

Buffalo State College Discrimination Complaint Procedure (including sexual harassment)

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Summary

The State University of New York University College at Buffalo (“Buffalo State College”) is committed to maintaining a learning and workplace environment free from sexual harassment and unlawful discrimination. In its continuing effort to seek equity in education and employment, and in support of federal and state anti-discrimination legislation, Buffalo State College 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, or criminal conviction. Harassment on the basis of the above protected categories is one form of unlawful discrimination. Buffalo State College 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.

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 Buffalo State College, as well as other third-parties who are participating in a College-sponsored program or activity. Complaints alleging *Title IX Sexual Harassment* will be investigated and adjudicated in accordance with the College’s Title IX policy. 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 Buffalo State College policy.

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

- (1) An employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
- (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 the recipient'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.

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 Buffalo State College may identify, respond to, and prevent incidents of illegal discrimination. Buffalo State College 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.

Buffalo State College 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 experience retaliation should contact the campus Affirmative Action Officer (“AAO”) and may file a complaint pursuant to this procedure.

Except as required by law, Buffalo State College 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 College will resume its investigation as soon as law enforcement notifies it that such investigation will not interfere with the criminal investigation or prosecution. Buffalo State College will implement appropriate interim steps during the law enforcement agency’s investigation to provide for the safety of the victim(s) and the campus community, as described below.

If a parallel or overlapping complaint has been filed with an outside enforcement agency (*e.g.*, SDHR, OCR, EEOC), 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 investigation may pause or continue in a manner designed to avoid conflict with litigation counsel, court procedure and judicial rulings.

Consultation and Review

Any student, employee, or third party may consult with the AAO or Title IX Coordinator regarding potential discrimination or harassment. This initial contact may occur by telephone, email, videoconference, or in person--the latter being preferred.

It is the responsibility of the AAO 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 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 referred to the AAO or Title IX Coordinator.

Cases of Sex Discrimination

Complaints or reports of sex discrimination 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 privately view policy information and obtain contact information for campus-specific, off-campus, community, and state-wide resources, visit <http://response.suny.edu>.

When Buffalo State College has *knowledge of an allegation of Title IX Sexual Harassment*, the investigation shall proceed pursuant to the campus [Title IX policy](#).

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 should be reported within **one year** 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 one year 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 AAO, 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 Affirmative Action Officer or Title IX Coordinator (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.

Although in limited circumstances, verbal complaints may be acted upon, the procedures set forth here rest upon the submission of a written complaint submitted by paper or electronically that will enable there to be a full and fair investigation of the facts.

All complaints must be submitted on the forms provided by the College (see Forms below).

As soon as reasonably possible after the filing of the complaint, the investigator will provide a copy of the complaint, along with a copy of this procedure, to the respondent(s).

Informal Resolution

No party will be required to participate in informal resolution, and the campus may never condition enrollment, employment, or enjoyment of any other right or privilege upon agreeing to informal resolution.

Informal resolution of complaints of sexual harassment may be addressed via the campus' [Sexual Harassment Informal Resolution Process](#) if the complainant and respondent agree.

In all other discrimination complaints, the AAO may attempt to resolve the underlying issue with the agreement of complainant and respondent. The time limitations for investigating a complaint shall be tolled (paused) during the pendency of the informal resolution process. Any party or the AAO 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.

If a resolution satisfactory to both the complainant and the respondent is reached, the AAO shall close the case, sending a written notice to that effect to the complainant and respondent(s). The written notice, a copy of which shall be attached to the original complaint form in the AAO'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(s) and the AAO. ([See Forms for the Memorandum: Status - Resolved form](#))

If the AAO is unable to resolve the complaint to the mutual satisfaction of the complainant and respondent(s), the AAO shall so notify the parties and initiate the investigation process.

Formal Investigation and Resolution

The formal complaint proceeding is commenced by the filing of a complaint form as described above 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:

- Buffalo State College 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., 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 reduce their findings to 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 College 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 Buffalo State College policies against discrimination and harassment;
- The preponderance of the evidence supports a finding of a violation of the Buffalo State College policies against discrimination and harassment.

The parties to a complaint will receive notice of the outcome of the investigation, including a copy of the investigator's report.

When the evidence supports a finding that a violation of law or policy occurred, the investigator will recommend appropriate action to the College 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 college, 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 student conduct, or other appropriate disciplinary body for review, and appropriate action under the appropriate 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 student code of 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.

Forms

[Form A](#) - Charge of Discrimination

[Form B](#) - Template for Memorandum Outlining Mutual Agreement Between Parties

Related Procedures

[Buffalo State College Policies on Sexual Violence Prevention and Response](#)

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

[Buffalo State College Nondiscrimination Notice](#)

[Buffalo State College Title IX resources](#)

[Buffalo State College Equity and Campus Diversity Policies](#) (Affirmative action, bias crime, disability related discrimination, discrimination based on national origin, religion, sexual orientation, Veteran status)

Other SUNY 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](#)

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

[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

Authority

New York State Human Rights Law, available on the [New York State Division of Human Rights website](#), or in [PDF format](#) from the same site.

[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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History

This document was updated and adopted in January 2021 in order to comply with [Title IX regulations](#) and improve the efficiency and effectiveness in which complaints are addressed.

Appendices

[Appendix A](#) - External Enforcement Agencies