



THE STATE UNIVERSITY *of* NEW YORK

DISCRIMINATION COMPLAINT PROCEDURE

Office of Diversity and Affirmative Action • 2003

Complaint Procedure for Review of Allegations of Unlawful Discrimination/Harassment

Overview

The State University of New York, 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, age, sex, sexual orientation, disability, veteran status or marital status. Harassment is one form of unlawful discrimination on the basis of the above protected categories. Conduct that may constitute harassment is described in Appendix A. For more detailed information see your Affirmative Action Officer.

This procedure may be used by any State University of New York student or employee. 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. Neither does this procedure 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 Office of University Counsel for review and supervision. Contact information for these agencies is listed in Appendix B. More detailed information may be obtained from the Campus Affirmative Action Officer.

This SUNY *Complaint Procedure for the Review of Allegations of Unlawful Discrimination* provides a mechanism through which the University may identify, respond to and prevent and eliminate 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 and federal enforcement agencies or courts.

All campuses must use the SUNY *Complaint Procedure for the Review of Allegations of Unlawful Discrimination* 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 State University of New York, Office of the University Counsel. The request for an exception will be acted upon by the Office of University Counsel after a review of the campus's complaint procedure.

The Affirmative Action Officer on each SUNY campus shall receive any complaint of alleged discrimination, shall assist the Complainant in the use of the complaint form defining the charge and shall provide the Complainant with information about the various internal and external mechanisms through which the complaint may be filed, including applicable time limits for filing with each agency.

**PART A:
Informal
Resolution**

Complainant is not required to pursue the SUNY internal procedure before filing a complaint with a State or Federal agency. In addition, if the Complainant chooses to pursue the SUNY internal procedure, the Complainant is free to file a complaint with the appropriate State or Federal agency at any point during the process. *Upon filing with an external agency, however, the SUNY internal complaint procedure will be terminated and the matter referred to the Office of the University Counsel for review, defense or, if deemed appropriate by Counsel, involvement in mediation, conciliation or settlement with the external agency where the complaint was filed, or such other actions as may be in the interests of the University.*

During any portion of the procedures detailed hereafter, the parties shall not employ audio or video taping devices.

1. The Affirmative Action Officer on an informal basis may receive initial inquiries, reports and requests for consultation and counseling. Assistance will be available whether or not a formal complaint is contemplated or even possible. It is the responsibility of the Affirmative Action Officer to respond to all such inquiries, reports and requests as promptly as possible and in a manner appropriate to the particular circumstances.

An individual may refuse to reduce a complaint to writing. However, notwithstanding that refusal, there may be a continuing obligation on the part of the campus to investigate the verbal complaint to the best of its ability and proceed with any action that is warranted. 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 90 DAY PERIOD THAT IS APPLICABLE UNDER THIS PARAGRAPH.

2. Complaints or concerns that are reported to an administrator, manager or supervisor concerning an act of discrimination or harassment shall be immediately referred to the Affirmative Action Officer. Complaints may also be made directly to the Affirmative Action Officer.
3. Employees must file a written complaint with the Affirmative Action Officer 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 if that date is later. All such complaints must be submitted on the forms provided by the State University of New York (see Appendix C). This form will be used for both the initiation of complaints under the informal procedure and the conversion movement of the complaint to the formal procedure. 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.

4. The complaint shall contain:
 - (a) The name, local and permanent address(es), and telephone number(s) of the Complainant.
 - (b) 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, if appropriate.
 - (c) 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.
 - (d) Identification of the status of the persons charged whether faculty, staff, or student.
 - (e) A statement indicating whether or not the Complainant has filed or reported information concerning the incidents referred to in the complaint with a non-college 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 person or department or agency with which the information was filed and its address or to which it was reported.
 - (f) Such other or supplemental information as may be requested.
5. If the Complainant brings a complaint beyond the period in which the complaint may be addressed under these procedures, the Affirmative Action Officer may terminate any further processing of the complaint, refer the complaint to University Counsel or direct the Complainant to the appropriate alternative forum (see Appendix B for a list of alternative forums).
6. 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.
7. In seeking an informal resolution, the Affirmative Action Officer 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 Affirmative Action Officer, 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 Affirmative Action Officer (see Appendix D for the appropriate form).

8. If the Affirmative Action Officer 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 Officer shall so notify the Complainant. The Affirmative Action Officer 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 IN PARAGRAPHS 7 AND 8, MAY BE EXTENDED BY MUTUAL AGREEMENT OF THE COMPLAINANT AND RESPONDENT WITH THE APPROVAL OF THE AFFIRMATIVE ACTION OFFICER. SUCH EXTENSION SHALL BE CONFIRMED IN WRITING BY THE COMPLAINANT AND RESPONDENT.

9. At any time, subsequent to the filing of the complaint form in Appendix C, under Part A, the Complainant may elect to proceed as specified in Part B of this document and forego the informal resolution procedure.

**PART B:
The Formal
Complaint
Procedure**

1. The formal complaint proceeding is commenced by the filing of a complaint form as described in Part A(4). The 90 day time limit also applies to the filing of a formal complaint.
2. 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.
3. The complaint, together with a statement, if applicable, from the Affirmative Action Officer indicating that informal resolution was not possible, shall be forwarded to the Chairperson of the Campus Affirmative Action Committee within 10 calendar days from the filing of the formal complaint.
4. If an informal resolution was not pursued, the Affirmative Action Officer shall forward the complaint to the Chairperson of the Campus Affirmative Action Committee within 10 calendar days from the filing of the complaint.
5. Upon receipt of a complaint, the Affirmative Action Officer 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 Affirmative Action Officer 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 Affirmative Action Officer (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 Affirmative Action Officer.

6. Within 10 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 jointly selected by the Complainant and the Respondent from a pre-selected pool of eligible participants (see Appendix E).
7. 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 two designees. The panel members shall choose a Chair amongst themselves. Selection must be completed and written notification of designees submitted to the Chairperson of the Campus Affirmative Action Committee no later than 10 calendar days after the Complainant, the Respondent and the President received notice under Paragraph 6 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.

8. In the event that the procedural requirements governing the selection of the Tripartite Panel are not completed within 10 calendar days after notification, the Chairperson of the Campus Affirmative Action Committee shall complete the selection process.
9. 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 to provide rebuttal to the written record compiled by the Tripartite Panel.
10. Within 48 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 Affirmative Action Officer, to the President. If the President is the Respondent, the findings and recommendation shall be submitted to the Chancellor or his designee. ***When the Panel transmits the recommendation to the President, the Panel shall transmit concurrently, copies to the Complainant, Respondent and the Affirmative Action Officer.***
11. Within 24 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.
- (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 action of the President shall be final.

If the President is the Respondent, the Chancellor or his 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.

12. No later than 10 calendar days following issuance of the statement by the President or the Chancellor, as the case may be, the Affirmative Action Officer 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.

THE TIME LIMITATIONS SET FORTH ABOVE IN PARAGRAPHS 6, 7, 8, 10, 11, AND 12, MAY BE EXTENDED BY MUTUAL AGREEMENT OF THE COMPLAINANT AND RESPONDENT WITH THE APPROVAL OF THE PANEL. SUCH EXTENSION SHALL BE CONFIRMED IN WRITING.

13. 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 Affirmative Action Officer will provide general information on State and Federal guidelines and laws, as well as names and addresses of various enforcement agencies (see Appendix B).

Definitions and Prohibited Acts and Behaviors**Sexual Harassment in the Employment Setting is defined as:**

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 Harassment in the Educational Setting is defined as:

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.

Harassment on the Basis of Protected Characteristic(s) other than Sex/Gender

Harassment based on race, color, age, religion, or national origin, disability, sexual orientation or other protected characteristics is oral, written, graphic or physical conduct relating to an individual's race, color, or national origin (including an individual's ancestry, country of origin, or country of origin of the student's parents, family members, or ancestors) or other 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.

APPENDIX B

External Enforcement Agencies

New York State Division of Human Rights

State Headquarters

New York State Division of Human Rights
One Fordham Plaza
4th Floor
Bronx, New York 10458

Tel: (718) 741-8400
Fax: (718) 741-3214

Albany

New York State Division of Human Rights
Empire State Plaza
Agency Building #2, 18th Floor
Albany, New York 12220

Tel: (518) 474-2705
Fax: (518) 473-3422

Binghamton

New York State Division of Human Rights
44 Hawley Street
Room 603
Binghamton, New York 13901

Tel: (607) 721-8467
Fax: (607) 721-8470

Brooklyn

New York State Division of Human Rights
55 Hanson Place
Room 304
Brooklyn, New York 11217

Tel: (718) 722-2856
Fax: (718) 722-2869

Buffalo

New York State Division of Human Rights
The Walter J. Mahoney State Office Building
65 Court Street
Suite 506
Buffalo, New York 14202

Tel: (716) 847-7632
Fax: (716) 847-7625

Manhattan

New York State Division of Human Rights
20 Exchange Place
2nd Floor
New York, New York 10005

Tel: (212) 480-2522
Fax: (212) 480-0143

New York State Division of Human Rights
Adam Clayton Powell State Office Building
163 West 123rd Street
4th Floor
New York, New York 10027

Tel: (212) 961-8650
Fax: (212) 961-4126

Long Island

New York State Division of Human Rights
175 Fulton Avenue
Hempstead, New York 11550

Tel: (516) 538-1360
Fax: (516) 483-6589

New York State Division of Human Rights
State Office Building
Veterans Memorial Building
Hauppauge, New York 11787

Tel: (631) 952-6434
Fax: (631) 952-6436

Rochester

New York State Division of Human Rights
One Monroe Square
259 Monroe Avenue
3rd Floor
Rochester, New York 14607

Tel: (585) 238-8250
Fax: (585) 238-8259

Syracuse

New York State Division of Human Rights
333 E. Washington Street
Room 401
Syracuse, New York 13202

Tel: (315) 428-4633
Fax: (315) 428-4638

Peekskill

New York State Division of Human Rights
8 John Walsh Boulevard
Suite 204
Peekskill, New York 10566

Tel: (914) 788-8050
Fax: (914) 788-8059

Office of Sexual Harassment

New York State Division of Human Rights
Office of Sexual Harassment
55 Hanson Place
Suite 347
Brooklyn, New York 11217

Tel: (718) 722-2060
or 1-800-427-2773
Fax: (718) 722-4525

Office of AIDS Discrimination

New York State Division of Human Rights
Office of AIDS Discrimination
20 Exchange Place
2nd Floor
New York, New York 10005

Tel: (212) 480-2522
or 1-800-522-4369
Fax: (212) 480-0143

**United States
Department
of Labor**

Office of Federal Contract Compliance Programs

201 Varick Street
Room 750
New York, New York 10014

Tel: (212) 337-2006
Fax: (212) 620-7705

Buffalo District Office

6 Fountain Plaza
Suite 300
Buffalo, New York 14202-2199

Tel: (716) 551-5065
Fax: (716) 551-4035

New York District Office

26 Federal Plaza
Room 36-116
New York, New York 10278-0002

Tel: (212) 264-7742
Fax: (212) 264-8166

**New York State
Department
of Labor**

New York State Department of Labor

State Campus
Building 12, Room 500
Albany, New York 12240-0003

Tel: (518) 457-2741
Fax: (518) 457-6908

**United States
Equal Employment
Opportunity
Commission**

EEOC National Headquarters

1801 L. Street, N. W.
Washington, D. C. 20507

Tel: (202) 663-4900
Fax: (202) 663-4912

EEOC Field Office

6 Fountain Plaza
Suite 350
Buffalo, New York 14202

Tel: (716) 551-4441
Fax: (716) 551-4387

**Office for
Civil Rights**

OCR National Headquarters

U. S. Department of Education
Office of Civil Rights
Customer Service Team
Mary E. Switzer Building
330 C. Street, S. W.
Washington, D. C. 20202

Tel: (800) 421-3481
Fax: (202) 205-9862

Office for Civil Rights

New York Office
75 Park Place
14th Floor
New York, New York 10007-2146

Tel: (212) 637-6466
Fax: (212) 264-3803

APPENDIX C The State University of New York Charge of Discrimination

This form is to be used by students and employees to file a complaint of discrimination based on RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN, SEXUAL ORIENTATION, VETERAN'S STATUS, AGE, DISABILITY, MARITAL OR PARENTAL STATUS OR SEXUAL HARASSMENT.

Campus _____

(PLEASE PRINT OR TYPE) Received by _____ Date _____

1. Name _____ Phone No. _____
Status (Faculty, Staff, Graduate, Undergraduate) _____
Campus Address _____
Home Address _____
City _____ State _____ Zip Code _____
-

2. ALLEGED DISCRIMINATION IS BASED ON (please check all that apply):

Race or color Religion National Origin Sexual orientation Veteran's Status
 Sex Age Disability Marital/Parental Status Sexual Harassment

3. Alleged Discrimination took place on or about: Month _____ Day _____ Year _____
Check if alleged discrimination is continuing Yes No

4. Respondent(s) Name(s) _____
Title (if known) _____

5. Please check the appropriate box(es):

I have filed an informal complaint on (Date) _____
 I elect to utilize the informal complaint process as described in Part A, p. 4 of the Internal Discrimination Procedure.
 I elect to proceed immediately to file a formal complaint as described in Part B, p. 6 of the Internal Discrimination Procedure.

6. Have you filed this charge with a federal, state or local government agency? Yes No
If yes, with which agency? _____ When? _____

7. Have you instituted a suit or court action on this charge? Yes No
If yes, with which court? _____ When? _____
Court address _____
Contact person _____
-

8. Describe briefly the act which occurred and your reason for concluding that it was discriminatory (attach extra sheets if necessary).

9. I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

Signature: _____ Date _____

Selection and Training of Panel and Tripartite Hearing Committee

Panel

The Campus Affirmative Action Committee has the responsibility for recommending to the President a panel of campus administrators, faculty, staff and students from which a tripartite hearing committee may be selected. The Campus President annually appoints all affirmative action panel members. Training should occur prior to any specific complaints or cases and, preferably, at the beginning of the school year. Members of the affirmative action panel should become familiar with the internal grievance procedures, discrimination laws, and the law and the language of affirmative action. The panel should be assisted in a clear understanding of their responsibilities and rights, such as reviewing confidential material, concepts of burden of proof, confidentiality and responsible record keeping.

Tripartite Hearing Committee

The tripartite hearing committee is made up of persons selected from the affirmative action panel (the pool of individuals recommended by the affirmative action committee, approved by the President and trained in the campus internal grievance procedures). One person is selected by the Complainant; one person by the Respondent and the third member is selected by the other two designees. The three panel members select among themselves a committee chairperson. The tripartite committee should be given an opportunity to review the procedure and have any questions concerning process answered by the affirmative action officer prior to beginning the investigation.

The tripartite hearing committee is charged with the responsibility of reviewing all facts regarding the alleged harassment, investigating and reporting only on that charge, and maintaining confidentiality. The written record compiled by the committee must be clearly identified and described to ensure that findings are based on documented information extracted from pertinent records and letters.