



The State University of New York

Office of the Chancellor

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www.suny.edu

DRAFT NON-FINAL M E M O R A N D U M

_____, 2018

TO: Members of the Board of Trustees
FROM: Kristina M. Johnson, Chancellor
SUBJECT: Sexual Harassment and Consensual Relationship Policy

Action Requested

The proposed resolution establishes a uniform policy statement with respect to sexual harassment and directs campuses to create a consensual relationship policy.

Resolution

I recommend that the Board of Trustees adopt the following resolution:

Whereas New York State and the State University of New York are committed to protecting the safety and well-being of its students and staff and maintaining educational and working environments that are free from discrimination and harassment; and

Whereas SUNY recognizes the need to take all possible precautionary steps to prevent harassment from occurring, and believes that college officials can play a crucial role in combatting sexual harassment and discrimination on its campuses; and

Whereas SUNY also recognizes the importance of assisting the victims of discrimination and harassment, and putting appropriate processes in place to hold offenders accountable for their discriminatory and harassing conduct, in accordance with due process requirements; and

Whereas when sexual harassment occurs on campus it interferes with the campus's learning and working environment and is



prohibited by law, including by Title VII the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972 and the New York State Human Rights Law, and such conduct cannot and will not be tolerated; and

Whereas Governor Andrew M. Cuomo has taken an active leadership role in addressing sexual harassment in both the government and private sectors; and

Whereas SUNY has reviewed its existing policies and procedures aimed at preventing sexual harassment, and has found that while all its campuses have long maintained programs which apply evidence-based approaches to preventing and responding to sexual harassment and other forms of sex-based discrimination, such best practices should be uniformly applied at all SUNY campuses; and

Whereas when SUNY faculty, staff and students exercise power and authority over other SUNY faculty, staff and students whether due to current supervisory, instructional, or other professional responsibility, or perceived influence or control over an educational or work experience, a power imbalance is created, which may impede the real or perceived freedom of the faculty, student or employee to terminate or alter the relationship; and

Whereas a sexual or romantic relationship under the conditions set forth above may result in a loss of objectivity and create a conflict of interest in any evaluative, supervisory, instructional, or other professional role; now, therefore, be it

Resolved that System Administration, all State-operated campuses and community colleges shall adopt the uniform Sexual Harassment Policy Statement attached to this Resolution to notify campus community members of SUNY's no tolerance policy for behavior that violates the sexual harassment policy; and

Resolved that all appropriate campus officials ensure proper investigation and discipline for such behavior in accordance with each campus's policies and process; and, be it further

Resolved that SUNY's Sexual Harassment Policy Statement shall be widely publicized to all students, faculty and staff subsequent to its adoption; and, be it further

Resolved that on or before ____ 1, 2018 all SUNY campuses, and System administration shall widely disseminate to their campus communities a consensual relationship policy which will:

- Apply to all faculty and staff;
- Prohibit consensual relationships between faculty and students where there is a direct supervisory relationship, or where the student's course of study requires the academic or professional supervision of the faculty member;
- Require for faculty relationships that the faculty member inform his or her divisional supervisors and the Director of Human Resources or equivalent, and the campus's Title IX Officer or Coordinator of such relationship;
- Require that for relationships in the campus workforce there be alternative supervisory roles to ensure that supervisors in a consensual relationship with an employee be removed from any evaluation of the employee, and from any activity or decision that may appear to reward, penalize, or otherwise affect the employment status of the employee;
- Make allowances for pre-existing relationships or marriages provided that the relationship is reported as required herein and that alternative supervisory relationships be established; and
- Require that discipline be imposed for any individual failing to follow the terms of the policy, up to and including termination; and, be it further

Resolved that SUNY will work with the State to present annual, mandatory coordinated training to all campuses for employees and annual training for students on preventing and addressing sexual harassment and sex discrimination with multi-disciplinary teams representing Title IX, affirmative action, university police, general counsel, employee relations and others; and, be it further

Resolved that all SUNY campuses shall maintain records to ensure compliance with annual training requirements, reporting requirements and alternative supervision requirements; and, be it further

Resolved that all SUNY campuses shall continue to conduct the uniform campus climate assessment in accordance with N.Y. Education Law 129-B and the October 2, 2014 Resolution of the

Board of Trustees, which shall now assess as well the Sexual Harassment Prevention policy and the consensual relationship policies; and, be it further

Resolved that all SUNY campus presidents must report to the Chancellor, or designee, by ____ 1, 2018, on the actions they have taken to address the measures set forth above; and, be it further

Resolved that the Chancellor shall report to the Board and the Governor on the actions taken by the campuses to comply with the directives set forth in this Resolution.

Background

Although all SUNY campuses have strong statements prohibiting sexual harassment, it is imperative for SUNY to leverage its power as the most comprehensive system of higher education in the country to speak with one voice in combating all forms of sexual harassment. As part of this effort, SUNY is developing a sexual harassment prevention policy with a particular understanding of the abuses that can arise from relationships in which there is a power differential.

This proposed resolution will require:

- All SUNY campuses to adopt a uniform policy statement on sexual harassment to notify its community members of their right to contact campus, local and/or State law enforcement, as well as appropriate campus officials, and to widely publicize the processes and procedures, similar to their efforts under NYS Education Law Art. 129-B to respond to incidences of sexual and interpersonal violence;
- All SUNY campuses to adopt a sexual harassment prevention policy statement that will reflect SUNY's no tolerance of sexual harassment and be widely distributed to faculty, staff, and students;
- SUNY, working with the State, to conduct statewide coordinated training with all SUNY campuses, conducted by multidisciplinary teams. Training will be mandatory for all faculty and staff, and will cover sexual harassment and the requirements of the consensual relationship policy. Expert SUNY and statewide officials will conduct training for college administrators and adjudicators on preventing and addressing harassment and discrimination based on gender and improving compliance, reporting and investigatory processes. Such content will be included in the training offered to students, included in orientation

materials, and be required for student athletes and student club and organization leaders, as required by Education Law 129-B; and

- All SUNY campuses to continue to conduct a uniform campus climate assessment, which will include the new sexual harassment prevention policy and the consensual relationship policy, every other year.

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Attachments

SUNY Sexual Harassment Response and Prevention Policy Statement

Sexual harassment is a form of sex discrimination which is unlawful in the workplace under Title VII of the Civil Rights Act of 1964, as amended, and the New York State Human Rights Law. Under Title IX of the Educational Amendments of 1972, sexual harassment also is prohibited in the provision of educational services and protects students and employees from sexual harassment.

Sexual harassment can occur between males and females, or between persons of the same sex. Sexual harassment will not be tolerated at SUNY. The University has implemented measures to address and prevent sexual harassment and is taking additional affirmative steps to increase awareness of, and sensitivity to, all forms of sexual harassment in order to maintain a workplace and learning environment free of its harmful effects.

In accordance with applicable law, sexual harassment is generally described as unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of employment or academic benefit; or
- Submission to or rejection of the conduct is used as the basis for an employment or academic decision affecting the person rejecting or submitting to the conduct; or
- The conduct has the purpose or effect of unreasonably interfering with an affected person's work or academic performance, or creating an intimidating, hostile or offensive work or learning environment.

Sexual harassment can include physical touching, verbal comments, non-verbal conduct such as leering or inappropriate written or electronic communications, or a combination of these things. Examples of sexual harassment may include, but are not limited to:

- Seeking sexual favors or a sexual relationship in return for the promise of a favorable grade or academic opportunity;
- Conditioning an employment-related action (such as hiring, promotion, salary increase, or performance appraisal) on a sexual favor or relationship; or
- Intentional and undesired physical contact, sexually explicit language or writing, lewd pictures or notes, and other forms of sexually offensive conduct by individuals in positions of authority, co-workers or student peers, that unreasonably interferes with the ability of a person to perform his or her employment or academic responsibilities.

Sexual harassment is considered a form of employee and student misconduct which may lead to disciplinary action. SUNY campuses shall take the necessary steps to ensure that

this Sexual Harassment Response and Prevention Policy Statement is distributed, implemented, and enforced in accordance with campus policies.

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DRAFT OPTIONAL SUNY Consensual Relationship Policy

I- Policy Statement:

The State University of New York is committed to ensuring that our students, faculty, and staff can learn and work in an environment that is free from nepotism, harassment, exploitation, and conflicts of interest. SUNY is also committed to promoting fairness in grading, evaluation, and career opportunities. In order to achieve this, it is vital that faculty and staff maintain professional boundaries with students, and with employees over whom there is or will be a supervisory relationship.

SUNY faculty and staff members exercise power and authority over SUNY students and employees for whom they have current supervisory, instructional, or other professional responsibility which creates a power imbalance. This makes consent within any sexual, intimate, or romantic relationship between a supervisor and employee or between a faculty or staff member and a student problematic, and may impede the real or perceived freedom of the student or employee to terminate or alter the relationship. Further, it may cause individuals outside of that relationship to believe that they are treated in an unequal manner during such a relationship or after it terminates, or it may cause individuals to feel that entering into such a relationship is necessary or assistive in attaining their academic or career goals. Such a relationship may damage the credibility or reputation of the employee, the department or unit, or the campus as a whole and may expose individuals or the institution to legal action and liability.

In the academic context, amorous relationships that might be appropriate in other circumstances have inherent dangers when they occur between faculty and students. Implicit in the idea of professionalism is the recognition by those in positions of authority that in their relationships with students and staff there is an element of power. Because inherent power differentials exist even where there is no direct teaching or supervision of students, SUNY faculty and staff are prohibited from entering into romantic, intimate, and/or sexual relationships with undergraduate students regardless of department or relationship and are prohibited from entering into romantic, intimate, and/or sexual relationships with any student in their academic department or campus unit. There is a presumption against romantic, intimate, and/or sexual relationships between employees where there is a current supervisory imbalance, and such relationships must be reported to determine if an alternative supervisory structure is possible. Non-consensual relationships are always prohibited and may implicate other policies or laws.

II- Definitions:

- **Undergraduate Students:** An individual whose primary relationship to the campus is in their role as an enrolled or non-matriculated student in an Associate or Bachelor level program. This definition does not include employees who are taking a non-matriculated course that is not part of an academic program. Status

begins at payment of deposit to enroll or equivalent and continues through completion of all academic requirements and graduation.

- **Graduate or Professional Students:** An individual whose primary relationship to the campus is in their role as an enrolled or non-matriculated student in a Masters, Doctoral, post Bachelor Certificate or Professional level program. It also includes such individuals in the status of academically-required employment, such as residency, internship, practicum, fellowship and equivalent. This definition does not include employees who are taking a non-matriculated course that is not part of an academic program.
- **Academic Department or Campus Unit:** Department devoted to a particular academic discipline. For individuals with dual appointments, Department Chair in both departments shall be notified.
- **Supervisory Relationship:** A relationship in which an employee has the authority to make or impact decisions regarding hiring, termination, promotion, assignment of duties, evaluation, or changes in compensation or benefits for another employee.

III- Applicability:

This policy governs faculty and staff, employed full-time, part-time, or in volunteer status, who receive compensation, not including need-based or scholarship financial aid or in-kind provision of housing and board. This policy has limited applicability to student-employees as specifically established below.

IV- Policy:

A- Undergraduate Students:

SUNY faculty and staff are prohibited from entering into romantic, intimate, and/or sexual relationships with Undergraduate Students regardless of department or relationship. Entering into or continuing in such a relationship can subject the faculty or staff member to discipline up to and including termination.

B- Any Graduate or Professional Student In The Same Academic Department Or Campus Unit:

SUNY faculty and staff are prohibited from entering into romantic, intimate, and/or sexual relationships with any Graduate or Professional Student in their academic department or campus unit or over whom they have academic or other supervisory responsibility, even if in a different academic department or unit. Entering into or continuing in such a relationship can subject the faculty or staff member to discipline up to and including termination.

C- Employees in A Supervisory Relationship:

SUNY faculty and staff are prohibited from supervising any employee with whom they are engaged in a romantic, intimate, and/or sexual relationship. Faculty and staff who seek to enter into a romantic, intimate, and/or sexual relationship with any employee for whom they provide supervision must notify their direct supervisor or unit head, and Director of Human Resources or Employee Relations or designee. The Director of Human Resources or designee shall notify the Vice President, or equivalent, overseeing the relevant division. Initial disclosure must occur within two (2) business days of commencement of the romantic, intimate, and/or sexual relationships. The employee's supervisor, in concert with the Director of Human Resources or Employee Relations or designee, and divisional Vice President or equivalent shall determine whether an alternative supervisory structure is possible and, if so, shall direct the employees to the alternative supervisory structure. Even if the relationship concludes (whether amicably or not), the covered employee may never supervise the other employee.

D- Pre-Existing Relationships:

Relationships between faculty and staff and an undergraduate, graduate/professional student, or supervised employee that pre-date enrollment as a student or hire as staff are permissible provided that the relationship is disclosed to the faculty or staff member's direct supervisor or unit head and the Director of Human Resources or Employee Relations or designee. Disclosure must occur within two (2) business days of enrollment or hire. Failure to timely notify appropriate staff can subject the faculty or staff member to discipline up to and including termination.

E- Student-Employees:

Students also serving as employees such as graduate students and resident assistants are prohibited from entering into romantic, intimate, and/or sexual relationships with undergraduate or graduate students over whom they have a current academic or other supervisory relationship. This is defined as current students who are under direct supervision, such as in a class for which the covered student-employee is a graduate assistant, or who live in the resident hall at which the student-employee is a resident assistant. Relationships between student-employees and undergraduate or graduate students over whom they have a current academic or other supervisory relationship that pre-date the supervisory relationship are permissible provided that the relationship is disclosed to the faculty or staff member's direct supervisor or unit head and the Director of Human Resources or Employee Relations or designee. Disclosure must occur within two (2) business days of enrollment or hire.

V- Reports and Investigation:

Reports of violations of this policy may be brought to the campus Title IX Coordinator, the Director of Human Resources or Employee Relations or their designee, or the Office of the Provost. Faculty and staff who are Responsible Employees under

Title IX must report violations of this policy within two (2) business days after learning of the violation.

Monitoring the status of alternative supervision is the responsibility of the Director of Human Resources or Employee Relations or designee. All documentation under this policy shall be maintained in the Office of Human Resources or Employee Relations.

Retaliation for making a report or participating in a process under this policy is prohibited and may result in discipline up to and including termination. Legal consent between the parties shall not be a defense to a violation under this policy. The University prohibits an individual from knowingly filing a false complaint or making misrepresentations of sexual misconduct. A complaint made in good faith is not considered false merely because the evidence does not ultimately support the allegation of sexual misconduct. If an investigation results in a finding that a person who has accused another of sexual misconduct has acted maliciously or has recklessly made false accusations, the reporting party will be subject to appropriate sanctions. It is important to note that due process considerations may limit the ability to investigate or resolve anonymous complaints.

SUNY Sexual Harassment Policy

It is unlawful and against SUNY policy to harass anyone because of that person's sex or gender. SUNY acts promptly to remedy sexual harassment and prevent its recurrence.

Every employee and student is entitled to an environment free from sexual harassment, which has devastating economic, psychological, and physical effects on its victims, and the cost to the University in human and financial terms may be enormous. Sexual harassment is also illegal.

Victims of sexual harassment have protection under the law. To protect potential victims of sexual harassment, and to protect our University, SUNY is taking affirmative steps to increase awareness of and sensitivity to sexual harassment, and to maintain a workplace free of its deleterious effects.

Title VII of the Civil Rights Act of 1964, as amended, prohibits discrimination in employment on the basis of race, color, religion, national origin or sex. The Equal Employment Opportunity Commission (EEOC) has amended its guidelines on sex discrimination to include sexual harassment as an unlawful employment practice under Section 703 of Title VII.

In accordance with these guidelines, unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature will constitute sexual harassment when:

1. Submission to the conduct is either an explicit or implicit term or condition of employment; or
2. Submission to or rejection of the conduct is used as the basis for an employment decision affecting the person rejecting or submitting to the conduct; or
3. The conduct has the purpose or effect of unreasonably interfering with an affected person's work performance, or creating an intimidating, hostile or offensive work environment.

Sexual harassment can include physical touching, verbal comments, non-verbal conduct such as leering or inappropriate written or electronic communications, or a combination of these things. Examples of sexual harassment may include, but are not limited to:

- Seeking sexual favors or relationships in return for the promise of a favorable grade or academic opportunity
- Conditioning an employment-related action (such as hiring, promotion, salary increase, or performance appraisal) on a sexual favor or relationship

- Intentional and undesired physical contact, sexually explicit language or writing, lewd pictures or notes, and other forms of sexually offensive conduct by individuals in position of authority, co-workers or student peers, that unreasonably interferes with the ability of a person to perform his or her employment or academic responsibilities.

Such harassment is a violation of Title VII and the New York State Human Rights Law and will not be tolerated within SUNY. Sexual harassment is considered a form of employee and student misconduct which may lead to disciplinary action. Supervisory personnel have an obligation to take all possible steps to ensure that this Sexual Harassment Policy is distributed, understood, and adhered to. Responsible Employees under Title IX, which includes any employee who has the authority to take action to redress or the duty to report incidents of sexual misconduct, are required to report any instances of sexual harassment to _____.

It is important to note that behavior in the workplace or classroom may fall short of the legal standard for sexual harassment, but still may be addressed as unprofessional and/or inappropriate. If you are experiencing behavior that is causing you to be uncomfortable at work, in class or anywhere on campus, we strongly encourage you contact us to explore your options. Individuals who have been subjected to or witnessed sexual harassment, may also contact us anonymously if you are more comfortable doing so.

Employees and students alleging harassment may use the SUNY Discrimination Complaint procedure which can be found online at https://www.suny.edu/sunypp/documents.cfm?doc_id=451. Students and employees may also report such inappropriate conduct to the Title IX Officer, the Human Resources Department, the Affirmative Action Officer, their supervisor or other responsible SUNY employee.

Should disciplinary action be found necessary, appropriate procedures will be used, including, if applicable, the procedures of the collective bargaining agreements or campus student judiciary regulations. Filing a complaint with the University does not preclude an individual who is subjected to sexual harassment from also filing with outside enforcement agencies, such as the EEOC, the State Division of Human Rights or the Office for Civil Rights. Complaints of sexual harassment may be filed with the University at _____. To the fullest extent possible, investigation of complaints will be conducted with due regard to privacy.