent complaints from arising:

1. ***Don’t ask any student out on a “date” – even consensual relationships can be trouble.*** Although not forbidden by any laws or personnel rules, dating students is risky. Complaints of harassment might be filed by a student who was a direct party in a failed relationship or by other students who feel the relationship had an adverse effect on their academic success. [See the NHTI *Statement on Consensual Relationships* in the Appendix.]
2. ***Don’t speculate in public about or comment on a student’s personal life, appearance, or habits.*** While a single comment is unlikely to arouse concern, repeated comments about a student’s clothing, hairstyles, tiredness, etc. – especially if those comments are linked to speculation about a student’s personal relationships – can make a student feel singled out and may set the stage for so-called “hostile environment” complaints.
3. ***Avoid unnecessary touching.*** Many people casually touch others to whom they are speaking. While most understand that there are no sexual implications in this sort of touching, some do not. Keep in mind that it is the perception of the person being touched and NOT the intention of the person doing the touching that is key in such complaints.
4. ***Avoid profane language, ethnic/racial/religious (etc.) epithets, and even slightly off-color jokes in the classroom and workplace.*** Unless these are being used for clear academic purposes, they have no place in the classroom or workplace. In a related issue, employees should avoid e-mailing jokes, cartoons, etc., that involve such language or graphics and should not use workplace computers to access sexually explicit or other sensitive electronic materials without a clear academic purpose.
5. ***If discussing a potentially sensitive subject is essential to course objectives, or if an instructor feels it is important to be deliberately provocative to stimulate discussion, a short explanation in the syllabus or before the discussion begins can help avoid complaints.*** When students understand the context of a discussion

in the larger picture of the discipline, and when they see controversial issues being handled professionally, they are less likely to express concerns.

6. ***Never discuss a student's disability in front of others – whether the student is present or not – without the student's (preferably written) permission.*** Any questions about a student's documented or perceived disability or any questions about applying the provisions of a student's Reasonable Accommodation Plan to a particular course should be discussed only with the student and/or the Coordinator of Disabilities Services. Do not assume that a student has disclosed his/her disability to all faculty. [See also the Section X.H.8 regarding Disabilities Services.]

7. **Be aware of your surroundings before initiating sensitive conversations with others.**

*Officemates, for example, cannot always leave their desks when being made uncomfortable by your telephone conversations about your latest date, your opinion of people who don't share your moral philosophies, or the latest risqué joke you've heard. Ideally, the officemate would respectfully explain his/her discomfort at these situations. However, often that comfort level is not there. So, if you and those nearby are simply work colleagues (and not the very best of friends), try to keep private those non-work-related conversations that do not directly involve the colleague.*

Complaints are handled in accordance with the Civil Rights/Equity Grievance Reporting and Handling Procedure, which can be found in Section VII.B below or in the Student Handbook.

Any questions regarding civil rights/equity issues should be directed to the Institute's Civil Rights/Equity Coordinator, Eileen Fitzsimmons, North Hall Room N108, [efitzsimmons@nhctc.edu](mailto:efitzsimmons@nhctc.edu), 603-271-8883 (fax), or 603-271-2583 (phone).

## B. Grievance Reporting Procedures

### 1. Introduction

The NHTI Civil Rights/Equity Committee is sensitive to the fear and/or embarrassment an individual may experience in coming forward with a complaint regarding discrimination. The grievance reporting procedures outlined below are designed to provide a safe, confidential, and supportive environment in which an individual may discuss his/her concerns.

Complaints of discrimination or of retaliation for making such complaints may be reported directly to the NHTI's Civil Rights/Equity (formerly "Affirmative

Action”) Coordinator. Complaints may also be reported to any member of the college’s faculty, staff, or administration, who will then refer the complaint(s) to the Civil Rights/Equity Coordinator. [See also Statement of Nondiscrimination.] Each reported complaint will be followed up by the Civil Rights/Equity Coordinator.

Any NHTI student or employee who has observed or is aware of discriminatory behavior or retaliation for reporting discriminatory behavior should report such discrimination to the Civil Rights/Equity Coordinators or other college representative.

No one shall be required to file a complaint with an individual who is hostile to him/her and/or who engages in or has been alleged to have engaged in conduct which could be considered discriminatory.

## 2. Initial Reporting

The individual with the complaint is encouraged to speak with the Institute's Civil Rights/Equity Coordinator. This conversation, which will be considered an informal review of the incident, cannot be kept completely confidential, but will be shared with others only on a need-to-know basis. An attempt to resolve the alleged complaint within ten (10) working days will be initiated by the Coordinator. If a resolution cannot be reached through these informal means, a formal investigation will be initiated. Every attempt will be made to maintain the anonymity of the individuals involved.

## 3. Formal Investigations

Formal grievance reporting procedures must be initiated within **one year** of the alleged violation.

Investigations shall be conducted with particular care to preserve the anonymity of all persons involved. Only those who have an immediate need to know (including, but not necessarily limited to, the investigator(s), the grievant(s), the respondent(s), and the Institute President) shall be provided with the identity of the grievant, the respondent, and the allegations.

All involved persons shall be afforded the opportunity to submit information relevant to a complaint. All parties contacted in the course of an investigation shall be advised of the necessity of confidentiality and that any breach of confidentiality shall be treated as misconduct subject to disciplinary action.

The investigation will be conducted within thirty (30) calendar days of receipt of a written complaint. If additional time is required to ensure a thorough investigation, this time may be extended.

Upon completion of the investigation, a written report will be submitted to the President (or the President's designee), and the findings will be disclosed to the grievant and respondent. If the investigators have determined that the complaint was proven valid by a preponderance of the evidence, the investigators' report to the Institute President shall be accompanied by a recommendation for corrective and/or disciplinary action determined according to the totality of the circumstances uncovered during the investigation. In making a recommendation for corrective and/or disciplinary action, the investigators may consider (but not limit themselves to) the following factors:

- a) severity of the offense
- b) the frequency and duration of the prohibited conduct
- c) the extent to which the misconduct, however minor, serves to create an intimidating campus environment\* for the grievant, or otherwise increases the difficulties of education or job performance for the grievant.

[The term *campus environment* encompasses both the *immediate* campus environment including all NHTI students, personnel, buildings, grounds, and associated activities, and the *extended* campus environment including (but not necessarily limited to) athletic, clinic, and internship sites.]

The Institute President (or the President's designee) will take the report and its recommendations under advisement, and make a decision regarding corrective and/or disciplinary action. The time between submission of the report to the President and commencement of corrective and/or disciplinary action shall be no longer than 21 calendar days. The Institute President will provide the Civil Rights/Equity Coordinator with written documentation of the decision regarding corrective and/or disciplinary action at the time of or prior to the commencement of disciplinary action. Both the grievant and the respondent will be informed of the President's decision.

#### 4. Appeals

Appeals of the President's decision may be made by students according to the procedures outlined in the (NHCTC System) Board of Trustees policy manual, which is available in the Academic Affairs Office, the Library, and in various offices on campus. Faculty, staff, and administrators may appeal according to procedures outlined in the State of New Hampshire Division of Personnel Rules.

#### 5. Retaliation Prohibited

Retaliation of any kind against anyone making an allegation of discrimination, against anyone involved in the investigation, or against anyone involved in the decision regarding corrective and/or disciplinary action is prohibited, and shall result in disciplinary action against the retaliator.

### C. Sexual Harassment Policy

The State of New Hampshire Policy on Sexual Harassment is quoted here from the State's Web site:

#### *POLICY STATEMENT*

*All employees of the State of New Hampshire are entitled to work in an environment free of sexual harassment. Sexual harassment has been shown to have a devastating impact on victims and coworkers and the state is committed to preventing and eliminating such misconduct in the workplace. To accomplish these goals, the state's policy against sexual harassment shall be clearly and regularly communicated to all state employees, both supervisory and non-supervisory, through periodic educational programs and training. In addition, this policy shall be implemented through the complaint investigation procedures set forth below.*

*All complaints of sexual harassment or retaliation shall be promptly and thoroughly investigated. Particular care shall be taken in the course of investigations to protect the confidentiality of all involved. Should it be determined that a state employee has committed sexual harassment, immediate and appropriate corrective and/or disciplinary action shall be taken. This may include discharge and/or other forms of discipline under rules of the Division of Personnel.*

#### *POLICY PURPOSE - STATEMENT OF PROHIBITED CONDUCT*

*Harassment and discrimination in employment based on sex are illegal under federal and state law and shall not be tolerated in state employment. Maintenance of a discriminatory work environment is also prohibited. Every working person has a duty to observe the law and shall be subject to disciplinary action such as discharge for failing to do so.*

*The following definition of sexual harassment is intended to describe the conduct prohibited by this policy:*

*SEXUAL HARASSMENT: an unwelcome sexual advance, a request for a sexual favor, or other verbal or physical conduct of a sexual nature constitutes sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of or creating an intimidating, hostile or offensive working environment.*

*Any supervisor who threatens or suggests, either explicitly or implicitly, that an employee's refusal to submit to sexual advances or other conduct of a sexual nature will adversely affect his/her employment, evaluation, wages, advancement, duties, shifts, or other condition of employment has committed sexual harassment.*

*Other sexually harassing conduct, whether committed by supervisory or non-supervisory personnel, is also prohibited. Such conduct includes, but is not limited to: repeated verbal abuse of a sexual nature; repeated offensive sexual flirtation; graphic verbal comments about an individual's body; sexually degrading words to describe an individual; repeated brushing, touching, patting, or pinching an individual's body; sexually explicit gestures; the display in the workplace of sexually suggestive, sexually demeaning, or pornographic objects, pictures, posters, or cartoons; inquiring or commenting about sexual conduct or sexual orientation or preferences; or verbal abuse consistently targeted at only one sex, even if the content of the abuse is not sexual.*

*Sexual harassment is unlawful and hurts other employees. When such misconduct creates or contributes to a discriminatory atmosphere in the workplace, it harms not only the direct victim, but all others in the workplace. Accordingly, an employee who engages in sexual harassment shall be subject to disciplinary action which may include discharge.*

#### **PROCEDURES FOR MAKING, INVESTIGATING AND RESOLVING SEXUAL HARASSMENT AND RETALIATION COMPLAINTS**

##### **1. COMPLAINTS**

*Complaints of sexual harassment or of retaliation for making such complaints shall be accepted, either in writing or verbally, by the Director of the Division of Personnel. Complaints may also be accepted by a supervisor, who shall then refer the complaint to the Director. In either case, the Director of Personnel shall then assign a human resources representative from the complainant's agency or from the Division of Personnel as investigator of the complaint. No employee shall be required to file a complaint with a supervisor who is hostile to that employee and/or who engages in conduct or has been alleged to have engaged in conduct which could be considered sexual harassment.*

*Any employee who has observed sexual harassment or retaliation against a person who has reported sexual harassment should report it to the investigator.*

##### **3. INVESTIGATION - CONFIDENTIALITY**

*All complaints shall be investigated expeditiously by the investigator. All interested persons shall be afforded an opportunity to submit information relevant to a complaint.*

*Investigations shall be conducted with particular care to preserve the confidentiality of all persons involved. Only those who have an immediate need to know, including, but not limited to, the investigator, the complainant and the alleged harasser or retaliator shall be provided with the identity of the complainant and the allegations. All parties contacted in the course of an investigation shall be*

*advised of the necessity of confidentiality and that any breach of confidentiality shall be treated as misconduct subject to disciplinary action.*

*Investigations shall be completed and a written report issued within thirty (30) days of the receipt of the complaint. The investigator's report shall be disclosed to the complainant. If the investigator makes a determination that the complaint was proven by a preponderance of the evidence, the investigator shall disclose the report to the agency head along with a recommendation for corrective action and/or disciplinary action. The recommendation shall be based on the severity of the offense which shall be determined according to the totality of the circumstances. The intensity, frequency, and duration of the prohibited conduct shall be considered by the investigator. Other factors may include the extent to which the misconduct, however minor, may serve to isolate, limit, intimidate or otherwise increase the difficulties of job performance or atmosphere in the workplace for the complainant.*

#### **4. RETALIATION PROHIBITED**

*Retaliation of any kind against anyone who is involved in the investigation of or in making an allegation of sexual harassment is prohibited and may result in disciplinary action against the retaliator.*

#### **STATE EMPLOYEE EDUCATION AND TRAINING**

*The State's policy against sexual harassment shall be communicated in writing to all employees. Educational posters communicating the state's opposition to sexual harassment shall be conspicuously and continuously displayed in the workplace. Such notices shall advise employees of the right to initiate a sexual harassment complaint through the procedures outlined in this policy as well as the right to initiate complaints with the New Hampshire Human Rights Commission and/or the Equal Employment Opportunity Commission.*

*Each state department or agency shall conduct periodic training to inform employees of the state's policy prohibiting sexual harassment and retaliation and the complaint and investigation procedures set forth herein. Such training shall include the following components:*

- 1. FOR ALL EMPLOYEES: as part of general orientation, each recently hired employee shall be provided a copy of this policy and shall be requested to read it and sign a statement acknowledging the policy. In addition, supervisory employees who have attended a training seminar on sexual harassment, as set forth below, shall meet with employees under their authority once each year to advise them of the state's commitment to eliminate sexual harassment in the workplace, the penalties for engaging in sexual harassment, and the procedures for reporting incidents of sexual harassment.*

2. *FOR ALL SUPERVISORY EMPLOYEES: all supervisory personnel shall annually participate in a training session on sexual harassment and other forms of discrimination which includes information about the types of conduct which will not be tolerated in the workplace. Each participant shall be informed that he/she is responsible for knowing the contents of the state's sexual harassment policy and for giving similar presentations to employees.*

#### D. Examples of Sexual Harassment

The following is a list that illustrates the kinds of activities that may be actionable under State and Federal sexual harassment laws. This list is in no way considered to be all-inclusive.

1. Direct sexual advances;
2. Graphic comments about a person's body;
3. Sexually suggestive objects or pictures in the workplace or classroom;
4. Sexually degrading words used to describe a person;
5. Derogatory or sexually explicit statements about a person's actual or supposed sexual relationships;
6. Repeated dirty jokes;
7. Sexually explicit gestures;
8. Touching, patting, or pinching;
9. Ogling, leering, and physical gestures conveying a sexual meaning;
10. Coming very close to someone when speaking (e.g., always leaning over someone or cornering them), or using a suggestive voice;
11. Sending of sexually explicit e-mail, or making sexually suggestive comments on e-mail;
12. Direct or implied threats or suggestions that submission to or rejection of sexual advances will determine and/or affect evaluations, letters of recommendations, student grades, student judicial decisions, etc.;
13. Continued unwelcome sexual flirtations, advances, or propositions;
14. Subtle pressure for sexual activity, including inappropriate or offensive sexual advances;
15. Spreading false statements of a sexual nature about a person;
16. Use in the classroom of sexual jokes, stories, or images in no way germane to the subject of the class;
17. Other sexually related behavior.