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Recommended By (Name, Title, Date): SUNY BoT, October 9, 2018

Approved By (Name, Title, Date): Zvi Szafran, President, March 1, 2019

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Category: General

Policy Contact: Director of Human Resources

Contact Phone: 315-386-7325

Policy on Sexual Harassment Response & Prevention

I. SCOPE

All employees of SUNY Canton

II. 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. Title IX of the Educational Amendments of 1972 prohibits sexual harassment in the provision of educational services and protects students and employees from sexual harassment.

All State-operated campuses and community colleges are required to have adopted the uniform SUNY Sexual Harassment Response & Prevention policy to notify their respective community members of SUNY's no-tolerance position regarding sexual harassment. Campuses and System Administration have been directed to ensure that appropriate investigation is made into complaints of sexual harassment and that discipline is imposed for such behavior in accordance with each entity's policies and processes.

III. POLICY

Sexual harassment is prohibited and will not be tolerated at SUNY Canton. The College 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.

Sexual harassment is a form of workplace discrimination and employee misconduct, as well as a form of discrimination in the academic setting. All employees and students are entitled to work and learn in a campus environment that prevents sexual harassment. All employees and students have a legal right to a workplace and a campus free from sexual harassment, and employees and students can enforce this right by filing a complaint internally with the College, or with a government agency, or in court under federal or state anti-discrimination laws, as detailed in the College's Discrimination and Sexual Harassment Complaint Procedure.

SUNY Canton will coordinate with the State to present annual, mandatory training to employees, and annual training for students, on preventing and addressing sexual harassment and sex discrimination, including knowledge of whom to contact with questions

regarding this policy and how to report violations of this policy. In addition, SUNY Canton shall maintain records to ensure compliance with annual training, reporting, and alternative supervision requirements.

Retaliation against a person who files a complaint, serves as a witness, or assists or participates in any manner in this procedure, is unlawful, is strictly prohibited, and may result in disciplinary action. Retaliation is an adverse action taken against an individual as a result of complaining about or provides information regarding unlawful discrimination or harassment, exercising a legal right, and/or participating in a complaint investigation as a third-party witness. Examples of retaliation include being discharged, disciplined, discriminated against, or otherwise subject to adverse action because the individual reports an incident of sexual harassment, provides information, or otherwise assists in any investigation of a sexual harassment complaint. Participants who experience retaliation should contact the campus Human Resources Department and may file a complaint pursuant to these procedures.

SUNY Canton will take the necessary steps to ensure that this Sexual Harassment Response and Prevention Policy is distributed, implemented, and enforced in accordance with their respective policies.

IV. DEFINITIONS

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 their employment or academic responsibilities.
- Physical acts of a sexual nature, such as:
 - Touching, pinching, patting, kissing, hugging, grabbing, brushing against, or poking another person's body;

- Rape, sexual battery, molestation, or attempts to commit these assaults.
- Unwanted sexual advances or propositions, such as:
 - Requests for sexual favors accompanied by implied or overt threats concerning a target's job performance evaluation, a promotion or other job benefits or detriments, or an educational benefit or detriment;
 - Subtle or obvious pressure for unwelcome sexual activities.
 - Sexually oriented gestures, noises, remarks, jokes, or comments about a person's sexuality or sexual experience, which create a hostile environment.
- Sexual or discriminatory displays or publications, such as:
 - Displaying pictures, posters, calendars, graffiti, objects, promotional material, reading materials, or other materials that are sexually demeaning or pornographic. This includes such sexual displays on computers or cell phones and sharing such displays while in the workplace or classroom.
- Hostile actions taken against an individual because of that individual's sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity, and the status of being transgender, such as:
 - Interfering with, destroying or damaging a person's workstation, tools or equipment, or otherwise interfering with the individual's ability to perform his or her employment or academic duties;
 - Sabotaging an individual's work; and/or
 - Bullying, yelling, name-calling.

Sex stereotyping occurs when conduct or personality traits are considered inappropriate simply because they may not conform to other people's ideas or perceptions about how individuals of a particular sex should act or look.

Such behavior can constitute sexual harassment regardless of the sex, gender, sexual orientation, self-identified or perceived sex, gender expression, status of being transgender, or gender identity of any of the persons involved. Sexual harassment is considered a form of employee and student misconduct which may lead to disciplinary action. Further, supervisors and managers will be subject to discipline for failing to report suspected sexual harassment or otherwise knowingly allowing sexual harassment to continue. Employees and students who believe they have been subjected to sexual harassment may use the College's Discrimination and Sexual Harassment Complaint Procedure to have their allegations reviewed, including a link to a complaint form.

V. OTHER RELATED INFORMATION

Discrimination Complaint

Equal Employment Opportunity Commission

SUNY Policy Doc. No. 6502, Equal Opportunity: Access, Employment and Fair Treatment in the State University of New York

VI. PROCEDURES

The following Discrimination Complaint Procedure applies to both informal and formal processes. This procedure provides a mechanism through which SUNY Canton may identify, respond to, and prevent incidents of illegal discrimination. SUNY Canton recognizes and accepts its responsibility in this regard, and believes that the establishment of this internal grievance process will benefit students, faculty, staff, and administration, permitting investigation and resolution of problems.

SUNY Canton reserves the right to promptly investigate all incidents of sex discrimination of which the campus has received notice. Based on information received, the Title IX Coordinator and Human Resources Director will make reasonable efforts to investigate and address instances of sex discrimination when it knows or should have known about such instances, regardless of complainant cooperation and involvement, consistent with the SUNY Policies on Sexual Violence Prevention and Response, including the Options for Confidentially Disclosing Sexual Violence.

SUNY Canton will comply with law enforcement requests for cooperation, and such cooperation may require the campus to temporarily delay 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 Canton 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, as described below.

The complainant is not required to pursue SUNY Canton's internal procedures before filing a complaint with a state or federal agency. In addition, if the complainant chooses to pursue SUNY Canton's 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 unlawful, is strictly prohibited, and may result in disciplinary action. Retaliation is an adverse action taken against an individual as a result of complaining about or providing information regarding unlawful discrimination or harassment, exercising a legal right, and/or participating in a complaint investigation as a third-party witness. Examples of retaliation include being discharged, disciplined, discriminated against, or otherwise subject to adverse employment action because the employee reports an incident of sexual harassment, provides information, or otherwise assists in any investigation of a sexual harassment complaint. Participants who experience retaliation should contact the campus Human Resources Director and may file a complaint pursuant to these procedures.

STEP 1: Complaint Consultation and Review

Any student or employee or any third party may consult with the Director of Human Resources and/or Title IX Coordinator regarding potential discrimination or harassment. This initial contact may occur by telephone, email, or in person--the latter being preferred.

It is the responsibility of the Director of Human Resources and/or Title IX Coordinator 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

are 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 departments.

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 Human Resources Director and/or Title IX Coordinator. 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 Human Resources Director by anyone who experiences, observes, or becomes aware of discrimination or harassment.

STEP 2: Filing Complaints and Time Limits

Although in limited circumstances, 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. SUNY Canton prefers written complaints. 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 Human Resources Director and/or Title IX Coordinator 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. Complaints of sex discrimination brought forth beyond the 180-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.

All complaints should be submitted on the *SUNY Procedure, Doc. No. 6501. Discrimination Complaint Procedure* form. 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 Human Resources Director and/or Title IX Coordinator is available to assist in preparing the complaint.

Employees: Employees must file a written complaint with the Human Resources Director and/or Title IX Coordinator within 180 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 180 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. The complaint must be filed with the Human Resources Director/Title IX Coordinator.

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 them. 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.

As soon as reasonably possible, after the date of filing of the complaint, the Human Resources Director and/or Title IX Coordinator will mail a notice of the complaint to the filer and a copy of the complaint to the Respondent(s).

STEP 3A: Informal Resolution

If a complainant elects to have the matter dealt with in an informal manner, the Human Resources Director and/or Title IX Coordinator will attempt to reasonably resolve the problem to the mutual satisfaction of the parties.

In seeking an informal resolution, the Human Resources Director and/or Title IX Coordinator shall attempt to review all relevant information, interview pertinent witnesses, and bring together the complainant and the respondent, if desirable. 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.

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 Human Resources Director and/or Title IX Coordinator, 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 Human Resources Director and/or Title IX Coordinator.

If the Human Resources Director and/or Title IX Coordinator 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 Human Resources Director and/or Title IX Coordinator shall so notify the complainant. The Human Resources Director and/or Title IX Coordinator shall again advise the complainant of their 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 Human Resources Director and/or Title IX Coordinator. Such extension shall be confirmed in writing by the complainant and respondent. The Human Resources Director and/or Title IX Coordinator will also have the discretion to reasonably extend the deadlines if an investigation is deemed complex.

The Complainant may elect to end the informal resolution process and proceed to the formal resolution procedure at any time after the Charge of Discrimination form is filed.

STEP 3B: Formal Resolution

The formal complaint proceeding is commenced by the filing of a complaint form as described above. The 180-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, they may do so by checking the appropriate box and signing and dating the complaint form.

The complaint, together with a statement from the Affirmative Action Officer (AAO) indicating that informal resolution was not possible, if applicable, 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 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's designee 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. In cases regarding Sexual Harassment or involving College employees, the President's designee shall be the Director of Human Resources. In cases regarding Sexual Violence involving students, the President's designee shall be the Vice President for Student Affairs.

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 pre-selected members. 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 7 calendar days after the Complainant, the Respondent and the campus president's designee received notice. If the President is the Respondent, then the third member of the panel shall be selected by the Chancellor or designee at System Administration.

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

STEP 4: Panel Review:

The tripartite panel shall review all relevant information, interview pertinent witnesses, and, at the panel's discretion, hear testimony from the Complainant and the Respondent. Both the Complainant and the Respondent(s) shall be entitled to submit written statements and/or other relevant material evidence and witnesses and to provide rebuttal to the written record compiled by the tripartite panel. The Complainant and Respondent have the right to request alternative arrangements if either the Complainant or Respondent does not want to be in the

same room. These alternative arrangements must be consistent with the rights of the Respondent and must enable both parties and the panel to hear each other during any hearing.

STEP 5: 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's designee. The burden of proof in cases of discrimination is preponderance of the evidence. If the President is the Respondent, the findings and recommendation shall be submitted to the Chancellor or their designee. When the panel transmits the summary of its findings and the panel's recommendations to the President's designee, 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 10 calendar days of receipt of the written summary, the President's designee shall issue a written statement to the Complainant and Respondent, indicating what action they propose to take. The President's designee will use the preponderance of the evidence standard. The action proposed by the President's designee, may consist of:

- a. A determination that the complaint was not substantiated; or
- b. A determination that the complaint was substantiated.
 - i. For employees (including student employees) not in a collective bargaining unit: The President's designee may take such administrative action as they deem appropriate under their authority delegated by the Chief Administrative Officer of the College, including but not limited to, termination, demotion, reassignment, suspension, reprimand, or training.
 - ii. For students: The President's designee 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's designee may determine that sufficient information exists to refer the matter to their 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's designee shall be final. If the President is the Respondent, the Chancellor or their 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 7 calendar days following issuance of the statement by the President's designee 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 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 to the parties.

STEP 6: 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.

Legal Protections and External Remedies

Sexual harassment is not only prohibited by the State University and SUNY Canton, but is also prohibited by state and federal law.

Aside from the internal process at SUNY Canton, employees may also choose to pursue legal remedies with the following governmental entities at any time.

New York State Division of Human Rights (DHR)

The Human Rights Law (HRL), codified as N.Y. Executive Law, art. 15, § 290 et seq., applies to employers in New York State with regard to sexual harassment, and protects employees, paid or unpaid interns and non-employees regardless of immigration status. A complaint alleging violation of the Human Rights Law may be filed either with DHR or in New York State Supreme Court.

Complaints with DHR may be filed any time within one year of the harassment. If an individual did not file at DHR, they can sue directly in state court under the HRL, within three years of the alleged discrimination or sexual harassment. An individual may not file with DHR if they have already filed a HRL complaint in state court.

Complaining internally to SUNY Canton does not extend your time to file with DHR or in court.

The one year or three years is counted from date of the most recent incident of harassment.

You do not need an attorney to file a complaint with DHR, and there is no cost to file with DHR.

DHR will investigate your complaint and determine whether there is probable cause to believe that discrimination or sexual harassment has occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If discrimination or sexual harassment is found after a hearing, DHR has the power to award relief, which varies but may include requiring your employer to take action to stop the harassment, or redress the damage caused, including paying monetary damages, attorney's fees, and civil fines.

DHR's main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458, (718) 741-8400, www.dhr.ny.gov

Contact DHR at (888) 392-3644 or visit dhr.ny.gov/complaint for more information about filing a complaint. The website has a complaint form that can be downloaded, filled out, notarized, and mailed to DHR. The website also contains contact information for DHR's regional offices across New York State.

United States Equal Employment Opportunity Commission (EEOC)

The EEOC enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act (codified as 42 U.S.C. § 2000e et seq.). An individual can file a complaint with the EEOC anytime within 300 days from the harassment. There is no cost to file a complaint with the EEOC. The EEOC will investigate the complaint and determine whether there is

reasonable cause to believe that discrimination has occurred, at which point the EEOC will issue a Right to Sue letter permitting the individual to file a complaint in federal court.

The EEOC does not hold hearings or award relief but may take other action including pursuing cases in federal court on behalf of complaining parties. Federal courts may award remedies if discrimination is found to have occurred.

An employee alleging discrimination against at work can file a "Charge of Discrimination." The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by calling 1-800-669-4000 (1-800-669-6820 (TTY)), visiting their website at www.eeoc.gov or via email at info@eeoc.gov

If an individual filed an administrative complaint with DHR, DHR will file the complaint with the EEOC to preserve the right to proceed in federal court.

Contact the Local Police Department

If the harassment involves unwanted physical touching, coerced physical confinement, or coerced sex acts, the conduct may constitute a crime. Contact the local police department.

VII. FORMS

Form A: SUNY Procedure, Doc. No. 6501. Discrimination Complaint Procedure

VIII. AUTHORITY

State University of New York Board of Trustees Resolution 18- , adopted October 9, 2018.

IX. HISTORY

This document was adopted in October 2018 pursuant to Labor Law §201-g, which requires every employer in the State of New York to adopt a sexual harassment prevention policy that meets or exceeds enumerated minimum standards in order to prevent and combat sexual harassment in the workplace.

X. APPENDICES


There are no appendices relevant to this policy.

XI. FREQUENCY OF REVIEW AND UPDATE

February 7, 2024

XII. SIGNATURE, TITLE, AND DATE OF APPROVAL

Zvi Szafran
Policy Approver – Printed Name


Policy Approver – Signature

President
Title

3-1-19
Date of Approval