

Discrimination Complaint Procedures

SUNY Fredonia Discrimination Complaint Procedure (including sexual harassment)

Summary

The State University of New York at Fredonia (“SUNY Fredonia”) is committed to maintaining a learning and workplace environment free from sexual harassment and unlawful harassment and discrimination. In its continuing effort to seek equity in education and employment, and in support of federal and state anti-discrimination legislation, SUNY Fredonia has adopted this complaint procedure for the prompt and equitable investigation and resolution of allegations of unlawful discrimination on the basis of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, domestic violence victim status, criminal conviction or any other basis protected by state or federal laws. Harassment on the basis of the above protected categories is one form of unlawful discrimination. SUNY Fredonia 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. Sex discrimination includes sexual harassment and sexual and interpersonal violence and may be addressed under this policy or the campus’ Title IX policy, depending on whether the alleged conduct meets the definition found at [34 CFR § 106.30](#). 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 regardless of the validity of the original complaint.

Process

Applicability

This procedure may be used by any student or employee, applicants for employment, interns, whether paid or unpaid, volunteers, contractors, and persons conducting business with SUNY Fredonia, as well as other third-parties who are participating in a University-sponsored program or activity. Complaints alleging *Title IX Sexual Harassment* will be investigated and adjudicated in accordance with the University’s Title IX Grievance policy which has its own separate policies and procedures. Employee grievance procedures established through negotiated contracts, academic grievance procedures, student disciplinary processes, and any other procedures defined by policy or contract will generally operate independently from this procedure, but may be used to give effect to findings where appropriate. Human resources or employee labor relations must be notified of complaints involving represented employees at the onset of the processes described in this procedure.

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.

Definitions

Discrimination is the different treatment of an individual or group based solely or principally upon a factor prohibited by law, including race, color, national origin, sex, religion, age, disability, gender, pregnancy, gender identity, gender expression, sexual orientation, predisposing genetic characteristics, marital status, familial status, veteran status, military status, domestic violence victim status, or criminal conviction status, that adversely affects the individual's or group's employment or academic status.

Discrimination may also result from failure of the University to provide reasonable accommodations to individuals when required due to the individual's disability, religion, pregnancy status, maternity, breastfeeding, transgender status, or sexual violence victim status.

Harassment is a form of discrimination consisting of oral, written, graphic or physical conduct relating to an individual's protected characteristics that has the effect of subjecting the individual to inferior terms, conditions or privileges of education or employment or interferes with or limits the ability of an individual to participate in or benefit from the University's programs or activities. Such conduct must amount to more than petty slights or trivial inconveniences but need not be severe or pervasive. Engaging in speech or expression protected by the First Amendment is not a violation of SUNY Fredonia policy; however, if individuals complain that speech constitutes harassment, discrimination or a hostile environment, it will be investigated under this policy.

Title IX Sexual Harassment means conduct on the basis of sex that satisfies one or more of the following:

1. A SUNY Fredonia employee conditioning the provision of an aid, benefit, or service of SUNY Fredonia on an individual's participation in unwelcome sexual conduct (quid pro quo);
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to SUNY Fredonia's education program or activity; or
3. "Sexual assault" as defined in [20 U.S.C. 1092\(f\)\(6\)\(A\)\(v\)](#), "dating violence" as defined in [34 U.S.C. 12291\(a\)\(10\)](#), "domestic violence" as defined in [34 U.S.C. 12291\(a\)\(8\)](#), or "stalking" as defined in [34 U.S.C. 12291\(a\)\(30\)](#).

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. Adverse action includes being discharged, disciplined, discriminated against, subjected to harassment or intimidation, or

otherwise subject to adverse employment action because the employee reports discrimination or participates in an investigation under this procedure.

Complainant is the individual bringing forward a complaint of harassment, discrimination, or retaliation.

Respondent is the individual or entity against whom a complaint has been filed. When a complaint is made against a group or entity, the campus shall identify an appropriate representative to act on behalf of the respondent.

Supportive (interim) measures are steps taken to stabilize the situation, prevent continuing misconduct, support the parties, and protect the integrity of the investigation. Whenever possible, interim measures will be structured so they do not disproportionately impact either party. 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 the campus human resources or employee relations department.

Procedure

This procedure provides a mechanism through which SUNY Fredonia may identify, respond to, and prevent incidents of illegal discrimination. SUNY Fredonia 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 violations of law or policy. All parties involved in the investigation are expected to cooperate and provide truthful information throughout the investigation. Failure to do so may compromise the integrity of the investigation or cause delays. All members of the campus community are expected to cooperate with this procedure.

SUNY Fredonia will keep investigations confidential to the extent possible. During any portion of the procedures detailed hereafter, neither the complainant, respondent(s), nor any witnesses shall employ audio or video taping devices.

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 up to and including termination or expulsion. Participants who believe they experience retaliation should contact their supervisor, or the campus Title VI Coordinator or Director of Human Resources and may file a complaint pursuant to this procedure.

If a parallel or overlapping complaint has been filed with an outside enforcement agency (e.g., State Division of Human Rights, U.S. Department of Education Office for Civil Rights, Equal Employment Opportunity Commission), the deadlines and process described in this procedure may be modified to the extent necessary to avoid interference with the outside enforcement agency's investigation. Upon the initiation of litigation, the University may pause the

investigation or continue in a manner designed to avoid conflict with litigation counsel, court procedure and judicial rulings.

Supervisory Responsibility

Complaints or concerns that are reported to, or conduct involving possible discrimination or harassment that is observed by an administrator, manager or supervisor, must promptly be referred to the Title VI Coordinator, or Director of Human Resources. All other employees are also encouraged to make such reports to the Title VI Coordinator, or the Director of Human Resources.

Consultation and Review

Any student, employee, or third party may consult with the Title VI Coordinator, or designee regarding potential discrimination or harassment. This initial contact may occur by telephone, email, videoconference, or in person—the last being preferred.

It is the responsibility of Title VI Coordinator or designee to respond to all such inquiries, reports, and requests as promptly as possible, and in a manner appropriate to the circumstances. This response may include interim measures to protect the parties during the investigation process as well as information on how to file a complaint using this procedure and/or with an outside enforcement agency. 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 be referred to the Title VI Coordinator.

Cases of Sex Discrimination

Complaints or reports of sex discrimination received by any faculty or staff member will be referred to the campus' Title IX Coordinator, who will provide to the complainant written or electronic information describing the available options, including pursuing a criminal complaint with a law enforcement agency, pursuing the complaint via this procedure (including possible referral to the Title IX process), or pursuing both options at the same time. 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 (such as counseling, local rape crisis center), and interim measures of protection. For more information, see the [Victim/Survivor Bill of Rights](#). Assistance will be available whether or not a formal complaint is filed. To view policy information and obtain contact information for campus-specific, off-campus, community, and state-wide resources, visit <http://response.suny.edu>.

When SUNY Fredonia has *knowledge* of an allegation of Title IX Sexual Harassment, the investigation shall proceed pursuant to the campus [Sexual Harassment/Title IX Policies & Procedures: SUNY Fredonia](#).

When a campus has notice of allegations or incidents of sexual harassment that fall outside of the definition set forth in 34 CFR § 106.30, the Title IX Coordinator will make reasonable efforts to investigate, regardless of complainant cooperation and involvement, consistent with the [Policies on Sexual Violence Prevention and Response](#), including the [Options for Confidentially Disclosing Sexual Violence](#).

Time Limitations for Filing a Discrimination Complaint

Discrimination and harassment should be reported within **three years** after the last act of alleged discrimination or harassment occurred. In instances involving a student charge of discrimination against a faculty member that occurred in the context of a subordinate-supervisor academic relationship (e.g., teaching, advising, thesis or dissertation supervision, coaching, clinical medical supervision), the time period may be extended until three years after the student is no longer under the faculty member's academic or clinical medical supervision or three years from the date the most recent alleged discrimination occurred, whichever is earlier. For allegations of sexual harassment, including sexual violence, the time period for reporting is extended to within **seven years** of the alleged acts of sexual harassment. Failure to report discrimination within the relevant limitation period may lead to dismissal of the complaint.

Conflicts of Interest

In the event that the Title IX Coordinator, or designee, cannot conduct an investigation due to a conflict of interest, the campus will ensure that the report of discrimination is investigated by individuals with experience and training in discrimination compliance.

Filing and Processing of Complaints

The Title IX Coordinator, or designee (hereinafter "investigator") who receives any complaint of alleged discrimination shall:

1. Inform the complainant about the complaint process and other internal options to resolve the issue;
2. Assist the complainant in the use of the complaint form; and
3. Provide the complainant with information about various external agencies with which the complaint may be filed, including where to find applicable time limits for filing with each agency.

Verbal complaints and referrals will be accepted and the submission of a written complaint written by the complainant or summarized by a third party submitted by paper or electronically with a statement of the allegations or summary of the facts will also be accepted.

All complaints received should be reduced to writing, whether by the Complainant or third party reporting the complaint and submitted on the [Form A](#) – Charge of Discrimination, provided by the University. If the complaining party or third party does not submit the written complaint, the Title IX Coordinator, or designee, will reduce the verbal allegations to writing.

As soon as reasonably possible after the filing of the complaint, the investigator notifies the respondent and provides a short description of the allegations, along with a copy of this procedure, to the respondent(s).

Formal Investigation and Resolution

The formal complaint proceeding is commenced by the filing of a complaint form as described above by a complainant or third party and/or by a party's decision to discontinue the informal resolution process. The outcome of the process is a report describing the relevant evidence and making findings.

The investigatory process is guided by the need to balance the remedy of unlawful discrimination and harassment with principles of fairness, due process, and confidentiality. Accordingly, parties to an investigation are afforded the following rights and protections:

- SUNY Fredonia will maintain the confidentiality of discrimination reports to the fullest extent possible and requests the same of parties to the investigation and third-party witnesses. Records of conversations with parties or witnesses will not be released outside of the institution unless required by law (e.g., outside investigation, FERPA, FOIL), court order, or as needed to pursue available remedies such as student/employee discipline.
- The respondent is entitled to due process, including knowledge of the specific allegation(s) and an opportunity to respond prior to imposition of sanctions or an adverse employment or education action. No finding or presumption of wrongdoing will be made absent factual evidence that supports the finding.
- Complainants and respondents will each have notice of the evidence presented during the investigation, as well as an opportunity to explain and respond to the evidence. The investigator will keep the parties informed of the progress of the investigation and any actions taken that may affect their rights.
- Complainants and third-party witnesses are protected against retaliation for reporting discrimination or participating in an investigation. If a party feels that any negative action has been taken as a result of reporting discrimination or participating in a complaint investigation, this allegation will be investigated separately.

The investigator may refer allegations of serious misconduct that could warrant disciplinary action to the applicable disciplinary offices (e.g., employee relations, student conduct) for investigation and adjudication. When possible, such referrals will be made following the investigation. However, earlier referral may be appropriate where the seriousness of the alleged conduct requires immediate action (e.g., alternate work assignment, suspension), where applicable collective bargaining agreements require investigation by employee relations, or where the time limitations applicable to disciplinary proceedings may be implicated prior to the conclusion of the investigation.

In conducting investigations, the investigator will consider relevant laws, policies and procedures, documentation, and information obtained from the complainant, respondent(s), and third-party witnesses. The standard of proof in complaints made under this policy is preponderance of the evidence (more likely than not), regardless of whether the allegations

would also constitute a crime. The timeframe for investigating a report of discrimination will depend upon the complexity of the investigation, but should not exceed sixty days, absent good cause. At the conclusion of an investigation, the investigator will summarize their findings in a written report, which will include a recommended outcome.

The following are potential outcomes of a complaint investigation:

- The matter is resolved between the parties and there are no other issues requiring University involvement;
- The complainant elects to withdraw the complaint or requests that there be no further investigation, and there are no other factors which require continuation of the investigation;
- There is insufficient evidence to support a finding of a violation of the SUNY Fredonia policies against discrimination and harassment;
- The preponderance of the evidence supports a finding of a violation of the SUNY Fredonia policies against discrimination and harassment.

The parties to a complaint will receive notice of the outcome of the investigation.

When the evidence supports a finding that a violation of law or policy occurred, the investigator will recommend appropriate action to the University president or designee to remedy such violation(s). If the president is the respondent, the findings and recommendation shall be submitted to the SUNY Chancellor or their designee, who will act in place of the president.

- I. For employees (including student employees) not in a collective bargaining unit: The president or designee may take such administrative action as they deem appropriate under their authority as the chief administrative officer of the University, including but not limited to, termination, demotion, reassignment, suspension, reprimand, or training.
- II. For students: The president or designee may determine that sufficient information exists to refer the matter to the office of student conduct, or other appropriate disciplinary bodies for review, and appropriate action under the applicable student conduct code. The potential outcomes may include reprimand, suspension, expulsion, or educational courses or activities.
- III. For employees in collective bargaining units: The president or 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 potential outcomes may include a reprimand, suspension, termination, training, reassignment, fine, demotion, or informal or formal counseling.

The action of the president or designee shall be final unless further proceedings under the code of student conduct or applicable collective bargaining agreement are implicated. If the president is the respondent, the Chancellor or 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: Following final determination and/or action, the president or designee 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. In cases of sex discrimination, notice of outcome will include the sanctions, as appropriate.

Charge of Discrimination Form (A)

[Form A](#) - Charge of Discrimination

Related Procedures

[SUNY Policies on Sexual Violence Prevention and Response](#)

[Available on the Sexual Violence Prevention Workgroup website](#)

Includes: Definition of Affirmative Consent, Policy for Alcohol and/or Drug Use Amnesty in Sexual Violence Cases, Campus Climate Assessment Policy, Sexual Violence Victim/Survivor Bill of Rights, Sexual Violence Response Policy, Options for Confidentially Disclosing Sexual Violence, and Student Onboarding and Ongoing Education Guide

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

[SUNY Policy Doc. No. 6504, Policy on Mandatory Reporting and Prevention of Child Sexual Abuse](#)

Other Related Information

[SUNY Procedure Doc. No. 6503](#) - Sexual Orientation Nondiscrimination

[SUNY Policy Doc. No. 6506](#) - Sexual and Romantic Relationship Policy

[SUNY Policy Doc. No. 6507](#) - Sexual Harassment Response and Prevention Statement

[SUNY Student Conduct Institute](#)

[SUNY SAVR Resource](#)

Authority

New York State Human Rights Law, available on the [New York State Division of Human Rights website](#)

[Title IX of the Education Amendments of 1972](#), Federal Law

Related guidance available with the United States Department of Education [Office for Civil Rights Publications page](#)

[All of the laws that are available on the [U.S. Equal Employment Opportunity Commission website](#), the federal agency with oversight of the laws]

- [Title VII of the Civil Rights Act of 1964](#)
 - [The Age Discrimination in Employment Act of 1967](#)
 - [Titles I and V of the Americans with Disabilities Act of 1990 \(ADA\)](#)
 - [The Equal Pay Act of 1963](#)
 - [The Pregnancy Discrimination Act](#)
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Appendices

[Appendix A](#) - External Enforcement Agencies