
DISCRIMINATION AND HARASSMENT POLICY

Category: Equity and Campus Diversity

Responsible Office: Equity and Campus Diversity Office

Date Established: 2002

Date Last Revised: 11/23/18

Date Posted to Library: 11/29/18

POLICY SUMMARY

Buffalo State College (the "College") prohibits discrimination and harassment and requires that accommodations be provided to individuals when such accommodations are reasonable and necessary as a result of an individual's disability, religion, pregnancy, maternity, or breastfeeding status. This policy describes the procedure the college will follow to investigate and/or resolve complaints of discrimination and harassment.

POLICY

Policy Statement:

The College is committed to ensuring equal employment, educational opportunity, and equal access to services, programs, and activities without regard to an individual's race, color, national origin, sex, religion, age, disability, gender, pregnancy, gender identity, gender expression, sexual orientation, predisposing genetic characteristics, marital status, veteran status, military status, domestic violence victim status, or ex-offender status. This includes, but is not limited to, recruitment, the application process, examination and testing, hiring, training, grading, disciplinary actions, rates of pay or other compensation, advancement, classification, transfer and reassignment, discharge, and all other terms and conditions of employment, educational status, and access to college programs and activities. Employees, students, applicants or other members of the college community (including but not limited to vendors, visitors, and guests) may not be subjected to harassment that is prohibited by law or treated adversely based upon a protected characteristic.

The College will provide accommodations to ensure the full participation of individuals in collegiate programs, when such accommodations are reasonable and necessary due to an individual's disability, religion, pregnancy, maternity, or breastfeeding status. The College will provide accommodations to individuals with disabilities in accordance with its Reasonable Accommodations Policy. Religious accommodations will be provided in accordance with the college's Religious Accommodation and Observation Policy.

This policy prohibits retaliation against anyone who files a complaint, participates in an investigation, and/or opposes a discriminatory act, practice, or policy. Retaliation will not be tolerated and may result in a referral to the college's disciplinary process.

Discrimination and Harassment Policy

Background:

The college's policy is in accordance with federal and state laws and regulations prohibiting discrimination and harassment. These laws include the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, Title VII of the Civil Rights Act of 1964 as Amended by the Equal Employment Opportunity Act of 1972, and the New York State Human Rights Law. These laws prohibit discrimination and harassment, including sexual harassment and sexual violence.

Applicability:

This policy:

- applies to all persons without regard to race, color, national origin, sex, religion, age, disability, gender, pregnancy, gender identity, gender expression, sexual orientation, predisposing genetic characteristics, marital status, veteran status, military status, domestic violence victim status, or ex-offender status
- applies to all members of the campus community, including students, faculty, staff, volunteers, vendors, visitors, and guests
- applies to all employment and educational practices and actions
- applies to all job classifications and titles in the college and to all types of appointments under college jurisdiction, whether full time, part time, or volunteers
- governs all college policies, practices, and actions including but not limited to recruitment, hire, rate of pay or other compensation, advancement, upgrading, promotion, demotion, renewal, non-renewal, termination, transfer, layoff, leave, training, grading, housing, and employee and student benefits of any nature
- applies to all campus organizational units
- expects that each contractor, supplier, union, public agency, or cooperative agent will support this policy by complying with applicable state and federal equal employment opportunity laws and regulations

DEFINITIONS

Complainant

An individual bringing forward a complaint of harassment, discrimination, or retaliation, whether on the individual's own behalf or on behalf of another person or group.

Discrimination

Different treatment of an individual or group based 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, veteran status, military status, domestic violence victim status, and ex-offender status, that adversely affects the individual's or group's employment or academic status. Policies or practices that adversely impact a protected group may also constitute discrimination, even when applied in a consistent manner.

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Harassment is a form of discrimination. Sex discrimination also includes, but is not limited to sexual harassment, sexual assault, and sexual violence.

Discrimination may also result from failure of the college to provide reasonable accommodations to individuals when required due to the individual's disability, religion, pregnancy status, maternity, and/or breastfeeding status.

Harassment

Conduct that is unwelcome, severe, pervasive, or persistent enough to interfere with an individual's employment, education, or other access to college programs and activities, and that is targeted toward an individual or group based on a protected factor, including race, color, national origin, sex, religion, age, disability, gender, pregnancy, gender identity, gender expression, sexual orientation, predisposing genetic characteristics, marital status, veteran status, military status, domestic violence victim status, and ex-offender status; harassment is a form of discrimination.

Preponderance of the Evidence

The standard of proof in discrimination cases, which determines whether it is "more likely than not" that the discriminatory or harassing act(s) occurred.

Respondent

An individual or entity against whom a complaint has been filed.

Retaliation

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. Adverse action includes 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 Chief Diversity Officer, and may file a complaint pursuant to these procedures.

Sexual Harassment

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

Sexual harassment is prohibited and will not be tolerated at SUNY. The University has implemented measures to address and prevent sexual harassment and is taking additional affirmative steps to increase awareness of, and sensitivity to, all forms of sexual harassment in order to maintain a workplace and learning environment free of its harmful effects.

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Sexual harassment is a form of workplace discrimination and employee misconduct, as well as a form of discrimination in the academic setting, and 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 University, or with a government agency, or in court under federal or state anti-discrimination laws, as detailed in the University's Discrimination and Sexual Harassment Complaint Procedure.

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.
 - 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.

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- 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; bullying, yelling, name-calling.

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 for more details on how to have their allegations reviewed, including a link to a complaint form.

See Appendix A for additional information regarding sexual harassment, and Appendix B for a full explanation of the rights of victims of sexual assault, domestic violence, dating violence, and stalking.

Title IX

Title IX of the Education Amendments of 1972, a federal law that prohibits sex discrimination in any education program or activity that receives federal financial assistance.

RESPONSIBILITY:

Supervisors, instructors, and others with authority to make decisions on behalf of the College

- Prevent discrimination and harassment whenever possible; initiate a referral for disciplinary and/or corrective action when appropriate.
- Provide information to individuals in their units regarding the procedure described in this policy.
- Refer persons with inquiries or complaints to this policy and ECD.
- Ensure that these decisions are made based upon legitimate, non-discriminatory reasons.
- Report instances of discrimination and harassment based upon a protected characteristic to ECD.

Chief Diversity Officer, Equity and Campus Diversity (ECD)

- Administers this policy.
- Investigates allegations of discrimination and harassment.

Faculty, Staff, Students

- Refrain from behavior that creates a hostile environment for others, regardless of whether it is the individuals' intent to create a hostile environment.

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Procedure

The College President has designated the ECD office to manage this complaint procedure. ECD will receive complaints, conduct necessary investigations, report findings, and make recommendations in accordance with the procedures outlined below.

The discrimination complaint procedure provides a mechanism through which the college may identify, respond to, prevent, and eliminate incidents of illegal discrimination. It may be used by any person who believes he or she has been the subject of discrimination in connection with the College. If a claim of discrimination or harassment involves a non-College entity such as a contractor, vendor, or affiliated school or hospital, the College will coordinate as necessary to ensure that an appropriate investigation is conducted and that discriminatory and/or harassing behaviors are addressed. If the College is unable to remedy the situation, it will work to provide the person with an alternative placement or program that provides comparable educational benefits and/or experience.

Timeframes for Filing a Complaint

Complaints should be filed within 180 days after the last act of alleged discrimination or harassment occurred. In instances involving a student complaint against a faculty member charging discrimination that occurred in the context of a subordinate-supervisor academic relationship (e.g., teaching, advising, thesis supervision, coaching), the time period may be extended until 180 days after the student is no longer under the faculty member's academic or supervision. Failure to file a complaint within the specified time period may lead to dismissal of the complaint.

Complaint Handling

Initial Consultation with Complainant

Any member of the College community may speak confidentially with the CDO regarding potential discrimination or harassment. The CDO will determine the nature of the issue or concern, obtain relevant facts, and provide guidance as to whether the matter falls under the office's jurisdiction. ECD will maintain a confidential record of the conversation, to the extent allowed by law. If the matter does not fall under ECD's jurisdiction, and/or if there are parallel avenues which the individual could pursue (e.g., academic grievance procedures), information will be provided regarding the college resources available to address the concern. If the matter falls within ECD's jurisdiction and the individual wishes to pursue a complaint, the complainant will be advised of the subsequent steps in the investigatory process.

In cases where the reporting individual wishes to discuss the matter but not proceed with the complaint investigation process, ECD will maintain a confidential record of the conversation, to the extent allowed by law. It should be noted that in instances of harassment, there may be situations where the College is legally obligated to pursue complaint investigation regardless of the individual's willingness to proceed. In this event, the individual will be notified, and steps identified to protect the complainant against retaliation and ensure an acceptable working or learning environment for the complainant. In instances involving allegations of serious misconduct, the matter may be referred to appropriate disciplinary channels and/or law enforcement for investigation.

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Victims of sexual assault, domestic violence, dating violence, and stalking have multiple options for redress, as well as the right to obtain assistance in order to ensure they can continue to participate in college programs and activities. These options and rights are described Appendix B - *Students Bill of Rights*.

The complainant will be asked to complete an initial Intake and Information Form and will be provided assistance in completing this form as needed. Failure or refusal to complete this form will not preclude investigation of the complaint. Individuals may contact ECD anonymously, either for consultation or to file a complaint. It is important to note that due process considerations may limit the ability to investigate or resolve anonymous complaints.

The Investigatory Process

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 a complaint are afforded the following rights and protections:

- ECD maintains the confidentiality of complaints to the fullest extent possible, and requests the same of parties to the complaint and third party witnesses. Records of conversations with parties or witnesses will not be released unless required by law.
- The respondent is entitled to due process, including knowledge of the specific allegation(s) against them and an opportunity to respond. No presumption of wrongdoing will be made absent factual evidence.
- The parties to the complaint and third party witnesses are protected against retaliation for filing complaints of discrimination and/or participating in an investigation. If a party feels that any negative action has been taken as a result of filing a complaint or participating in a complaint investigation, this allegation will be investigated separately.
- A complainant, respondent, or third party witness may choose to be accompanied by a person of their choice; these individuals must maintain confidentiality and may not impede or interfere with the CDO's ability to obtain necessary information.
- For instances involving sex discrimination, complainants will be made 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.

For complaints that also involve law enforcement proceedings, the CDO will comply with law enforcement requests for cooperation, including when such cooperation may require the CDO to temporarily suspend the fact-finding aspect of an investigation while the law enforcement agency is in the process of gathering evidence. The CDO will resume the investigation as soon as it is notified by the law enforcement agency that it has completed the evidence gathering process.

In conducting a complaint investigation, the CDO considers relevant laws, policies and procedures, documentation, and information obtained from the complainant, respondent, and third party witnesses. The standard of proof in complaints made under this policy is preponderance of the evidence. The timeframe for handling a complaint will depend upon the complexity of the investigation, but should not exceed sixty days absent good cause. The following are potential outcomes of a complaint investigation:

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- the matter is resolved between the parties and there are no other issues requiring ECD's involvement
- the complainant elects to withdraw the complaint and/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 College's policies against discrimination and/or harassment
- there is sufficient evidence to support a finding of a violation of the College's policies against discrimination and/or harassment; in this event, the CDO will recommend appropriate action to the supervisor or unit head to remedy such violation(s); employee or student misconduct may result in the referral of the matter through the applicable campus disciplinary mechanism(s) (i.e., Human Resource Management). Disciplinary recommendations for misconduct may include, but are not limited to, a reprimand, suspension, or termination. Non-disciplinary remedies for misconduct may include, but are not limited to, training, reassignment, or informal or formal counseling.

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

Conflicts of Interest

In the event that the investigatory process outlined in this policy may result in a conflict of interest, the College will take necessary measures to ensure that the investigation is thorough and impartial. These measures may include reassignment of the responsibility for the investigation. In the event that the CDO cannot conduct an investigation due to a conflict of interest, the College will ensure that the complaint is investigated by individuals with experience and training in discrimination compliance. If the CDO is precluded from investigating a complaint, the office may still assist complainants and respondents in seeking a voluntary resolution to the matter, as appropriate.

Complaints against the College's President will be handled in accordance with the State University of New York (SUNY) *Discrimination Complaint Procedure*.

Failure to Cooperate

If a complainant refuses to cooperate and/or respond to requests for information in a timely manner, the CDO will proceed with an investigation based on the information already provided. In the event that this information does not allow for an effective investigation, the complaint will be closed with notice to the complainant.

In the event that a respondent refuses to cooperate and/or respond to requests for an interview or other information, the respondent's supervisor will issue the respondent a directive to cooperate with the investigation. If the respondent's supervisor cannot issue such a directive because of a conflict of interest, the respondent will be directed to cooperate by the next individual in the chain of command. Failure to comply with this directive will result in a referral for disciplinary action.

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Other Avenues for Complaint Reporting

There is limited right to appeal an ECD finding based on: 1) new information that was not available at the time of the investigation; 2) a failure to follow this procedure; or 3) the penalty imposed or recommended was unduly harsh. A complainant may file a charge of discrimination with the appropriate state or federal enforcement agencies at any point in the process, subject to applicable time limitations.

It is important to note that filing an internal complaint pursuant to the procedure may not extend the time limits established by state and federal enforcement agencies. It is not necessary to pursue college complaint procedures before filing an external complaint.

State and federal enforcement agencies include:

New York State Division of Human Rights
The Walter J. Mahoney State Office Building
65 Court Street, Suite 506
Buffalo, New York 14202
Phone: 716-847-7632

Equal Employment Opportunity Commission
6 Fountain Plaza, Suite 350
Buffalo, New York 14202
Phone: 1-800-669-4000

Office for Civil Rights, New York Office
U.S. Department of Education
32 Old Slip, 26th Floor
New York, New York 10005-2500
Phone: 646-428-3900

CONTACT INFORMATION

Office Name: Equity and Campus Diversity Office
Office Address: 415 Cleveland Hall
Phone: (716) 878-6210
Fax: (716) 878-6234
Website: <http://equity.buffalostate.edu/>
Email: <mailto:eeoequity@buffalostate.edu>

REVISION HISTORY

Date of change:	11/23/18
Brief description of edit:	Major revisions
Date of change:	10/4/2017
Brief description of edit:	Update to form

APPROVAL SUNY Office of General Counsel