
DISCRIMINATION AND HARASSMENT

Category: Human Resources
Responsible Office: Equity, Diversity and Inclusion
Responsible Executive: Vice President Human Resources

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Summary

The University 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. The policy describes the procedure whereby the University will investigate and/or resolve complaints of discrimination and harassment.

Policy

POLICY STATEMENT

The University at Buffalo (UB, University) 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, 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 University programs and activities. Employees, students, applicants or other members of the University 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 University will provide accommodations to individuals with disabilities in accordance with its Reasonable Accommodation Policy. The University will also provide accommodations to ensure the full participation of individuals in University programs, when such accommodations are reasonable and necessary due to an individual's religion, pregnancy, maternity, or breastfeeding status.

BACKGROUND

The State University of New York (SUNY) Board of Trustees declared the University's long standing guiding principle in an Equal Employment Opportunity Policy unanimously adopted on June 30, 1971. The University at Buffalo adopted its Sexual Harassment Policy and Procedure in February of 2000. This policy incorporates the Sexual Harassment Policy, and supersedes the procedure described therein.

APPLICABILITY

This policy:

- applies to all persons without regard to race, color, national origin, sex, religion, age, disability, gender, pregnancy, gender identity, 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 University 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 University and to all types of appointments under University jurisdiction, whether full time, part time, or volunteers
- governs all University 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 whatever nature
- applies to all University 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, 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.

Discrimination may also result from failure of the University to provide 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 University 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, 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.

Sexual Harassment – unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- submission to or enduring such conduct when rejected is made either explicitly or implicitly a term or condition of instruction, employment, or participating in other University activity or
- submission to or rejection of such conduct by an individual is used as a basis for evaluation in making academic or personnel decisions affecting an individual or
- such conduct has the purpose or effect of unreasonably interfering with an individual's performance or creating an intimidating, hostile, or offensive University environment.

Sexual harassment, sexual violence and other forms of sex discrimination are prohibited under Title IX of the Education Amendments of 1972, Title VII of the Civil Rights Act of 1964, and New York State Human Rights Law. This University definition of sexual harassment is based on Equal Employment Opportunity Commission (EEOC) and Office of Civil Rights (OCR) regulations.

See Appendix A for additional information regarding sexual harassment, and Appendix B for a full explanation of the procedures applicable to victims of sexual violence.

Sexual Harassment Information Advisors – University personnel who have received extensive sexual harassment training, conducted by the Director of Equity, Diversity and Inclusion (EDI) or designee, to act as educators and trainers and provide general information on sexual harassment. They may be designated by the president, provost, vice presidents, and/or deans to serve as Sexual Harassment Information Advisors in their respective areas.

Respondent – an individual or entity against whom a complaint has been filed.

Retaliation – an adverse action taken against an individual as a result of complaining about discrimination or harassment, exercising a legal right such as obtaining a reasonable accommodation, and/or participating in a complaint investigation as a third party witness. Adverse actions may include, but are not limited to: termination/dismissal, failure to promote or assign salary increases, the assignment of lower grades or performance evaluations than other individuals who perform similarly, attempts to intimidate or harass the individual, the assignment of less desirable work to the individual, and/or the provision of negative references with respect to academic work or employment.

RESPONSIBILITY

President, provost, executive vice president, vice presidents, deans, directors, department heads, managers, and supervisors

- 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 the EDI Office.

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

- Ensure that these decisions are made based upon legitimate, non-discriminatory reasons.

Director of EDI

- Responsible for overall administration of this policy.
- Investigate allegations of discrimination and harassment.
- Supervise the activities of the Sexual Harassment Information Advisors.

Sexual Harassment Information Advisors

- Disseminate information and provide education regarding this policy.
- Act as a resource for faculty, staff, and students on issues of sexual harassment.
- Provide information regarding questions or concerns about sexual harassment.
- Direct individuals to the EDI office for a more in-depth assessment of situations or concerns brought to their attention.
- Sexual Harassment Information Advisors are not authorized to conduct investigations or maintain records of confidential discussions.

Faculty, staff, and students

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

PROCEDURE

The Office of Equity, Diversity and Inclusion is the campus office designated to manage this complaint procedure. EDI 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 University 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 UB. If a claim of discrimination or harassment involves a non-UB entity such as a contractor, vendor, or affiliated hospital, UB will coordinate as necessary to ensure that an appropriate investigation is conducted and that discriminatory and/or harassing behaviors are addressed.

Timeframes for Filing a Complaint

Ordinarily, complaints should be filed within one year 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 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. Failure to file a complaint within the relevant limitation period may lead to dismissal of the complaint.

Complaint Handling***Initial Consultation with Complainant***

Any member of the UB community may speak confidentially with an EDI representative regarding potential discrimination or harassment. The representative 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. EDI will maintain a confidential record of the conversation, to the extent allowed by law. If the matter does not fall under EDI'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 University resources available to address the concern. If the matter falls within EDI'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, EDI 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 University 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 for investigation. Complaints of sexual violence will be handled in accordance with the procedure described in Appendix B.

The complainant will be asked to complete an initial Intake and Information Sheet, and will be provided assistance in completing this form when necessary. Failure or refusal to complete this form will not preclude investigation of the complaint. Individuals may contact EDI 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:

- EDI 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 or court order.
- The respondent is entitled to due process, including knowledge of the specific allegation(s) against him or her and an opportunity to respond. No presumption of wrongdoing will be made absent factual evidence.
- Complainants 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 investigator's ability to obtain necessary information.

In conducting a complaint investigation, EDI considers relevant laws, policies and procedures, documentation, and information obtained from the complainant, respondent, and third party witnesses. 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:

- the matter is resolved between the parties and there are no other issues requiring EDI 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 University's policies against discrimination and/or harassment
- there is sufficient evidence to support a finding of a violation of the University's policies against discrimination and/or harassment; in this event, EDI 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).

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 University will take necessary measures to ensure that the investigation of a matter is thorough and impartial. These measures may include reassignment of the responsibility for the investigation. In the event that EDAAA cannot conduct an investigation due to a conflict of interest, the University will ensure that the complaint is investigated by individuals with experience and training in discrimination compliance. If EDAAA 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 University's President will be handled in accordance with the State University of New York's Discrimination Complaint Procedure.

Failure to Cooperate

If a complainant refuses to cooperate and/or respond to requests for information in a timely manner, EDI 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.

Other Avenues for Complaint Reporting

There is no right to appeal an EDI finding. 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 University 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: (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 of Equity, Diversity and Inclusion
406 Capen Hall
Buffalo, New York 14260
Phone: (716) 645-2266
Fax: (716) 645-3952
Email: aa-diversity@buffalo.edu
<http://affirmativeaction.buffalo.edu>

Related Information

University Documents:

UB Faculty/Staff Handbook: <http://www.business.buffalo.edu/UbbContent/Hrs/facultyhandbook/>
UB Reasonable Accommodation Policy: This will link to the new Reasonable Accommodation Policy once posted.
Office of Graduate Medical Education Policy and Procedure Against Discrimination and Harassment:
http://www.smbs.buffalo.edu/GME/pdf/policies/Discrimination_and_Harassment.pdf
UB Student Handbook: <http://undergrad-catalog.buffalo.edu/>

Other Documents:

EEOC Guidelines on Discrimination Because of Sex, U.S. Code of Federal Regulations 29, Part 1604.11 Sexual Harassment, 1989: <http://eoc.gov/policy/docs/sexualfavor.html>
EEOC Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisor: <http://eoc.gov/policy/docs/harassment.html>
Research Foundation Procedures for Resolving Allegations of Workplace Discrimination: https://portal.rfsuny.org/portal/page/portal/Pers_Admin/Employee%20Relations/hapro026.pdf
Research Foundation Sexual Harassment Policy: https://portal.rfsuny.org/portal/page/portal/Pers_Admin/Affirmative%20Action%20and%20Equal%20Employment/per_sexual-harassment_pol.htm
SUNY Discrimination Complaint Procedure: http://www.suny.edu/sunypp/documents.cfm?doc_id=451

Revision History

- April 2012** - Revised to include procedures pertaining to a potential conflict of interest and Appendix B regarding sexual violence.
- November 2011** - Updated Office of Equity, Diversity and Affirmative Action (EDAAA) department name to reflect the current name of: Office of Equity, Diversity and Inclusion (EDI).

Presidential Approval

John B. Simpson

John B. Simpson, President

3/1/10

Date

APPENDIX A

Sexual Harassment

In determining whether conduct constitutes harassment, consideration will be given to the record as a whole and to the totality of circumstances, including the nature of the sexual advances and the context in which the incidents occurred.

Certain behavior can be classified as sexual harassment even if a relationship appears voluntary in the sense that one was not coerced into participating. A central element in the definition of sexual harassment is that the behavior is unwelcome.

Some acts or practices that have the effect of discouraging individuals of either sex from pursuing academic or professional interests may not constitute sexual harassment because they are not sexual in nature. Such acts may nevertheless constitute illegal sex discrimination if the behavior is directed toward members of one sex and not the other.

Sexual harassment can take different forms, and the determination of what constitutes sexual harassment will vary according to the particular circumstances. Sexual harassment may involve behavior by a person of either sex against a person of the same or opposite sex. Harassment that is sexual in content is always actionable regardless of the harasser's sex, sexual orientation, or motivations.

Examples of sexual harassment may include but are not limited to:

- seeking sexual favors or relationships in return for the promise of a favorable grade or other academic opportunity
- conditioning an employment-related action (such as hiring, promotion, salary increase, or performance appraisal) on a sexual favor or relationship
- 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 his or her employment or academic responsibilities.

The first two examples illustrate what is characterized as the "quid pro quo" form of sexual harassment. The third example illustrates the "hostile environment" form of sexual harassment. "Hostile environment" sexual harassment is unwelcome sexual behavior toward another employee or student that is sufficiently severe or pervasive to alter the conditions of the victim's employment or academic pursuits and create a work or educational environment that a reasonable person would find abusive. (This explanation of "hostile environment" sexual harassment is based on U.S. Supreme Court decisions (e.g., *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57, 67 (1986)).

Isolated instances, e.g., a sexual comment or joke, ordinarily will not constitute sexual harassment unless the circumstances are egregious. Such sexual behavior does not constitute harassment if it is welcomed (i.e., voluntary and consensual). It is important to note that conduct in the workplace or educational setting may fall short of the legal standard for sexual harassment but may still be addressed as unprofessional and/or inappropriate.

APPENDIX B

Sexual Violence

This policy's prohibition against sex discrimination includes sexual harassment and sexual violence. The United States Department of Education's Office for Civil Rights defines sexual violence as "physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent," including rape, sexual battery, and sexual coercion.

An individual who is the victim of sexual violence may file a complaint under the University's Discrimination and Harassment policy, in addition to the individual's option to file a complaint with law enforcement.

- Complaints of sexual violence against University employees will be referred to the appropriate disciplinary mechanisms.
- Complaints of sexual violence against students will be handled in accordance with the procedures set forth by the Office of Judicial Affairs.
- In the event that a member of the University community files a sexual violence complaint against an affiliate of the University (e.g., vendor or contractor), the University will take necessary steps to ensure that the complaint is addressed appropriately by the affiliate.

The University will take prompt action to eliminate the hostile environment that can be caused by sexual harassment and sexual violence, regardless of whether an individual chooses to participate in law enforcement and/or disciplinary action. These actions may include, but are not limited to:

- Notifying the parties of options to avoid contact with each other, including transferring academic or living situations as appropriate, without disproportionately burdening one party
- Providing an escort for a party to move safely around campus
- Offering and providing services to students, including counseling, medical services, and academic services such as counseling
- Educating both parties about the prohibition against retaliation from each other and third parties