Table of Contents
Summary
Process
Forms
Related Procedures
Other Related Information
Authority
History
Appendices

Summary

The State University of New York (University), 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 the Definitions section.

This procedure may be used by any student or employee of a state-operated campus of the University. 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. 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. However, after filing with one of these outside enforcement agencies, or upon the initiation of litigation, the complaint will be referred to University’s office of University counsel for review. Contact information for these agencies is listed in the Other Related Information section below. More detailed information may be obtained from the campus affirmative action officer.

This procedure provides a mechanism through which the University may identify, respond to, and prevent 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 enforcement agencies or courts.

All campuses must use this procedure 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 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 University campus shall receive any complaint of alleged discrimination, assist the complainant in the use of the complaint form, and provide the complainant with information about various internal and external mechanisms through which the complaint may be filed, including applicable time limits for filing with each agency.

The complainant is not required to pursue the University internal procedures before filing a complaint with a state or federal agency. In addition, if the complainant chooses to pursue the University 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 University internal complaint procedure will be terminated and the matter referred to the office of 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.

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**Process**

**PART A: Informal Resolution**

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.

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. All such complaints must be submitted on the forms provided by the University (see Forms below). The Charge of Discrimination form will be used for both the initiation of complaints under the informal procedure and the conversion of the complaint to the formal procedure. 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.

   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-campus official or agency, under any other complaint or complaint procedure. If an external complaint has been filed, the statement should indicate the name of the department or agency with which the information was filed and its address.

   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 an alternative forum (Appendix A).

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 Forms for the Memorandum: Status - Resolved form).

8. If the affirmative action officer is unable to resolve the complaint to the mutual satisfaction of the complainant and respondent thin 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 Charge of Discrimination form, 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 selected by the Complainant and the Respondent from a pre-selected pool of eligible participants (Appendix B).

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 other two designees. The panel members shall choose a chair among themselves. Selection must be completed and written notification of designees submitted to the chairperson of the campus affirmative action committee no later than 10 calendar days after the complainant, the respondent and the campus president received notice under paragraph six 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 summary of its Findings and the panel's recommendations to the President, the panel will also send, concurrently, copies of both the summary of its findings and recommendation(s) 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 (Appendix A).

Definitions

**Harassment on the Basis of Protected Characteristic(s) other than Sex/Gender** – harassment based on race, color, age, religion, national origin, disability, sexual orientation or other protected characteristics is oral, written, graphic or physical conduct relating to an individual's 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.

**Sexual Harassment in the Educational Setting** – 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.
Sexual Harassment in the Employment Setting – 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.

Forms

Form A - State University of New York Charge of Discrimination

Form B - Memorandum: Status - Resolved

Related Procedures

There are no related procedures relevant to this procedure.

Other Related Information

Discrimination Complaint

Sexual Orientation Nondiscrimination - Sexual Orientation Nondiscrimination

Authority

45 CFR § 86.8 (b) (Designation of responsible employee and adoption of grievance procedures)

History

Memorandum to the presidents from office of the chancellor dated March 14, 2003.

Memorandum to the presidents from office of vice chancellor and chief operating officer dated April 26, 2002.

Memorandum to presidents from office of University counsel and the vice chancellor for legal affairs, dated December 27, 2002.

Appendices

Appendix A - External Enforcement Agencies

Appendix B - Selection and Training of Panel and Tripartite Hearing Committee
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._________________________________
   Campus Address____________________________ Status_____________________________________
   (Faculty, Staff, Graduate, Undergraduate)
   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. 3 of the Internal Discrimination Procedure.

   □ I elect to proceed immediately to file a formal complaint as described in Part B, p.4 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________________
MEMORANDUM : STATUS – RESOLVED

Date:

To: Complainant

From: Affirmative Action Officer

Subject: Status of Complaint

This is to confirm the fact that your complaint, which was filed with the Affirmative Action Office on (insert date), has been resolved to the mutual satisfaction of all parties involved and the matter is deemed closed.

Agree:

Complainant

Respondent

Date

Date
§ 86.8
Designation of responsible employee and adoption of grievance procedures.

(a) Designation of responsible employee. Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to such recipient alleging its noncompliance with this part or alleging any actions which would be prohibited by this part. The recipient shall notify all its students and employees of the name, office address and telephone number of the employee or employees appointed pursuant to this paragraph.

(b) Complaint procedure of recipient. A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action which would be prohibited by this part.

(Secs. 901, 902, Education Amendments of 1972, 86 Stat. 373, 374; 20 U.S.C. 1681, 1682)
External Enforcement Agencies

**State Headquarters**
New York State Division of Human Rights Tel: (718) 741-8400
One Fordham Plaza Fax: (718) 741-3214
4th Floor
Bronx, New York 10458

**Albany**
New York State Division of Human Rights Tel: (518) 474-2705
Empire State Plaza Fax: (518) 473-3422
Corning Tower, 28th Floor
Albany, New York 12220

**Binghamton**
New York State Division of Human Rights Tel: (607) 721-8467
44 Hawley Street Fax: (607) 721-8470
Room 603
Binghamton, New York 13901

**Brooklyn**
New York State Division of Human Rights Tel: (718) 722-2856
55 Hanson Place Fax: (718) 722-2869
Room 304
Brooklyn, New York 11217

**Buffalo**
New York State Division of Human Rights Tel: (716) 847-7632
The Walter J. Mahoney State Office Building Fax: (716) 847-7625
65 Court Street
Suite 506
Buffalo, New York 14202

**Manhattan**
New York State Division of Human Rights Tel: (212) 480-2522
20 Exchange Place Fax: (212) 480-0143
2nd Floor
New York, New York 10005

New York State Division of Human Rights Tel: (212) 961-8650
Adam Clayton Powell State Office Building Fax: (212) 961-4425
163 West 124th Street
4th Floor
New York, New York 10027
Long Island
New York State Division of Human Rights  Tel: (516) 538-1360
175 Fulton Avenue, Suite 404  Fax: (516) 483-6589
Hempstead, New York 11550

New York State Division of Human Rights  Tel: (631) 952-6434
State Office Building  Fax: (631) 952-4920
250 Veterans Memorial Highway, Room 2B49
Hauppauge, New York 11788

Rochester
New York State Division of Human Rights  Tel: (585) 238-8250
One Monroe Square  Fax: (585) 238-8259
259 Monroe Avenue
3rd Floor
Rochester, New York 14607

Syracuse
New York State Division of Human Rights  Tel: (315) 428-4633
333 E. Washington Street  Fax: (315) 428-4638
Room 443
Syracuse, New York 13202

Peekskill
New York State Division of Human Rights  Tel: (914) 788-8050
8 John Walsh Boulevard  Fax: (914) 788-8059
Suite 204
Peekskill, New York 10566

Office of Sexual Harassment
New York State Division of Human Rights  Tel: (718) 722-2060
Office of Sexual Harassment or 1-800-427-2773
55 Hanson Place, Suite 347  Fax: (718) 722-4525
Brooklyn, New York 11217

Office of AIDS Discrimination
New York State Division of Human Rights  Tel: (212) 480-2522
Office of AIDS Discrimination  Fax: (212) 480-0143
20 Exchange Place, 2nd Floor
New York, New York 10005
## 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  
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  
Tel: (518) 457-2746  
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 B: 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 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. The tripartite committee will prepare a written summary of its findings and recommendations for further action on a form to be provided by the affirmative action officer.