

**HARASSMENT
AND
DISCRIMINATION
POLICY**

NIPISSING UNIVERSITY

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Harassment and Discrimination Policy

The Board of Governors of Nipissing University endorses the principle that all members of the University community have the right to study and work in an environment free from harassment. The environment can include incidents that occur both on and off campus which have the potential to adversely impact a person's work or academic performance or create a poisoned work or study environment. The Board endeavours at all times to provide an environment which is supportive of the University's goals, dignity and self-esteem of its members, and will not tolerate behaviour that denies individuals their dignity.

Harassment and discrimination of any kind is considered a serious offense, subject to disciplinary action by the appropriate University authority.

The University has established a Harassment and Discrimination Committee for the purpose of resolving complaints under the Harassment and Discrimination Policy (herein after referred to as the Policy).

Definition

Harassment is defined by the Ontario Human Rights Code, as a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome to a person in relation to one of the prohibited grounds contained in the Code. The Board of Governors prohibits harassment and discrimination on the grounds of race, ancestry, place of origin, colour, ethnic origin (including language, dialect or accent), citizenship, creed, sex, sexual orientation, disability, age, record of offences, marital status, family status, and the receipt of public assistance. These prohibitions are based on those specified in the Ontario Human Rights Code.

Harassment and discrimination may be related to any of the grounds prohibited by the Code. It can include comments or conduct by a person in a position of authority which are intimidating, threatening or abusive and may be accompanied by direct or implied threats to the individual's grade(s), status or job.

Harassment can also occur between people of similar authority. For clarity purposes, similar authority would be support staff to support staff, or faculty to faculty, etc. Where a Nipissing University employee is in a personal relationship with an individual such that there is, or may be perceived to be, a conflict of interest or possible favouritism, then that employee will decline or terminate a supervisory or evaluative role with respect to that individual, and when necessary, make appropriate alternative arrangements for the supervision and/or evaluation of that individual. Alternate arrangements may entail advising the employee's appropriate supervisor of the relationship and reasons for conflict of interest. The employee may ask the supervisor to relieve him/her of any related duties of supervision or evaluation of that individual.

For the purposes of this Policy, definitions and examples are as follows:

Harassment: one or a series of vexatious comments or conduct related to one or more of the prohibited grounds that is known or might reasonably be known to be unwelcome/unwanted, offensive, intimidating, hostile or inappropriate.

Examples include gestures, remarks, jokes, taunts, innuendoes, display of offensive materials, offensive graffiti, threats, verbal abuse, hazing, shunning or exclusion related to the prohibited grounds.

Sexual Harassment: one or a series of comments or conduct of a gender-related or sexual nature that is known or might reasonably be known to be unwelcome/unwanted, offensive, intimidating, hostile, or inappropriate.

Examples include gestures, remarks, jokes, slurs, taunts, innuendoes, threats, verbal abuse, unwanted physical contact, invitations, leering, the display of sexually offensive material, solicitation, demands, penalties related to sexual orientation, marital, or family status, unwanted attention, implied or expressed promise or reward or benefit in return for sexual favours, implied or expressed threat(s) or act(s) of reprisal if sexual favours are not given.

Discrimination: action(s) or behaviour(s) that result in the unfavourable or adverse treatment or preferential treatment which has the effect of creating or perpetuating prejudice or stereotyping.

Examples include refusal to provide goods, services or facilities, exclusion from employment or employment benefits, refusal to work with, teach, or failure to provide physical access.

Negative Environment: one or a series of comments or conduct that creates a negative environment for individuals or groups and are related to the prohibited grounds. The comment or conduct must be of a significant nature or degree and have the effect of "poisoning" the work or study environment. A complainant does not have to be a direct target to be adversely affected by a negative environment. It includes conduct or comment that creates and maintains an offensive, hostile, or intimidating climate for study or work.

Examples include exposure to graffiti, signs, cartoons, remarks, exclusion or adverse treatment related to one or more of the prohibited grounds.

Systemic Harassment/Discrimination: policies, practices, procedures, actions or inactions, that appear neutral, but have an adverse impact associated with one of the prohibited grounds.

An example is exam schedules that conflict with important religious events.

I. Principles

1. All complainants, respondents and witnesses are to be treated fairly. Fairness includes, but is not limited to, the right to reasonable notice, and the opportunity to be heard by impartial and unbiased decision makers.
2. Member(s) of the University community who feel they have been harassed or discriminated against are encouraged, where appropriate, to make a direct request to the harasser or discriminator to stop the offensive behaviour.
3. The complainant is encouraged to keep a written record of the nature of the behaviour, times of its occurrences, and witnesses, if any.
4. Wherever possible, allegations and complaints of harassment or discrimination will be resolved informally or by mediation at the Informal Complaint Level (Section IV). Formal hearings (Section VI) under this Policy will be initiated only after informal resolution or mediation has been offered as an option, or an informal resolution or mediation of the complaint has been attempted and has failed.*
5. Staff and members of the committee who receive information with respect to a complaint will be required to maintain this information in confidence. However, the University reserves the right to disclose information as necessary to ensure the health, safety and security of members of the University community and in response to any legal orders or directions to disclose.
6. Remedies provided under this Policy are intended:
 - a) to resolve complaints fairly and acceptably to complainants and respondents;
 - b) to recommend appropriate disciplinary measures for individuals who are found to have committed acts of harassment or discrimination; and
 - c) to prevent acts of harassment or discrimination.
7. Complaints of alleged assault or other alleged criminal actions will be referred to the appropriate police services. However, in appropriate cases, proceedings may be taken under this Policy while criminal proceedings are underway.
8. It is understood that this Policy does not prevent any individual from seeking redress under the Ontario Human Rights Code or other legal avenues.

**It being understood that in the case of a student to student complaint, procedures in the Code of Student Rights and Responsibilities shall be followed exhaustively prior to the commencement of proceedings pursuant to this policy.*

II. Administrative Procedures

1. Committee Structure:

Chairperson: Director, Human Resources (permanent)

Executive Administration (one member)

Board of Governors (one member)

Academic Senate Representative (one member)

Student Union Executive (one member)

Education Student Representative (one member)

Professional School Student Representative (one member)

Arts and Science Student Representative (one member)

Nipissing University Faculty Association Representative (one member)

Ontario Public Service Employees' Union Representative (one member)

Manager, Student Counselling Services (permanent)

Manager, Residence Life (permanent)

A complaint of harassment or discrimination may be made to any member of the committee. A listing of current committee members is posted in the employee lounge, the Office of Student Development and Services, the Registrar's Office, and beneath all Harassment and Discrimination Policy posters.

2. Bias or Conflict of Interest Guidelines

- a) Prior to considering the merits of a complaint, the Chair shall determine if any member(s) has a bias or conflict of interest in the matter being considered. If the Chair has a bias or conflict of interest, the Committee shall elect another member to act as Chair.
- b) A member of the committee shall be deemed to have a bias or conflict of interest if the member has had any direct involvement in the matter being considered; or the member has been associated with the complainant or respondent such that there would be an actual or reasonably perceived obstacle to objectivity in determining the matter being considered.
- c) The complainant or respondent may specifically identify by name any committee member(s) whom the complainant or respondent believes to have a bias or conflict of interest and shall state the reasons for such belief.
- d) Where a difference of opinion arises on the question of any member's bias or conflict of interest, the matter shall be decided by a simple majority vote of the committee, excepting the member(s) under consideration. The member(s) under consideration shall be absent during the vote.
- e) Where a member declares, or it is determined, that a bias or conflict of interest exists, said member shall be disqualified from taking part in the deliberations and that member's place on the committee shall be taken by an alternate chosen by the Chair.

III. Initiating the Complaint

1. A complaint of harassment or discrimination may be made by any member(s) of the University community. In other words, a complaint may be made by or against a member(s) of the University community. Members of the University community include:
 - all employees;
 - all students;
 - members of the Board of Governors;
 - members of standing and Ad Hoc Committees established by the University;
 - members of societies, associations and organizations which have a direct relationship or are under the authority of the University;
 - contractors, individuals providing services or conducting research; and
 - visitors or guests who have no ongoing connection to the University but are on campus.

In the interest of fairness, no action of any kind will be taken, except in unusual circumstances, until a formal written and signed complaint has been made by a complainant.

A formal written and signed complaint must identify the person(s) complained against, and provide a description of the conduct alleged to violate the Policy, including such details as the date(s) the incident(s) occurred, where they occurred, who was present, what happened, and reasons why the complainant feels he/she was harassed or discriminated against. It should also identify any person(s) who may have information relevant to the complaint.

2. A complaint of harassment or discrimination may be made to any member of the committee. The committee member will direct the complainant to the Chair. The complaint should be made as soon as possible after the alleged incident, but must be made within one (1) year of the alleged incident.
3. Following the consultation with the committee member and the Chair, the complainant shall indicate whether he/she elects to: take no further action; or proceed with an attempt to resolve the complaint informally.
4. If the complainant elects to proceed to resolve the complaint informally, the complainant shall make a written statement of the circumstances of the alleged harassment or discrimination and provide written authorization for the committee member to authorize the Chair to proceed with the informal complaint procedure.

IV. Informal Complaint Procedure

1. Upon receipt of a signed written complaint and authorization, the Chair will, in consultation with the complainant, assemble an Ad Hoc Committee. The Ad Hoc Committee will be composed of the Chair and one (1) other member of the Harassment and Discrimination Committee.
2. The Ad Hoc Committee will meet with the complainant to explain and follow the procedures of the Policy and to investigate the complaint.
3. In order to continue with the Informal Complaint Procedure, the Ad Hoc Committee will meet with the respondent to discuss the allegations and shall forward a copy of the written complaint to the respondent within five (5) working days and request a response within ten (10) working days. A copy of said response will be forwarded to the complainant within five (5) working days of its receipt by the Ad Hoc Committee. The complainant may reply in writing to the respondent's statement within five (5) working days.
4. The Ad Hoc Committee may meet with the complainant and the respondent, either, individually or together, in an attempt to achieve a fair and acceptable resolution. The complainant and respondent may be accompanied by an advisor (which may include external community services representation, e.g., counsellor, lawyer, etc.) at any time during this process.
5. The informal process may result in a mutually acceptable resolution, withdrawal of the complaint or failure to resolve.

6. The Ad Hoc Committee will write a report setting out:
 - a) the background of the case, including the allegations;
 - b) the response;
 - c) the steps taken to resolve the complaint; and
 - d) recommendations.
7. The report shall recommend one of the following:
 - a) that no further action be taken because a resolution has been achieved or the complaint has been withdrawn;
 - b) that a Complaint Panel (three other members of the Harassment and Discrimination Committee) be appointed to hear the complaint; or
 - c) that no further action be taken because the complaint is frivolous, vexatious or without foundation.
8. A copy of the report shall be sent to the complainant and respondent.
9. All documentation pertaining to harassment or discrimination complaints will be kept by the University.

V. Appeal Procedure

1. In the event the Ad Hoc Committee recommends that no further action be taken, the complainant shall have the right to appeal.
2. An appeal shall be sent to the Director, Human Resources and Employee Relations, within ten (10) working days of receiving the report of the Ad Hoc Committee, and shall set out all of the facts and arguments on which the complainant bases the appeal to the report.
3.
 - a) The Director, Human Resources and Employee Relations shall then appoint a member of the Harassment and Discrimination Committee who has not been involved in the Informal Complaint Procedure to review all of the material considered by the Ad Hoc Committee, as well as any other material that may be filed by either party.
 - b) A hearing date, that is mutually convenient for both parties will be set. Reasonable efforts will be made to agree upon a mutually convenient hearing date, but if such an agreement cannot be reached the member appointed in 3(a) above reserves the right to set the hearing date unilaterally.
 - c) At the hearing, the parties may appear with an advisor. Each party shall present his or her case to the Harassment and Discrimination Committee member, and have the opportunity to question the other party and witnesses called by the other party.

After the completion of the hearing, the member shall decide:

- i) to implement the recommendation of the Ad Hoc Committee; or
- ii) to allow the appeal and request the Chair to convene a hearing panel to hear the complaint according to the rules set down in the Formal Complaint Procedure. Although proceedings under the Formal Complaint Procedure are not governed by the *Statutory Powers Procedure Act*, procedures shall generally conform to the minimum procedural rules as required by the *Statutory Powers Procedure Act*.

VI. Formal Complaint Procedure

1. A Complaint Panel shall be appointed by the Chair if:
 - a) the Ad Hoc Committee recommends that it be referred to a Complaint Panel, and this recommendation is not appealed;
 - b) the Ad Hoc Committee recommends that no further action be taken on the matter and this matter is successfully appealed; or
 - c) the complainant elects to proceed through the Formal Complaint Procedure.
2. The Complaint Panel shall receive the original complaint. The panel shall communicate with the parties and consult with them with respect to:
 - a) date for hearing;
 - b) expected length of the hearing;
 - c) names of any witnesses who are expected to be called; and
 - d) the documents which are to be submitted.

The panel will make every effort to convene a hearing under the Formal Complaint Procedure within twenty (20) working days of the receipt of the appeal or recommendation. The panel shall ensure that at least ten (10) working days before the hearing date disclosure takes place between the parties.
3. Either party may be accompanied by an advisor. In the event that one party does not appear at the hearing despite reasonable notice, the committee may proceed with the hearing in their absence.
4. Upon completion of the hearing, the panel shall, within twenty (20) working days, provide its findings to the parties in writing.
5. The Complaint Panel shall determine whether the act(s) as alleged by the complainant constitute:
 - a) Harassment or discrimination, and if not, the panel shall dismiss the complaint. Documentation will be kept by the University.
 - b) If the panel finds that the respondent's conduct has fallen within the Policy's definition of harassment or discrimination, it then shall recommend to the President that disciplinary and/or remedial action be taken. Where disciplinary or remedial action is recommended, the panel shall forward its reasons together with any necessary documents to the President.
 - c) Disciplinary action may include a reprimand, a suspension, demotion, dismissal, expulsion, or such actions as may be deemed appropriate, and shall be implemented pursuant to the relevant University policies or agreements.
6. There shall be no retaliation or reprisals against any person as a result of their attempts to enforce rights or obligations under this Policy.
7. Members of the committee who have been involved in any attempts to resolve the case are excluded from the Complaint Panel. The Complaint Panel shall consist of three (3) new members of the Harassment and Discrimination Committee.