

2010

Discrimination/
Sexual
Harassment

Grievance Policies
and Procedures



WESTERN
NEW ENGLAND
COLLEGE

A. Introduction

Every member of the Western New England College community has the right to live, learn, and work in a harassment free environment. Discrimination/harassment in any form undermines this concept and will not be tolerated. Harassment can be defined as any behavior that creates an intimidating, hostile, or offensive environment for any individual or group. Harassment is discriminatory when it is based on gender, race, religion, ethnic origin, disability, age, sexual orientation, gender identity, or gender expression. It is important to understand that the feelings of the recipient rather than the intentions of the initiator determine harassment. The subsequent procedures governing sexual harassment will apply to any and all violations of state or federal discrimination law.

The Mission Statement and Strategic Plan of Western New England College call for, among other things, a renewed commitment to creating and maintaining “an atmosphere of personal concern.”

Discrimination/sexual harassment has no place in that atmosphere, or in any part of our College community. “Community” at Western New England College involves an environment, both within and beyond the classroom, where *all* members participate fully in an atmosphere free from prejudice, harassment, exploitation, or intimidation. When discrimination/sexual harassment occurs, the learning and working environment is compromised, the mission of the institution is diminished, trust is violated, and personal dignity is assaulted.

These policies and procedures provide the Western New England College community guidance with respect to the College’s *zero tolerance* approach to discrimination/sexual harassment. College policy as well as federal and state laws prohibit discrimination/sexual harassment and provide recourse for victims. Therefore, the College will respond promptly to complaints of discrimination/sexual harassment. Where it is determined that such inappropriate conduct has occurred, the College will take steps to eliminate the conduct and impose such corrective action as is necessary, including disciplinary action where appropriate. Retaliation against anyone bringing a complaint about discrimination/sexual harassment or against anyone cooperating in an investigation of a complaint of discrimination/sexual harassment will not be tolerated.

Please review these policies and procedures carefully. The individuals listed in this brochure should be contacted about any discrimination/harassment problems you experience or observe, or of which you become aware. By working together, we can maintain an environment that values personal concern and that reinforces our educational mission.

B. What is sexual harassment?

“Sexual harassment,” pursuant to Massachusetts law and federal statutes, means unwelcome sexual advances, requests for sexual favors, and/or other verbal or physical conduct of an unwelcome sexual nature where:

- submission to or rejection of such advances, requests, or conduct is made either explicitly or implicitly as a term or condition of an individual’s education or employment, as a basis for employment decisions, or as a basis for decisions regarding a student’s academic progress/grades; and/or
- such advances, requests, or conduct have the purpose or effect of unreasonably interfering with an individual’s academic or work performance by creating an intimidating, hostile, humiliating, or sexually offensive educational, residential, or employment environment.

The courts have recognized two different types of actionable sexual harassment:

1. ***Quid pro quo*** harassment occurs when a person with authority uses submission to or rejection of unwelcome sexual conduct as the basis for making academic or employment decisions affecting a subordinate or a student. This kind of harassment usually involves explicit or implicit threats of retaliation for refusing to submit to sexual advances.
2. ***Hostile environment*** harassment is unwelcome conduct of a sexual nature that is sufficiently severe, persistent, or pervasive as to limit a person’s ability to work or participate in a program or activity.

C. Examples of sexual harassment

It is important to emphasize that sexually oriented conduct that is *unwelcome* and has the effect of creating a workplace and/or learning environment that is hostile, offensive, intimidating, or humiliating to male or female students or employees of the College community may constitute sexual harassment.

While it is not possible to enumerate all circumstances that may constitute sexual harassment, the following are some examples of conduct which, if *unwelcome*, may constitute sexual harassment depending upon the totality of the circumstances, including the severity of the conduct and its pervasiveness:

- Unwelcome sexual advances—whether or not they involve physical touching;
- Sexual epithets, jokes, written or oral references to sexual conduct, gossip regarding one’s sex life, comments on an individual’s body, comments about an individual’s sexual activity, deficiencies, or prowess;
- Displaying sexually suggestive objects, pictures, or cartoons;
- Unwelcome leering, whistling, brushing against the body, sexual gestures, suggestive or insulting comments;
- Inquiries into one’s sexual experiences; or
- Discussion of one’s sexual activities.

Below are other examples of incidents that may constitute sexual harassment at Western New England College:

- “My advisor meets with me in his office with the door closed. Despite my efforts to distance myself from him, he moves closer. He always comments on my appearance. Last time we met, he brushed up against me. I feel uncomfortable and am considering changing my major and my advisor.”
- “One of the female managers in my department kept asking me out on a date. She said that getting to know her better would improve my chances of promotion. I asked her to stop, but she would not take no for an answer.”

- “I work in a department where most of my peers are men. They continually tell sexual jokes. One brought in and made copies for the other guys of a cartoon about women and parts of their bodies. I told my supervisor that I do not think this is funny. He has asked the others to stop, but they just ignore him.”
- “I take a class where the professor assigns readings from *Hustler* and *Playboy* magazines. Last week, the professor showed a video that contained some sexually suggestive material. During the video, many guys in the class laughed or told lewd jokes and the professor did nothing about it. The course is about human relations, so the professor thinks he is being provocative or interesting, but I find him to be sexist. Several women have dropped the class, but I want to take this class.”
- “Guys on the floor think I’m gay. At least a couple of times a week, someone—I do not know who—tapes a derogatory cartoon, article, or picture to my door. I have complained to my resident advisor, but he just says he has no idea who is doing it. I am thinking of transferring, but in the meantime, I am pretty depressed.”
- “I spent a lot of time at a party three weeks ago talking to a classmate. Now, he simply won’t leave me alone. He follows me across campus, tries to touch me inappropriately, makes suggestive comments, and calls at all hours of the night. I have asked him to stop but he won’t take no for an answer. Yesterday, he cornered me outside the library and would not let me pass. Luckily, someone else came by. I feel very threatened.”

Faculty, employees, and students are strongly encouraged to review the College’s Policy on Sexual Misconduct and Sexual Assault. These policies are set forth in the College’s *Student Handbook*.

D. What should you do if you are discriminated against/sexually harassed?

While the College accepts its role and responsibilities in providing a workplace and learning environment free from discrimination/sexual harassment, there are steps that each member of the College community can and should take. Individuals who harass will have no reason to stop unless they are challenged. It is therefore imperative that individuals who believe that they have been discriminated against or sexually harassed come forward. While some individuals may be reluctant to do so, ignoring or minimizing discriminating/sexually harassing conduct will not eliminate it, and will not allow the College to investigate and correct unacceptable and unlawful conduct. Individuals can sometimes stop discrimination/sexual harassment by taking direct action.

- **Respond immediately:** Sometimes, telling the discriminator and/or harasser that his/her behavior is unwelcome will stop the conduct. State an emphatic “NO” in the case of sexual harassment at the time. Be direct and firm. Clearly express disapproval of any behavior that causes discomfort. Communicate that it is *unwelcome and that you want the behavior to stop*. Ignoring or avoiding a discriminator and/or a harasser usually does not work. If you are unable to confront the discriminator and/or harasser in person, try writing a letter. In the letter, include a detailed account of the conduct you find offensive, including dates. State the impact the conduct has had on you and that you will take further action if the behavior does not stop. Keep a copy of the letter.
- **Keep records:** Document all incidents and conversations that might constitute discrimination and/or sexual harassment, including dates, times, places, witnesses, and an accurate description of specific incidents. Write down quotes so that you can recall at a later date the exact language used.
- **Talk to someone:** If the discrimination/sexual harassment does not stop, or you are reluctant or unable to confront the person verbally or in writing, talk to someone. Talk to a supervisor or someone of authority at the College whom you trust. Seek confidential support through the Counseling Center, Campus Ministries, Human Resources, the **CareerCenter**, and/or Health Services. You may also consult one of the administrative and/or faculty resources listed within this brochure. The College also encourages individuals who have witnessed, or who have knowledge of, discrimination/sexual harassment directed at any member of the College community, to report such conduct immediately.

The College has designated several members of the College community to serve as resources to any individual who has a discrimination/sexual harassment complaint or inquiry. These individuals are available to discuss any concerns that you may have and to provide information to you about our policy on discrimination/sexual harassment and our grievance procedures.

Gregory Michael

Executive Director, Human Resources and the **CareerCenter**
Designated Equal Employment Opportunity (EEO) Officer
782-1343

Vergie Lee

Director of Benefits Administration, Human Resources
and the **CareerCenter**
782-1381

Jeanne Steffes

Vice President for Student Affairs, Dean of Students
782-1282

Kathleen Reid

Director of Health Services/Nurse Practitioner
782-1211

Beth Hill

Associate Director, Residence Life
782-1317

Michael Johnson

Assistant Dean for Law Student Affairs
and Director of Academic Affairs, School of Law
782-1376

Lori Mayhew

Head Women's Softball Coach/Equipment Manager
782-2230

Students may also contact Victim Advocates by calling
413-575-7194.

E. What happens when a report is made?

1. Informal resolution

Many claims of discrimination/sexual harassment may be resolved informally. In the informal process input will be important, yet direct confrontation with the alleged harasser may not be required. The goal of an informal resolution is to end the offensive or unwelcome behavior. The Dean of the respective School (if the Respondent is a faculty member), the Executive Director of Human Resources and the **CareerCenter** (if the Respondent is classified staff or administration), and the Dean of Students or the Assistant Dean for Law Student Affairs (if the Respondent is a student) will work with the Complainant and the Respondent to reach an informal resolution.

Examples of informally reached outcomes might include:

- Mediated, informal conversation between the Complainant and Respondent;
- Conducting educational programs for a unit, division, or department; or
- Adjusting residential or academic placement of either the Complainant or Respondent.

Resorting to formal hearings will be avoided whenever possible. The purpose of informal adjudication is to arrange an appropriate solution acceptable to all parties concerned. At the conclusion of the informal process, the only document that will be maintained is a memorandum of understanding, signed by both parties, and maintained by the EEO Officer.

Informal College proceedings must be exhausted before formal College proceedings will commence. In the event that the informal process does not achieve resolution of the issue, the EEO Officer will prepare a memorandum signed by the parties BEFORE the formal process will be available.

2. Formal resolution

If informal efforts to resolve a problem are not successful, or if informal resolution is inappropriate or inadequate based on the severity of a case, or if the Respondent is a known prior offender, then a more formal resolution may be necessary. Formal written

complaints must be filed with the EEO Officer. The matter will then be referred to the College's Discrimination/Sexual Harassment Hearing Committee by the EEO Officer.

The EEO Officer will monitor the implementation of these formal grievance procedures, and either party may request a formal hearing.

The EEO Officer will intervene in the formal process when in his/her judgment such intervention is necessary for expediency. The EEO Officer will schedule all committee meetings, oversee the process and procedures, and attend hearings, if necessary, as a nonparticipating, nonvoting member. The EEO Officer will NOT contribute to the writing of the Hearing Committee's findings.

F. Procedures for formal hearings by the Discrimination/Sexual Harassment Hearing Committee

1. Composition of the Discrimination/Sexual Harassment Hearing Committee

The Discrimination/Sexual Harassment Hearing Committee will consist of six (6) members of the Western New England College community appointed by the President to serve two-year terms. Members can serve no more than two (2) consecutive two-year terms. The Committee will be comprised of three (3) tenured faculty members referred to the President by the Faculty Senate, the School of Law, and the School of Pharmacy, two (2) classified staff, and two (2) administrators, all from different departments. Replacement of faculty representatives on the Committee (if it became necessary) would be made either by the Senate, the School of Law, or the School of Pharmacy as appropriate. The President will designate a Chair of the Committee, based on such considerations as experience, continuity, and sensitivity to the concerns of those affected by discrimination/sexual harassment. At any given time, there should be no more than five (5) persons of the same gender on the Committee. Two (2) additional members who are students will sit on the Committee when a complaint directly involves a student. For complaints involving graduate students, pharmacy students, or law students, at least one (1) of the two (2) student members on the Committee will be a graduate student, law student, or pharmacy student as appropriate to the case.

2. Initiation of the Hearing Procedure

A copy of the complaint will be mailed by the EEO Officer to the Respondent, who will be afforded ten (10) calendar days from the mailing date to prepare a written response regarding the incident. Upon receipt of the Respondent's response, the EEO Officer will mail to each party a copy of the complaint and response.

At that time, both parties will be presented a list of the members of the Committee and may challenge any member's eligibility for cause in writing to the Chair, within two (2) working days of the presentation of the list. Any such challenge will be ruled upon by the EEO Officer. Any Committee member with previous knowledge of the incident will present that information for the Committee, which will decide if that member should be disqualified from hearing the case. If the Chair is released by challenge or disqualification, the Committee will elect a Chair *pro tempore*. If, by challenge, disqualification, or unavailability, fewer than six (6) members of the Committee remain eligible, others will be appointed by the President *pro tempore*.

No hearing will be held without the parties being given at least seven (7) calendar days notice. Each party may be accompanied during each session by one advisor from the Western New England College community. The advisor will not participate in the session, but may consult freely with the person whom they are advising. The advisor may be an attorney from the College community. The Complainant and Respondent may each request witnesses and present documentary evidence. Witnesses will be present at the hearing only when giving testimony. Each party may bring any number of witnesses; however, the actual number of witnesses heard will be at the discretion of the Committee. The Committee may refuse to accept or hear any evidence that it deems irrelevant or unreliable. Rules of evidence used in courts of law are not used in this process.

3. Conduct of Formal Hearings

The formal hearing will be tape recorded for the Committee's use in its deliberations. The tape will not be transcribed, but will be stored securely and confidentially by the General Counsel. Upon written request, a copy of the tape will be made available to either party of this proceeding. The Committee alone may

question witnesses and parties. In the course of the hearing, each party may submit in writing, questions to be asked by the Committee. However, the Committee reserves its right to decline to pursue any such questions. The Respondent has the right to refuse to testify.

4. Written Report

Within ten (10) calendar days of the hearing, the Committee must prepare a written report that details the allegations, the hearing process, and the evidence heard. The Committee shall include in this report its findings of fact, including any findings it makes concerning the credibility of witnesses. All findings by the Committee shall be based on a majority vote of the panel. All Committee members must sign the written report.

5. Findings of the Committee

After a hearing, the Committee may find one of the following:

- that it is more likely than not that the alleged violation occurred, or
- that it is more likely than not that the alleged violation did not occur.

6. Referral for Action

The Committee will issue a written report to the relevant Dean or supervisor, who after review of said report, will distribute a copy of the report to the Complainant and Respondent. The relevant Dean, after consultation with the EEO Officer, will determine and impose sanctions in writing to the Respondent within fifteen (15) calendar days of the Dean's receipt of the Committee's report. Appropriate disciplinary action will be taken by the Respondent's supervisor for staff, Deans of the respective School for faculty or for graduate students, the Dean of Students for undergraduate students, or the Dean of the School of Law for law students.

7. Sanctions

Sanctions imposed on the Respondent will be commensurate with the seriousness of the conduct, and will be adequate and sufficient to demonstrate the College's commitment to taking strong and effective measures to both remedy and prevent further violations. The assessment of the severity of the sanction will be based on both the current case and the Respondent's previous record of

misconduct. Any sanctions imposed on tenured faculty will be pursuant to the procedures delineated in the appropriate faculty handbook. Sanctions might include, but are not limited to:

- a written apology;
- a transfer or change in department or teaching assignment;
- a warning, meaning a written statement that the Respondent violated this policy, a notation of which would be placed in the Respondent's permanent record; and/or
- a referral for counseling and/or training (failure to fulfill the sanctions shall be cause for sanctions of a more serious nature);
- probation for a stated period of time within which the Respondent's rights to participate in College-sponsored activities and/or access to facilities may be limited or removed;
- suspension (with or without pay), meaning a separation from the College for a stated period of time or until specific conditions are met;
- dismissal, meaning permanent removal from employment or College programs, facilities, and property.

The relevant member of the President's Staff will review any sanction recommending termination from employment at the College. If a member of the President's Senior Staff is the Respondent, the President will review any sanction recommending termination from employment at the College.

8. Summary Suspension

The College reserves the right to take necessary and appropriate action to protect the educational environment, and the safety and well being of members of the College community. In the event that any individual charged with violation of the College's Discrimination/Sexual Harassment Policy is deemed a serious risk to the safety and security of the College and/or its campus community, its faculty, students, or staff, the College reserves the right to summarily suspend that individual. The College reserves its right to suspend that individual with or without pay and benefits (tenured faculty can only be suspended with pay

and benefits) and exclude that individual from campus, except as is necessary to participate in the formal hearing process delineated above.

Nothing in this policy shall limit the authority of the College, or any of its constituent parts, to take such actions as the appropriate College officer or Dean or his/her designee deems necessary to protect the physical safety of members of the College community, or to maintain conditions compatible with the educational process or institutional integrity of the College or any of its constituent parts.

9. Appeals

a. Notice of an appeal: Respondents and Complainants may appeal by filing written notice with the College official who issued the disciplinary sanctions (or lack thereof) within fourteen (14) calendar days from the day a sanction is or is not imposed, with a copy to the EEO Officer. *Respondents seeking an appeal must specify in writing the grounds for the request. Respondents who fail to file an appropriate written request for an appeal within fourteen (14) days waive their rights to appeal.*

b. Grounds for appeal: Appeals will be considered only under one or more of the following circumstances:

- when the Respondent deems the sanction inconsistent with the gravity of the offense, except in the case of termination of employment as provided in Section 11.10 of the *Western New England College Faculty Handbook* where review is automatic;
- when new evidence that was not available at the time of the hearing becomes available within the above referenced fourteen (14) calendar day period; or
- when there has been a substantial and material procedural error during the hearing process.

c. Reviewer: The relevant member of the President's Staff will review appeals. In the event that the EEO Officer is the appellee's direct and immediate supervisor, the appeal will be heard by an alternate, designated by the President.

d. Possible results: The relevant member of the President's Staff will review the request for an appeal and any evidence necessary to support that request. He/she shall then have the authority to:

- affirm;
- reverse;
- modify the sanction imposed; or
- remand the matter for further investigation or consideration by the Discrimination/Sexual Harassment Hearing Committee (only available in cases where there is new evidence or where there has been a substantial and material procedural error).

Decisions of the relevant member of the President's Staff are final.

In the event that the Respondent is a member of the President's Senior Staff, the President will review appeals.

e. Appeals for tenured faculty only: Should any tenured faculty member at the College desire to pursue an appeal of any actions imposed on him/her through these procedures, the affected faculty member will avail himself/herself of procedures delineated in the appropriate faculty handbook (for Law Faculty, refer to Section 13.1 in the *Western New England College Law Faculty Handbook*, and for other tenured faculty, refer to Section 6.(B).5 in the *Western New England College Faculty Handbook*).

10. Substitutions

In the event that the Respondent is a Dean, Equal Employment Opportunity Officer, or a member of the President's Staff, the President will designate an appropriate substitute who will assume the responsibilities outlined in this policy. In the event that the Respondent is the President, the Chairman of the Board of Trustees will receive the report of the Committee and determine, with the Board of Trustees, any sanctions to be imposed in accordance with the Bylaws of Western New England College. The decision of the Board of Trustees shall be final.

11. Confidentiality

Throughout all investigations and hearings of complaints arising from discrimination/sexual harassment, both formal and informal, the confidentiality of the proceedings and the identities of the parties to the complaint shall be protected to the fullest extent practicable under the facts and circumstances of each case.

G. What external resources will process a complaint?

Any individual may also file a formal complaint with either or both of the government agencies listed below. Each agency has a short time period for filing a claim (EEOC - 300 days; MCAD - 300 days). Using the College's complaint process does not prohibit a student or employee from filing a complaint with these agencies:

- The United States Equal Employment Opportunity Commission (EEOC)
10 Congress Street - 10th Floor
Boston, MA 02114
617-565-3200
- The Massachusetts Commission Against Discrimination (MCAD)
MCAD Boston Office
One Ashburton Place - Room 601
Boston, MA 02108
617-727-3990
- MCAD Springfield Office
424 Dwight Street, Room 220
Springfield, MA 01103
413-739-2145



WESTERN
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Office of Human Resources
and the CareerCenter
1215 Wilbraham Road

Springfield, MA 01119-2684