

DISCRIMINATION/HARASSMENT/SEXUAL MISCONDUCT /TITLE IX POLICY AND PROCEDURES

Introduction

Western New England University is committed to the principle of equal opportunity in education and employment. The University prohibits discrimination against any employee, applicant for employment, student or applicant for admission on the basis of any protected class. Protected classes include: age, color, creed, disability, ethnicity, gender identity, gender expression, genetics, national origin, pregnancy, race, religion, ancestry, sex, sexual orientation, genetics, active military or veteran status or any other protected category under applicable federal and state or local law.

The University provides equal access and participation in all University activities without regard to sex. Sexual misconduct including sexual harassment, sexual assault and sexual exploitation are forms of sex discrimination and prohibited under Title IX of the Higher Education Amendments of 1972, Title VII of the Civil Rights Act of 1964, and Chapters 151B and 151C of the Massachusetts General Laws. If this conduct occurs off campus, it may fall under the purview of Title IX and Title VII and the University reserves the right to act on incidents occurring off campus.

In addition to the above mentioned regulations, the University also complies with the Violence Against Women Reauthorization Act of 2013 (VAWA)¹, The Clery Act² and The Campus SaVE Act³.

Because the University takes allegations of discrimination/harassment seriously, the University will respond promptly to complaints of discrimination/harassment and will take appropriate action where it is determined that such inappropriate conduct has occurred. Furthermore, the University will act promptly to eliminate the conduct and impose such corrective action and sanctions as necessary.

This policy applies to any individual of either sex who participates in the University community as a student, faculty, staff member, visitor or any other persons having dealings with the institution."

The Assistant Vice President/Director of Human Resources serves as the EEO Officer and ADA 504 Coordinator and oversees the University's compliance efforts with discrimination and equal opportunity.

The General Counsel serves as the Title IX Coordinator and oversees the University's compliance efforts with harassment and sexual misconduct.

Internal inquiries or reports about violations of this policy may be made to:

Title IX Coordinator

Cheryl Smith
General Counsel and Title IX Coordinator
Deliso Hall, Room 102
(413) 782-1542
csmith@wne.edu

ADA/504 Coordinator, Equal Employment Opportunity Officer

Joanne Ollson
Assistant Vice President and Director of Human Resources
Rivers Hall, Room 104
(413) 782-1343

Deputy Title IX Officers

Sean Burke- Student Affairs
Associate Director of Residence Life for Operations
St. Germain Campus Center, Room 222
(413) 782-1316
sean.burke@wne.edu

Lori Mayhew- Athletics
Alumni Healthful Living Center, Room 105B
Assistant Director of Athletics/Equipment Director/Softball Coach
(413) 796-2227
lori.mayhew@wne.edu

Inquiries may be made externally to Office for Civil Rights (OCR)

US Department of Education 400 Maryland Ave SW Washington, DC 20202-1100
Customer Service Hotline # (800) 421-3481
Facsimile (202) 453-6012
TDD# (877) 521-2172
Email: OCR@ed.gov
Web: <http://www.ed.gov/ocr>

Boston Office-EEOC
John F. Kennedy Federal Building 475 Government Center
Boston, MA 02203
Phone: 1-800-669-4000
Fax: 617-565-3196
Complaints can be filed Monday through Friday, from 8:30am to 3:00 pm.

Massachusetts Commission Against Discrimination (MCAD)
436 Dwight Street, Room 222
Springfield, MA 01103

Accommodation of Disabilities

The University is committed to full compliance with the American with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against qualified persons with disabilities.

The Assistant Vice President of Human Resources has been designated as the ADA/504 Coordinator for the University, responsible for coordinating efforts to comply with all disability laws.

Employees requesting reasonable accommodation should complete the ADA Accommodation Request Form found on the Human Resources web page at: http://www1.wne.edu/assets/45/ADA_Accommodations.pdf

Students requesting accommodation should contact the Office of Student Disability Services located in Herman Hall, Room 105.

Prohibited Conduct

Discrimination and Harassment⁴

Harassment constitutes a form of discrimination that is prohibited by law. Members of the Western New England University community, guests and visitors have the right to be free from discrimination and harassment. All members of the campus community are expected to conduct themselves in a manner that does not infringe upon the right of others. The University supports a zero tolerance approach to discrimination and harassment and complies with all applicable federal and state laws.

Sexual Misconduct

A violation of this policy may occur if one party engages in sexual activity with another party without consent.⁵ In order for individuals to engage in sexual activity of any kind with each other, there must be clear knowing and voluntary consent prior to and during sexual activity. Effective consent means that a person is able to make free, informed, and reasonable choices and decisions, and is not incapacitated by intoxication or other drug consumption (be it voluntary or otherwise), by disability, or by fear. Consent is effective when it has been clearly communicated. Consent may never occur if a person is unconscious, unaware, or otherwise physically helpless.

Anything but a clear, knowing and voluntary consent to any sexual activity is equivalent to a “no.”

Coercing someone into sexual activity violates this policy in the same way as physically forcing someone into sex. Coercion occurs when someone is pressured for sex.

In short, consent must include explicit communication and mutual approval of the sexual activities in which the parties are involved. For consent, individuals involved in the sexual activity must willingly and knowingly engage in the activity. As a result, consent cannot be given due to physical force, intimidating behavior, threats, or coercion. Engaging in sexual activity with someone through force, intimidation, threats, or coercion is a violation of this policy. Further consent cannot be given by an individual who is incapacitated. For example, consent cannot be given by those incapacitated by alcohol or drugs, or by individuals who are unconscious. Knowingly engaging in sexual activity with someone who is incapacitated or who otherwise cannot give explicit consent is a violation of this policy. Sexual misconduct offenses include but are not limited to, sexual harassment, sexual assault, and sexual violence as defined below.

Sexual Harassment

The Western New England University community defines sexual harassment as:

- unwelcome, gender-based verbal or physical conduct that is,
- sufficiently severe, persistent or pervasive that it,
- has the effect of unreasonably interfering with, denying or limiting someone’s ability to participate in or benefit from the university’s educational program and/or activities, and is based on power differentials (quid pro quo), the creation of a hostile environment or retaliation. In Massachusetts, the legal definition for sexual harassment is: sexual advances, requests for sexual favors, and verbal or physical conduct of a sexual nature when:
 - (a) submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions; or,
 - (b) such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, humiliating or sexually offensive environment.

The legal definition of sexual harassment is broad and in addition to the above examples, other sexually oriented conduct, whether it is intended or not, that is unwelcome and has the effect of creating an environment that is hostile, offensive, intimidating, or humiliating may also constitute sexual harassment. Sexual harassment can involve a male harasser and female victim, female harasser and male victim, or parties of the same gender. Sexual harassment can also take place on the basis of gender identity or sexual orientation.

While it is not possible to list all those additional 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 they involve physical touching or not;
- Sexual epithets, jokes, written or oral references to sexual conduct, gossip regarding one's sex life; comment on an individual's body, comment about an individual's sexual activity, deficiencies, or prowess;
- Displaying sexually suggestive objects, pictures, cartoons;
- Unwelcome leering, whistling, brushing against the body, sexual gestures, suggestive or insulting comments;
- Inquiries into one's sexual experiences; and,
- Discussion of one's sexual activities.

Western New England University recognizes that our community is not limited to our physical campus and includes “online” and “offline” interactions and postings.

The University, in compliance with the Violence Against Women Reauthorization Act Of 2013 also prohibits

conduct as follows:

Sexual Assault:

The term ‘sexual assault’ means any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent⁶.

Sexual assault includes, but is not limited to:

- Intentional touching of another person’s intimate parts without that person’s consent; or other intentional sexual contact with another person without that person’s consent; or
- Coercing, forcing, or attempting to coerce or force a person to touch another person’s intimate parts without that person’s consent; or
- Rape, which is penetration, no matter how slight, of (1) the vagina or anus of a person by any body part of another person or by an object, or (2) the mouth of a person by a sex organ of another person, without that person’s consent.⁷

Domestic Violence⁸:

Domestic violence means a felony or misdemeanor crime of violence committed by the victim’s current or former spouse, current or former cohabitant, persons similarly situated under domestic or family violence laws, or anyone else protected under domestic or family violence laws.

Dating Violence⁸:

Dating violence means violence by a person who has been in a social, romantic or intimate relationship with the victim. Whether there was such a relationship will be gauged by its length, type, and frequency or interaction.

Stalking⁸:

Stalking means a course of conduct directed at a specific person that would cause a reasonable person to fear for her, his or others’ safety, or to suffer substantial emotional distress.

Other Offenses (that may fall under Title IX as prohibited)

- Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person;
- Discrimination, defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of gender;
- Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
- Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the university community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the Hazing Policy);
- Bullying, defined as repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally (that is not speech or conduct otherwise protected by the 1st Amendment).
- Demonstrating abusive behavior toward another person, including but not limited to verbal or written statements including Internet/electronic communications (that is not speech or conduct otherwise protected by the 1st Amendment).

Retaliation

Any retaliation against an individual who has complained about discrimination, harassment or retaliation against

individuals for cooperating with an investigation of a discrimination/harassment complaint is unlawful and will not be tolerated.

Remedial Action

The University reserves the right to take whatever remedial measures it deems necessary in response to allegations of discrimination, harassment or retaliation in order to protect the rights and personal safety of community members. Such measures include but are not limited to, modification of living/academic arrangements, escort services, no contact orders, interim suspension, reporting the matter to campus and/or local police.

Reporting

There are three federal laws that establish responsibilities for employees of universities to report certain types of crimes and incidents, especially sexual misconduct: the Clery Act, Title IX of the Higher Education Amendments of 1972, and Title VII of the Civil Rights Act of 1964. Each of these areas of federal law has a different purpose, but generally the laws are intended to protect members of the campus community, visitors and guests from criminal and discriminatory behavior. The responsibilities established by these laws give rise to the term “responsible employees.”

The University has defined all employees, both faculty and staff, as responsible employees (except for health care professionals and any other individuals who are statutorily prohibited from reporting). When an employee becomes aware of an alleged act of sexual harassment, sexual misconduct discrimination, sexual assault, domestic violence, dating violence, or stalking, the employee must promptly contact the Title IX Coordinator or one of the Deputy Coordinators. The Coordinator or Deputy will use the Complaint Reporting Form ([see Attachment](#)) when gathering the initial information. If the complainant does not want to meet with the Title IX Coordinator or Deputy the employee receiving the complaint should print the form and complete with the complainant. The printed form should be hand delivered to the Title IX Coordinator and not sent electronically or through regular campus mail.

If an employee thinks that a complainant may report an act of sexual misconduct, the employee should inform the complainant that the University will maintain the privacy of the information to the greatest extent practicable. The employee may be required to report the act and reveal the names of the parties involved. If the complainant wishes to proceed, the employee should inform the complainant of the implications of sharing the names of the parties involved, which puts the University on notice.

If the complainant decides not to share the information with the employee, the employee should refer the complainant to resources on campus who have the ability to maintain confidentiality by virtue of their role. These on-campus resources include the Counseling Center, Health Services and Spiritual Life. Spiritual counselors, professional medical care providers, mental health providers, and those who report to them are under no obligation to report any details to the Title IX Coordinator. Non-professional counselors are not required to report incidents of sexual violence in a way that identifies the victim without the victim’s consent. If the complainant shares the information but indicates they will not participate in the investigative process, the employee must report this information to the Title IX Coordinator.

On-campus resources are available to members of the campus community. There are a number of off campus resources that complainants can be referred to as well. All complainants should be given a copy of the Harassment, Discrimination and Retaliation Reporting Pamphlet and the Emergency Information and Resources document.

Investigation

When the University receives a complaint, it will promptly investigate the allegation in a fair and expeditious manner. In compliance with OCR guidelines, the University will complete all investigations within a 60 business day time period which can be extended for appropriate cause by the Title IX Coordinator. At the close of the investigation, the Title IX Coordinator will report that a) the case should proceed under this policy; b) the case should proceed under other student/faculty disciplinary policy; or c) no further action is warranted.

Prior to any hearings, the investigator will interview all parties and witnesses, compile statements, verify statements, gather documentation, review evidence, conduct research and draft a report to submit to the governing disciplinary

board (students) or hearing committee (faculty, staff) if one has been convened.

If a student/employee who is party to a Title IX Investigation chooses legal counsel as an advisor, all communication as to process and procedures relevant to the University's investigation and hearing process will be communicated directly to the party's legal counsel by the office of the General Counsel of the University.

Resolution, Disciplinary Action and Sanctions

Informal Resolution- Some claims of discrimination and harassment may be resolved informally, these claims do not include incidents of sexual violence. Some examples of informal resolutions include:

- Mediation between the complainant and respondent; and
- Conducting educational programs for groups or individuals.

The purpose of informal resolution is to implement an appropriate solution acceptable to all parties concerned. The Title IX Coordinator will work with the Complainant and Respondent to reach an informal resolution. If the Respondent is a faculty member the Dean of the respective School will participate in the resolution process. At the conclusion of the informal process a memorandum of understanding will be signed by both parties.

In the event that the informal process does not achieve resolution of the issue, the formal resolution process will be implemented.

When the Respondent is a student the procedure for Resolution of Claims outlined in the Student Code of Conduct will apply (<http://www1.wne.edu/student-activities/doc/handbook-2016-2017-final1.pdf>).

Formal Resolution

When a complaint is resolved through formal resolution, a Discrimination/ Harassment Hearing Committee will be convened. The Committee will consist of five (5) members of the Western New England community appointed by the President to serve two- year terms. Quorum will be 3 members. The Committee will be comprised of two (2) tenured faculty members referred to the President by the University Senate, one (1) non-exempt staff, one (1) exempt staff, all from different departments. Non- exempt and exempt staff will be selected by the President in consultation with the Assistant Vice President and Director of Human Resources. Replacement of faculty representatives on the Committee will be made by the University Senate. 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 the discrimination/harassment.

At any given time, there should be no more than three (3) 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 of the Committee will be a graduate student, law student, or pharmacy student as appropriate to the case. Student Committee Members can serve no more than two (2) consecutive one-year terms and will be recommended by the Student Senate Governing Boards.

Initiation of the Hearing Procedure

A copy of the complaint along with the investigator's report will be delivered to the Chair of the Committee. The investigator's report will include the respondent's response, witness statements, and all other relevant information documented during the investigation.

Within 10 days of receiving the information, the Chair of the Committee will send a list of Committee members to both the complainant and respondent. Either party may challenge any member's eligibility for cause in writing to the Chair, within two (2) working days of receiving the list. Any such challenge will be ruled upon by the Chair of the Committee. Any Committee member with previous knowledge of the incident will present that information to the Committee chair. 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 three (3) members of the Committee remain eligible, another member will be appointed by the President pro tempore.

No hearing will be held without the parties being given at least seven (7) calendar day notice. Each party may be accompanied during each session by one (1) advisor. If the advisor is an attorney, the advisor must be informed that they are not acting as legal counsel or advocate. The advisor will not participate in the session, but may observe and consult freely with the person whom they are advising.

Any party who is part of a Title IX proceeding may seek assistance from an advisor of the party's choice who is either a member of the University community (current student, alumnus, faculty member, or staff), family member, or legal counsel. The advisor's role is to provide clarification as to process and procedure, and offer general support to the party. The advisor's role is not to defend, speak on behalf of or otherwise advocate on behalf of, a complainant or respondent.

Advisors are permitted to attend meetings and hearings, but may not speak during a hearing. A Hearing Officer, at his/her discretion, may seek out clarification from an advisor. Advisors are not permitted to question any witnesses prior to or during a hearing. If an advisor has first-hand information as to an incident or situation, the advisor may provide a written statement to the Hearing Officer at the time of the scheduled hearing. An advisor may write a note to a student party during a hearing, and may request a brief recess to confer with a student party.

An advisor may review and read the investigative record and take notes. No copies of any investigative materials will be given to the advisor.

Any advisor who in the University's discretion is deemed to be disruptive or disrespectful during any hearing, meeting, or through any investigative process, will be asked to remove him/herself from the process. The University will not postpone or continue an investigation, a hearing, or a meeting because of the removal of an advisor who does not comply with the University's participation guidelines.

Conduct of Formal Hearings

The formal hearing will be recorded for the Committee's use in deliberations. The recording will not be transcribed but will be stored securely and confidentially by the General Counsel. Upon receipt of signed written request, a copy of the recording will be made available to either party by the General Counsel's office. The Committee alone may question witnesses and parties. Each party has the right to be present for the entirety of the hearing. In the course of the hearing, each party may submit in writing, questions to be asked by the Committee. However, the Committee reserves the right to decline to pursue any such questions. The Respondent has the right to refuse to testify.

The Complainant and Respondent may 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.

Findings of the Committee (Preponderance of the evidence Standard)

After the hearing, the Committee will 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.

Decision and Written Report

The Committee will deliberate in closed session to determine whether the responding party is responsible or not responsible for the violation in question. The Committee will base its findings and recommendation on a preponderance of the evidence standard.

The Chair will prepare a written deliberation report and deliver it to the Title IX Coordinator detailing the finding, the evidence heard, and how each member voted. The report should conclude with the recommended sanctions. All findings by the Committee shall be based on a majority vote of the panel. The Committee members must sign the written report.

After consultation with the Title IX Coordinator the employee's immediate supervisor will determine and impose sanctions in writing to the respondent. Disciplinary action will be taken by the respondent's supervisor for staff and Deans of the respective School or College for faculty.

The Title IX Coordinator will inform the party bringing the grievance of the final determination within 2-3 days of the hearing. The notification will be made in writing and delivered in person or certified or overnight mail.

Sanctions (Faculty, Administration, Staff)

Sanctions imposed by the Committee will be commensurate with the seriousness of the conduct, and will be adequate and sufficient to demonstrate the University'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 (if applicable). 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, which would be placed in the Respondent's permanent record;
- 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 slated period of time within which the Respondent's rights to participate in University-sponsored activities and/or access to facilities may be limited or removed;
- suspension (with or without pay) meaning a separation from the University for a slated period of time or until specific conditions are met; or
- dismissal, meaning permanent removal from employment or University programs, facilities, and property.

The appropriate administrative officer of the University will be notified of any sanction recommending termination from employment at the University.

Summary Suspension

The University reserves the right to take necessary and appropriate action to protect the educational environment, and the safety and well-being of members of the University community. In the event that any individual charged with violation of the University's Equal Opportunity – Nondiscrimination- Harassment Policy is deemed a serious risk to the safety and security of the University and/or its campus community, the University reserves the right to summarily suspend that individual. The University 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 necessary to participate in the formal hearing process delineated above.

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

Appeals (Faculty, Administration, Staff)

Notice of an appeal

Respondents and Complainants may appeal by filing written notice with the Title IX Coordinator within 14 calendar days from the day a sanction is or is not imposed. Respondents and Complainants seeking an appeal must specify the grounds for the request. Respondents and Complainants who fail to file an appropriate written request for an appeal within fourteen (14) days waive their rights to appeal.

Grounds for appeal

Appeals will be considered only in one or more of the following circumstances:

- when a Respondent or Complainant deems the sanction inconsistent with the gravity of the offense, except in the case of termination of employment as provided in the Western New England University 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.

Review

A three member appeals panel will be designated by the Title IX Coordinator in consultation with the President of the University. Appeal panel members may not include individuals who had previously been involved in the grievance process. The appeal panel will have the authority to:

- affirm;
- reverse;
- modify the sanctions; or
- remand the matter for further investigation or consideration by the Committee (only available where there is new evidence or where there is a substantial and material procedural error).

The original decision and sanction will stand if the appeal is not timely or is not based on the grounds cited above. After conferring with the appeals panel, the Title IX Coordinator will deliver a written decision on the appeal to all parties within 3 business days from the review of the appeals panel. Decisions of the appeals panel are final.

Appeals for tenured faculty only

Should any tenured faculty member at the University 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.

Substitutions

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 University. The decision of the Board will be final.

Confidentiality

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

Rights of the Complainant and Respondent

- The right to be treated with respect by University officials.
- The right to be notified of available counseling, mental health or other services, both on and off campus.
- The right not to be discouraged by University officials from reporting an assault to both on campus and off campus authorities.
- The right to be free from retaliation.
- The right to have a single advisor present during the process.
- The right to be informed in advance, when possible, of any public release of the information regarding the complaint.
- The right to written notice of the outcome and sanction of the hearing.
- The right to a fundamentally fair hearing as defined in these procedures.
- The right to an outcome based solely on the evidence presented during the process.
- The right to be informed in advance, when possible, of any public release of the information regarding the complaint.

Training

The University will offer education programs annually to all employees and students about the topics outlined in this policy. Additionally, the University will offer prevention and awareness programs to all new students and employees as part of the orientation processes.

Revisions

This policy will be reviewed and updated annually by the Title IX Coordinator.

Revised as of 4-10-2017

1. Violence Against Women Reauthorization Act Of 2013
2. 20 U.S.C.A. § 1092 (West); 34 C.F.R. § 668.46
3. Violence Against Women Reauthorization Act Of 2013 § 304
4. M.G.L.A. 151B § 4
5. There is no legal definition of consent in Massachusetts.
6. Violence Against Women Reauthorization Act Of 2013
7. White House Task Force to Protect Students from Sexual Assault
8. Violence Against Women Reauthorization Act Of 2013

