

<p>Category: HR / Labor Relations Legal and Compliance</p> <p>Responsible Office: General Counsel</p>	<p>Procedure Title: Discrimination Complaint Procedure</p> <p>Document Number: 6501</p> <p>Effective Date:</p> <p>This procedure item applies to: State-Operated Campuses</p>
---	--

Summary

The State University of New York (University), in its continuing effort to seek equity in education and employment and in support of federal and state anti-discrimination legislation, has adopted a complaint procedure for the prompt and equitable investigation and resolution of allegations of unlawful discrimination on the basis of race, color, national origin, religion, creed, age, sex, sexual orientation, disability, gender identity, gender expression, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, or criminal conviction. Harassment is one form of unlawful discrimination on the basis of the above protected categories. The University will take steps to prevent discrimination and harassment, to prevent the recurrence of discrimination and harassment, and to remedy its discriminatory effects on the victim(s) and others, if appropriate. Conduct that may constitute harassment is described in the Definitions section. Sex discrimination includes sexual harassment and sexual violence.

Applicability

This procedure may be used by any student or employee of a state-operated campus of the University as well as third-parties who are participating in a University-sponsored program or affiliated activity. Employee grievance procedures established through negotiated contracts, academic grievance review committees, student disciplinary grievance boards and any other procedures defined by contract will continue to operate as before. Furthermore, this procedure does not in any way deprive a complainant of the right to file with outside enforcement agencies, such as the New York State Division of Human Rights, the Equal Employment Opportunity Commission, the Office for Civil Rights of the United States Department of Education, and the Office of Federal Contract Compliance of the United States Department of Labor. However, after filing with one of these outside enforcement agencies, or upon the initiation of litigation, the complaint will be referred to the campus Affirmative Action Officer/Title IX Coordinator for investigation with the Office of General Counsel. Contact information for these agencies is listed in the Other Related Information section below. More detailed information may be obtained from the campus Affirmative Action Officer/Title IX Coordinator.

All campuses must use this procedure unless the campus has made application for an exception. Requests for an exception, along with a copy of the requesting campus's discrimination complaint procedure must be filed with the Office of General Counsel. The request for an exception will be acted upon by the Office of General Counsel after a review of the campus's complaint procedure. The Affirmative Action Officer and/or, in the case of sex discrimination, the Title IX Coordinator, on each University campus shall receive any complaint of

alleged discrimination, assist the complainant in the use of the complaint form, and provide the complainant with information about various internal and external mechanisms through which the complaint may be filed, including applicable time limits for filing with each agency. Campus distributed and published versions of this procedure must contain the name or title, office address, email address, and telephone number of the individual with whom to file a complaint.

Procedure

The following applies to both the informal and formal processes. This procedure provides a mechanism through which the University may identify, respond to, and prevent incidents of illegal discrimination. The University recognizes and accepts its responsibility in this regard and believes that the establishment of this internal, non-adversarial grievance process will benefit student, faculty, staff, and administration, permitting investigation and resolution of problems without resorting to the frequently-expensive and time-consuming procedures of state and federal enforcement agencies or courts.

SUNY, through the campus Affirmative Action Officer/Title IX Coordinator, reserves the right to pursue any complaint of discrimination about which it becomes aware. Based on information received, the Affirmative Action Officer/Title IX Coordinator may exercise her/his discretion and initiate a complaint on behalf of the SUNY Canton community, regardless of complainant cooperation or involvement.

The Affirmative Action Officer, or in instances involving sex discrimination, the Title IX Coordinator, is available to assist in preparing the complaint. The Title IX Coordinator will ensure that complainants are aware of their Title IX rights and available resources on and off-campus, and the right, if any, to file a complaint with local law enforcement.

SUNY will comply with law enforcement requests for cooperation and such cooperation may require the campus to temporarily suspend the fact-finding aspect of an investigation while the law enforcement agency is in the process of gathering evidence. The campus will resume its investigation as soon as it is notified by the law enforcement agency that it has completed the evidence gathering process. SUNY will implement appropriate interim steps during the law enforcement agency's investigation period to provide for the safety of the victim(s) and the campus community.

The complainant is not required to pursue the University internal procedures before filing a complaint with a state or federal agency. In addition, if the complainant chooses to pursue the University internal procedure, the complainant is free to file a complaint with the appropriate state or federal agency at any point during the process.

During any portion of the procedures detailed hereafter, the parties shall not employ audio or video taping devices. Complaints and investigations will be kept confidential to the extent possible.

Retaliation against a person who files a complaint, serves as a witness, or assists or participates in any manner in this procedure is strictly prohibited and may result in disciplinary action. Retaliation is an adverse action taken against an individual as a result of complaining about unlawful discrimination or harassment, exercising a legal right, and/or participating in a complaint investigation as a third-party witness. Participants who experience retaliation should contact the campus Affirmative Action Officer/Title IX Coordinator.

Complaint Consultation and Review

Any student or employee, or any third party may consult with the Affirmative Action Officer/Title IX Coordinator (hereinafter AAO) regarding potential discrimination or harassment. This initial contact may occur by telephone, e-mail, or in person--the latter being preferred. The AAO will assist the individual in understanding the nature of the incident, the complaint process, resources available to the individual, and other options to resolve the issue. Assistance will be available whether or not a formal complaint is contemplated or even possible.

It is the responsibility of the AAO to respond to all such inquiries, reports, and requests as promptly as possible and in a manner appropriate to the particular circumstances. This response may include interim measures to protect the parties during the investigation process. Interim measures will not disproportionately impact the complainant. Interim measures for students may include, but is not limited to, information about how to obtain counseling and academic assistance in the event of sexual assault, and steps to take if the accused individual lives on campus and/or attends class with the complainant. Interim measures involving employees in collective bargaining units should be determined in consultation with campus employee relations.

Complaints or concerns that are reported to an administrator, manager or supervisor concerning an act of discrimination or harassment, or acts of discrimination or harassment that administrators, managers, or supervisors observe or become aware of shall be immediately referred to the AAO. Employees with Title IX compliance responsibilities and/or employees who have the authority to take action to redress the harassment must report any complaints to the Title IX Coordinator. Employees who observe or become aware of sex discrimination, including sexual harassment and sexual violence, should report this information to the campus Title IX Coordinator. Complaints may also be made directly to the AAO by anyone who experiences, observes, or becomes aware of discrimination or harassment.

Complaints of sexual violence will not be resolved by using mediation, but instead must be referred immediately to the campus Title IX Coordinator. The complainant will not be required to resolve the problem directly with the respondent in cases of sex discrimination.

Filing Complaints and Time Limits

Although in rare instances verbal complaints may be acted upon, the procedures set forth here rest upon the submission of a written complaint that will enable there to be a full and fair investigation of the facts. It is the complainant's responsibility to be certain that any complaint is filed within the applicable time limit.

If the complainant brings a complaint beyond the period in which the complaint may be addressed under these procedures, the AAO may terminate any further processing of the complaint, refer the complaint to the Office of General Counsel or direct the complainant to an alternative forum (Appendix A). Complaints of sex discrimination brought beyond the 90-day period will be tracked and investigated to the extent possible consistent with the campus Title IX obligations, including the Title IX Coordinator's duties to spot patterns and address systemic issues. Additionally, the Title IX Coordinator will ensure that complainants in sex discrimination cases are made aware of their Title IX rights, available remedies and resources on and off-campus, interim remedies, and the right, if any, to file a complaint with local law enforcement.

All complaints must be submitted on the forms provided by the University (see Forms below). The Charge of Discrimination form will be used for both the initiation of complaints under the informal procedure and the conversion of the complaint to the formal procedure.

The AAO is available to assist in preparing the complaint. The Title IX Coordinator will ensure that complainants are aware of their Title IX rights and available resources on and off-campus (such as counseling, local rape crisis center), and the right, if any, to file a complaint with local law enforcement. Campuses will comply with law enforcement requests for cooperation and such cooperation may require the campus to temporarily suspend the fact-finding aspect of an investigation while the law enforcement agency is in the process of gathering evidence. The campus will resume its Title IX investigation as soon as it is notified by the law enforcement agency that it has completed the evidence gathering process. SUNY will implement appropriate, reasonable, and available interim steps during the law enforcement agency's investigation period to provide for the safety of the complainant and the campus community.

As soon as reasonably possible after the date of filing of the complaint, the AAO will mail a notice of the complaint and a copy of the complaint to the Respondent(s).

Employees: Employees must file a written complaint with the AAO within 90 calendar days following the alleged discriminatory act or the date on which the complainant first knew or reasonably should have known of such act.

Students: Students must file a complaint within 90 calendar days following the alleged discriminatory act or 90 calendar days after a final grade is received, for the semester during which the discriminatory acts occurred, if that date is later.

Complaint Contents

The complaint shall contain:

1. The name, local and permanent address(es), telephone number(s), and status (faculty, staff, student, third party) of the complainant.
2. A statement of facts explaining what happened and what the complainant believes constituted the unlawful discriminatory acts in sufficient detail to give each Respondent reasonable notice of what is claimed against him/her. The statement should include the date, approximate time and place where the alleged acts of unlawful discrimination or harassment occurred. If the acts occurred on more than one date, the statement should also include the last date on which the acts occurred as well as detailed information about the prior acts. The names of any potential witnesses should be provided.
3. The name(s), address(es) and telephone number(s) of the respondent(s), i.e., the person(s) claimed to have committed the act(s) of unlawful discrimination.
4. Identification of the status of the persons charged whether faculty, staff, or student.
5. A statement indicating whether or not the complainant has filed or reported information concerning the incidents referred to in the complaint with a non-campus official or agency, under any other complaint or complaint procedure. If an external complaint has been filed, the statement should indicate the name of the department or agency with which the information was filed and its address.
6. A description of any corrective or remedial action that the complainant would like to see taken.

7. Such other or supplemental information as may be requested.
8. Signature of complainant and the date complaint signed

Informal Resolution

If a complainant elects to have the matter dealt with in an informal manner, the Affirmative Action Officer will attempt to reasonably resolve the problem to the mutual satisfaction of the parties.

In seeking an informal resolution, the AAO shall attempt to review all relevant information, interview pertinent witnesses, and bring together the complainant and the respondent, if desirable. If a resolution satisfactory to both the complainant and the respondent is reached within 24 calendar days from the filing of the complaint, through the efforts of the AAO, the officer shall close the case, sending a written notice to that effect to the complainant and respondent. The written notice, a copy of which shall be attached to the original complaint form in the officer's file, shall contain the terms of any agreement reached by complainant and respondent, and shall be signed and dated by the complainant, the respondent and the AAO. (See Forms for the Memorandum: Status - Resolved form)

If the AAO is unable to resolve the complaint to the mutual satisfaction of the complainant and respondent within 24 calendar days from the filing of the complaint, the AAO shall so notify the complainant. The AAO shall again advise the complainant of his or her right to proceed to the next step internally and/or the right to separately file with appropriate external enforcement agencies.

The time limitations set forth above may be extended by mutual agreement of the complainant and respondent with the approval of the AAO. Such extension shall be confirmed in writing by the complainant and respondent. The AAO will also have the discretion to reasonable extend the deadlines if an investigation is deemed complex.

The complainant may elect to proceed to the formal resolution procedure at any time after the Charge of Discrimination form is filed.

Formal Resolution

The formal complaint proceeding is commenced by the filing of a complaint form as described above. The 90 day time limit also applies to the filing of a formal complaint. If the complainant first pursued the informal process and subsequently wishes to pursue a formal complaint, he/she may do so by checking the appropriate box, and signing and dating the complaint form.

The complaint, together with a statement, if applicable, from the AAO indicating that informal resolution was not possible, shall be forwarded to the chairperson of the campus affirmative action committee within 7 calendar days from the filing of the formal complaint. If an informal resolution was not pursued, the AAO shall forward the complaint to the chairperson of the campus affirmative action committee within 7 calendar days from the filing of the complaint.

Notice to Parties: Upon receipt of a complaint, the AAO will provide an initialed, signed, date-stamped copy of the complaint to the Complainant. As soon as reasonably possible after the date of filing of the complaint, the AAO will mail a notice of complaint and a copy of the complaint to the Respondent(s). Alternatively, such

notice with a copy of the complaint may be given by personal delivery, provided such delivery is made by the AAO (or designee) and, that proper proof of such delivery, including the date, time and place where such delivery occurred is entered in the records maintained by or for the AAO.

Tripartite Panel Selection: Within seven (7) calendar days of receipt of the complaint, the chairperson of the campus affirmative action committee shall send notification to the Complainant, the Respondent and the campus president that a review of the matter shall take place by a tripartite panel to be selected by the Complainant and the Respondent from a pre-selected pool of eligible participants (Appendix B).

The tripartite panel shall consist of one member of the pre-selected pool chosen by the complainant, one member chosen by the respondent and a third chosen by the other two designees. The panel members shall choose a chair among themselves. Selection must be completed and written notification of designees submitted to the chairperson of the campus affirmative action committee no later than seven (7) calendar days after the complainant, the respondent and the Campus President received notice under paragraph six above. If the President is the Respondent, then the third member of the panel shall be selected by the Chancellor or designee in System Administration.

In the event that the procedural requirements governing the selection of the tripartite panel are not completed within seven (7) calendar days after notification, the chairperson of the campus Affirmative Action Committee shall complete the selection process.

Panel Review: The tripartite panel shall review all relevant information, interview pertinent witnesses and, at their discretion, hear testimony from and bring together the complainant and the respondent, if desirable. Both the complainant and the respondent(s) shall be entitled to submit written statements or other relevant and material evidence and witnesses, and to provide rebuttal to the written record compiled by the tripartite panel. Complainant has the right to request alternative arrangements if the complainant does not want to be in the same room as the accused. These alternative arrangements must be consistent with the rights of the accused and must enable both parties and the panel to hear each other during any hearing.

Findings and Recommendations: Within 15 calendar days from the completion of selection of the panel, the chairperson of the tripartite panel shall submit a summary of its findings and the panel's recommendation(s) for further action, on a form to be provided by the AAO, to the President. The burden of proof in cases of sex discrimination is preponderance of the evidence. If the President is the respondent, the findings and recommendation shall be submitted to the Chancellor or his designee. When the panel transmits the summary of its findings and the panel's recommendations to the President, the panel will also send, concurrently, copies of both the summary of its findings and recommendation(s) to the Complainant, Respondent, and the AAO.

Within ten (10) calendar days of receipt of the written summary, the President or designee shall issue a written statement to the complainant and respondent, indicating what action the President proposes to take. The action proposed by the President or designee, may consist of:

- a. A determination that the complaint was not substantiated.
- b. A determination that the complaint was substantiated.

- i. For employees (including student employees) not in a collective bargaining unit: The President may take such administrative action as he/she deems appropriate under his/her authority as the Chief Administrative Officer of the college, including but not limited to termination, demotion, reassignment, suspension, reprimand, or training.
- ii. For students: The President may determine that sufficient information exists to refer the matter to the student judiciary or other appropriate disciplinary panel for review and appropriate action under the appropriate student conduct code. For examples of sanctions, please see the relevant section of the applicable student code of conduct.
- iii. For employees in collective bargaining units: The President may determine that sufficient information exists to refer the matter to his/her designee for investigation and disciplinary action or other action as may be appropriate under the applicable collective bargaining agreement. The disciplinary process and potential outcomes are described in the applicable collective bargaining agreements.

The action of the President shall be final. If the President is the respondent, the Chancellor or his/her designee shall issue a written statement indicating what action the Chancellor proposes to take. The Chancellor's decision shall be final for purposes of this discrimination procedure.

Notice of Outcome: No later than seven (7) calendar days following issuance of the statement by the President or the Chancellor, as the case may be, the AAO shall issue a letter to the complainant and to the respondent(s) advising them that the matter, for purposes of this discrimination procedure, is closed.

Time Limitations: The time limitations set forth above may be extended by mutual agreement of the complainant and respondent with the approval of the panel. The panel will also have the discretion to reasonably extend the deadlines if an investigation is deemed complex. Such extension shall be confirmed in writing.

External Agencies: If the complainant is dissatisfied with the President's or Chancellor's decision, the complainant may elect to file a complaint with one or more state and federal agencies. The campus AAO will provide general information on state and federal guidelines and laws, as well as names and addresses of various enforcement agencies (Appendix A).

Definitions

Harassment on the Basis of Protected Characteristic(s) other than Sex/Gender – harassment based on race, color, age, religion, national origin, disability, sexual orientation, or other protected characteristics is oral, written, graphic, or physical conduct relating to an individual's protected characteristics that is sufficiently severe, pervasive, or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the educational institution's programs or activities.

Sex Discrimination – behaviors and actions that deny or limit a person's ability to benefit from, and/or fully participate in the educational programs or activities or employment opportunities

because of a person's sex. This includes, but is not limited to, sexual harassment, sexual assault, sexual violence by employees, students, or third parties. Employees should report sexual harassment that they observe or become aware of to the Title IX Coordinator.

Sexual assault is defined as a physical sexual act or acts committed against a person's will and consent or when a person is incapable of giving active consent, incapable of appraising the nature of the conduct, or incapable of declining participation in, or communicating unwillingness to engage in, a sexual act or acts. Sexual assault is an extreme form of sexual harassment.* Sexual assault includes what is commonly known as "rape," whether forcible or non-forcible, "date rape" and "acquaintance rape." Nothing contained in this definition shall be construed to limit or, conflict with the sex offenses enumerated in Article 130 of the New York State Penal Law, which shall be the guiding reference in determining if alleged conduct is consistent with the definition of sexual assault.

Sexual Harassment in the Educational Setting – unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual harassment of a student denies or limits, on the basis of sex, the student's ability to participate in or to receive benefits, services, or opportunities in the educational institution's program.

Sexual Harassment in the Employment Setting – unwelcome sexual advances, requests for sexual favors, or verbal or physical conduct of a sexual nature when any of the following occurs:

- Submission to such conduct is made a term or condition of an individual's continued employment, promotion, or other condition of employment.
- Submission to or rejection of such conduct is used as a basis for employment decisions affecting an employee or job applicant.
- Such conduct is intended to interfere, or results in interference, with an employee's work performance, or creates an intimidating, hostile, or offensive work environment.

Sexual Violence - physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent.

Preponderance of the Evidence – the standard of proof in sexual harassment and sexual assault cases, which asks whether it is "more likely than not" that the sexual harassment or sexual violence occurred. If the evidence presented meets this standard, then the accused should be found responsible.