

Anti-Harassment Policy

Introduction

New England Law strives to provide a work and educational environment that is free of harassment based on race, color, religion, national origin, ethnicity, sex, sexual orientation, gender (including identity and expression), age, disability, military status and any other legally protected characteristic. This anti-harassment policy covers sexual harassment and other types of harassment based on protected class status. Harassment is a form of discrimination and prohibited in the workplace, at work-related functions, outside of work if it affects employees in the workplace, and in connection with the School's educational programs. This policy covers all employees and students of New England Law. While this policy sets forth our goals of promoting a workplace and educational environment that are free of harassment, the policy is not designed or intended to limit our authority to discipline or take remedial action for workplace or other conduct that we deem unacceptable regardless of whether that conduct satisfies the legal definition of harassment.

Coordination with [Interim Title IX Sexual Harassment Policy](#)

New England Law is subject to federal and state laws that prohibit discrimination in employment and in its educational programs. In the case of sexual harassment, there are different legal requirements depending on whether the alleged conduct violates Title IX or another law. This policy is intended to comply with the legal requirements where the alleged conduct does *not* fall under Title IX. New England Law maintains a separate policy, the Title IX Sexual Harassment Policy, to cover sexual harassment under Title IX. Some types of sexual harassment may be prohibited by both this policy and the Title IX Sexual Harassment Policy. In those cases, New England Law will apply the Title IX Sexual Harassment Policy.

Definition of Harassment

Definition of Harassment: Harassment under this policy consists of unwelcome and offensive conduct that denigrates any individual based on protected class status and has the purpose or effect of interfering with work or academic performance by creating an intimidating, offensive, or hostile work or educational environment. In evaluating whether the conduct rises to this level, the school applies the totality of the circumstances framework, which is described below.

Sexual harassment is a form of harassment and includes unwelcome sexual advances, requests for sexual favors, offensive remarks about a person's sex, and other verbal or physical conduct of a sexual nature. Such activities are illegal when:

1. Submission to, or rejection of, such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or education or is used as a basis for employment or academic decisions; or
2. Such advances, requests, or conduct have the purpose or effect of unreasonably interfering with work or academic performance by creating an intimidating, hostile, humiliating or sexually offensive work or educational environment. In evaluating whether the conduct rises to this level, the school applies the totality of the circumstances framework, which is described below.

Totality of the circumstances framework: In evaluating whether conduct violates this policy by creating a hostile environment, the conduct is evaluated based on the totality of the circumstances, including its severity and pervasiveness and the context in which the conduct occurred. For a one-time incident to create a hostile

environment, it must ordinarily be severe. In general, the conduct must be sufficiently severe or pervasive. The context of the conduct is also a factor in determining whether there is a policy violation. In the context of legal education, for example, there may be times when a discussion of offensive conduct serves a legitimate educational purpose, such as when describing the facts of a case where harassing conduct is alleged. The school will base any determination of a policy violation based on a review of the totality of the circumstances.

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

Examples of harassment: Harassment can be both overt and subtle, and may include:

- Jokes or comments, including epithets, slurs and negative stereotyping, that are unwelcome or offensive regarding a person or group's race, color, national origin, sex, gender (including identity and expression), sexual orientation, disability, and any other legally protected characteristic.
- The distribution, display, or discussion of any written, audio, visual or graphic material that reflects hostility or disrespect toward an individual or group based on protected class status.

In the case of sexual harassment, the conduct may include:

- Unwelcome sexual advances or propositions, whether they involve physical touching or not;
- Sexual epithets, jokes, written or oral references or sexual conduct, or gossip regarding one's sex life;
- Contextually inappropriate comment on an individual's body or appearance;
- Comment about an individual's sexual activity, deficiencies, or prowess;
- Displaying of sexually suggestive objects, pictures, cartoons;
- Actions such as leering, whistling, brushing against the body, sexual gestures, suggestive or insulting comments;
- Inquiries into or discussions of one's sexual experiences;
- Observing, photographing, videotaping, posting, or making other visual or auditory records of sexual activity or nudity, where there is a reasonable expectation of privacy, without the knowledge and consent of all parties; and
- Sharing visual or auditory records of sexual activity or nudity without the knowledge and consent of all recorded parties and recipient(s).

Retaliation Prohibited

Any action taken in retaliation against a person who makes a complaint of harassment, who cooperates in an investigation of a complaint of harassment, or who opposes harassment is also unlawful and will be subject to the procedures and remedies applicable to harassment itself.

Procedures and Remedies

Initiation of Complaint: Any employee of New England Law who has encountered conduct that violates this policy should bring the matter to the attention of an Associate Dean or the Human Resources Office. Any student of New England Law who has encountered conduct that violates this policy should bring the matter to the attention of the Director of Student Services or an Associate Dean.

An Associate Dean may be reached by calling the Office of the Dean at (617) 422-7221 (ext. 7221 if calling from an internal phone). The Human Resources Office may be reached at (617) 422- 7206. The Director of Student Services,

who also serves as the Section 504 Title IX Coordinators, may be reached at (617) 422-7401 or at TitleIXCoordinator@nesl.edu.

If the complaint is against the Dean, the complaint should be brought to the Chairman of the Board of Trustees, who may be contacted at (617) 422-7221.

Duties of the Officer: Unless the Dean is the person accused of harassment, the Office of the Dean should be consulted by the person receiving the complaint in determining who will be responsible for handling the complaint (the "Officer").

Once the Officer has notice of possible harassment, the Officer shall take immediate and appropriate steps. This can include, where appropriate, taking steps to resolve the issues informally, conducting or arranging for an investigation into the alleged incident(s), and taking interim measures, after consultation with the Office of the Dean (unless the Dean is the accused party), including suspension of the alleged harasser, reasonably calculated to end any harassment, to eliminate a hostile environment if one has been created, and prevent harassment from recurring.

Any investigation will be conducted promptly in a fair and expeditious manner. The investigation will be conducted in a way as to maintain confidentiality to the extent possible under the circumstances. However, the law school community should understand that it is not always possible to keep complaints confidential during an investigation, since investigations generally include private interviews with the complainant, with any witnesses, and with the person alleged to have committed the harassment (the "respondent"). In determining whether harassment or other offensive conduct has occurred, it is not a sufficient excuse that the respondent "meant no harm" or was "just joking." Instead, the standard to be applied is the perspective of a reasonable recipient of the alleged harassing or offensive conduct.

The results of the investigation will be reviewed, as appropriate, by the Dean and/or Dean's designee(s) (or by the Chairman of the Board of Trustees if the accused is the Dean) for a final determination as to whether this policy has been violated or whether the matter warrants disciplinary action. When the law school has completed its investigation, if it is determined that inappropriate conduct has occurred, it will act promptly to eliminate the offending conduct, and where it is appropriate, it will also impose disciplinary action. Such action may range from counseling to termination of employment, or in the case of a student up to and including expulsion, and may include other forms of disciplinary action, depending on the circumstances.

Procedures Where the Accused Harasser Is a Student: Where the accused harasser is a student and the law school concludes, after investigation, that the incident(s) should be treated as cause for disciplinary action, the Dean (or Dean's designee(s)) will inform the complainant and respondent of the outcome. Any disclosure of discipline is subject to the Family Educational Rights and Privacy Act (FERPA), which allows the school to disclose information about sanctions that relate directly to the complainant, but prohibits the disclosure of additional information. Either the complainant or respondent can appeal the level of discipline to the Discipline Committee by submitting, within 20 days of learning of the outcome of the investigation, a written statement to the Office of the Dean explaining why the discipline should be changed, including submitting any supporting materials as are necessary. If there is no appeal, the recommended discipline will go into effect.

Where there is an appeal: The Office of the Dean will provide a copy of the appealing party's statement (or a summary of that statement) to the other party, who will have the option of providing a written response. Any written response should be submitted to the Office of the Dean within 20 days after that person's receipt of the appealing party's written statement. The Office of the Dean will transmit to the Discipline Committee copies of complainant's and respondent's written statements and any supplemental materials that the Office of the Dean wants to bring to the Discipline Committee's attention. The Discipline Committee will promptly review the written

materials and may affirm, increase, or decrease the level of discipline and may make this decision based on the written submissions, or may decide, in its sole discretion, to interview the parties or to hold an evidentiary hearing. The decision of the Discipline Committee will be final.

Procedures Where the Accused Harasser Is a Non-Student Employee: Where the law school concludes, after investigation, that the incident(s) should be treated as cause for disciplinary action:

- and the accused harasser is a non-tenured faculty member or a staff member, then the Dean or Dean's designee(s) may impose discipline, up to and including termination of employment.
- and the accused harasser is a tenured faculty member, the Dean or Dean's designee(s) may unilaterally impose discipline at a level below the withdrawal of tenure. If the discipline to be imposed rises to the level of withdrawal of tenure, then the matter will be subject to Rule 4.8 of the Faculty Rules, which provides tenured faculty members with a right to an evidentiary hearing before the appropriate faculty committee, with any recommendation of that committee to withdraw tenure subject to a final decision by the Board of Trustees.
- and the accused harasser is the Dean, the Chairman of the Board of Trustees may impose discipline up to and including termination of employment, except that if the Dean is a tenured faculty member, tenure may not be withdrawn without following Rule 4.8 of the Faculty Rules.

Procedures Where the Accused Harasser is a Third Person: If the conduct of a third person not an employee of or student at the New England Law is the subject of a complaint of harassment, the Officer shall refer the matter to the Dean for appropriate corrective action, which can range from a verbal warning to termination of the right of the alleged harasser to enter the facilities, conduct business with, or participate in the activities of the law school.

State and Federal Remedies: The law school expects that employees will bring any concerns about sexual or other discriminatory harassment to the school's attention. In addition to the remedies set forth above, a formal complaint of employment harassment may be directed to the government agencies set forth below:

United States Equal Opportunity Commission ("EEOC")
John F. Kennedy Federal Building 475 Government Center
Boston, MA 02203
1-800-669-4000

Massachusetts Commission Against Discrimination ("MCAD")
One Ashburton Place - Room 601
Boston, MA 02108
(617) 994-6000