

THE OFFICE OF
INSTITUTIONAL EQUITY

Complaint Process and Procedure for
Investigating Complaints of Discrimination,
Harassment, Sexual Assault, and/or
Sexual Violence

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1. Introduction

This SUNY Upstate complaint procedure provides a mechanism through which the University may identify, respond to, prevent, and eliminate incidents of discrimination and harassment that violate SUNY Upstate's Policies and to remedy the discriminatory effects on the victim(s) and others, if appropriate. The University recognizes and accepts its responsibility in this regard and believes that the establishment of this internal, non-adversarial complaint procedure will benefit student, faculty, staff and administration by permitting prompt internal investigation and resolution of problems.

2. Application of this Complaint Process and Investigation Procedure

a. Who May Make A Complaint?

This complaint process and investigation procedure will be utilized when responding to complaints brought by any member of the SUNY Upstate Medical University community, including but not limited to faculty, medical providers, supervisors, managers, staff, students, applicants, volunteers, vendors, visitors, guests, and all other individuals present on SUNY Upstate Medical University's campus or participating in SUNY Upstate Medical University's programs or activities, whether on or off campus, including overseas programs (hereinafter referred to as "SUNY Upstate Community"), who claims to have been subject to discrimination, harassment or sexual assault/violence on SUNY Upstate's campus or while participating in a SUNY Upstate sponsored program or activity.

b. Scope of Complaints Received and Investigation by OIE

This complaint process and procedure for investigating complaints will be followed for complaints of discrimination and/or harassment occurring on SUNY Upstate premises or in SUNY Upstate's sponsored programs or activities based on person's race, color, national origin, 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, criminal conviction record, or any other category protected under state or federal law, as well as complaints of sexual assault and sexual violence in violation of SUNY Upstate's Non-Discrimination and Equal Opportunity Policy (UW E-01), Harassment Prevention Policy (UW H-01), Title IX Policy, and Sexual Assault, Domestic Violence and Stalking Prevention Policy, and other policies listed at **Appendix A**.

It will also be followed for complaints of retaliation against an individual within the SUNY Upstate Community because s/he (a) filed a charge of discrimination or harassment, (b) complained to the University or a government agency about discrimination or harassment on the job or in the educational setting, or (c) participated in a discrimination or harassment proceeding (such as an internal investigation or lawsuit), including as a witness.

3. Complaint Process.

The Office of Institutional Equity's Title IX Coordinator/Institutional Equity Officer (hereinafter "IEO" will refer to both the Institutional Equity Officer and Title IX Coordinator) and other designated OIE staff members are responsible for receiving initial inquiries, reports, complaints, and requests for consultation regarding any suspected or known discrimination or harassment based on a protected category or sexual violence. It is the responsibility of OIE to respond to all inquiries, reports, complaints and requests as promptly as possible and in a manner appropriate to the particular circumstances.

The procedure set forth here will be followed upon the submission of a written complaint that provides enough information to allow for a full and fair investigation of the facts. The Discrimination Complaint Form that should be utilized to file an internal complaint with OIE can be found at **Appendix B**. If an individual makes a verbal complaint only, and refuses to put his/her complaint in writing, the University may still have an obligation to investigate such complaint. OIE will investigate a verbal complaint to the best of its ability if it determines it is necessary based on the facts alleged. If a verbal or written complaint contains insufficient information to conduct an adequate investigation, the complaint will be dismissed with written notice to the Complainant that there was insufficient evidence to investigate. Informal inquiries will typically not require a full investigation.

The IEO or designated investigator will ensure that Complainants in sex discrimination cases are made aware of their Title IX rights, and that all Complainants are made aware of available remedies and resources on and off-campus, interim remedies, and the right to file a complaint with local law enforcement. Assistance will be available whether or not a formal complaint is contemplated, or even possible. See **Appendix C** for a list of Support Resources. SUNY Upstate's Student Bill of Rights can be found at:
<http://www.upstate.edu/currentstudents/document/sexassaultdomviostalk.pdf>.

If, after an investigation there appears to be a violation of SUNY Upstate's Non-Discrimination and Equal Opportunity Policy, Harassment Prevention Policy, or Title IX Policy, OIE will refer the matter to the governing adjudicatory body to take appropriate action and may recommend that remedial actions be taken. Employee grievance procedures established through negotiated contracts, academic grievance review committees, student disciplinary grievance boards and any other procedures defined by contract will not be affected by this procedure.

4. Investigation Steps.

Investigations will be conducted by the Office of Institutional Equity's IEO Coordinator or another designated investigator. If the Complainant or Respondent believes that the investigator is not suited to perform their role because of bias or conflict of interest, they must notify the IEO upon learning the identity of the individual and their role.

In investigating a complaint, the investigator shall have the right to review all relevant information and to interview pertinent witnesses. When the investigator deems it warranted, he

or she may contact University counsel or other leadership officials for information, assistance and/or consultation. Investigations will be conducted in accordance with the following steps:

- Upon receipt of a complaint, the allegations will be reviewed and intake conducted. If the complaint is verbal, the individual will be encouraged to complete a “Complaint Form” in writing, which will include a statement of what occurred and why the Complainant believes that the behavior constituted discrimination or harassment based on a protected class. If the Complainant declines to put a complaint in writing, the investigator may still have an obligation to investigate the verbal complaint to the best of his/her ability to ensure a safe working and learning environment.
- If documents, emails, phone records, or other electronic communications are relevant to the allegations, steps will be taken to obtain and preserve them.
- If the investigator determines that there is sufficient information to warrant an investigation, Respondents will be given notice that a complaint has been filed and/or made against them and will be informed of the nature of the complaint and the time period during which the conduct was alleged to have occurred.
- The investigator will work with the appropriate leadership or other University officials to take appropriate interim measures while the investigation is taking place, if necessary.
- If the Respondent is a Principal Investigator or co-Principal Investigator who is conducting research funded by the National Science Foundation (“NSF”), the investigator may need to notify the NSF if the Respondent is placed on administrative leave during the investigation, a final finding is made that the Respondent has committed an act of harassment or sexual assault, or the Respondent has been subjected to an administrative action relating to such a finding or determination, pending a final determination.
- The investigator will interview all parties involved and relevant witnesses as the investigator deems appropriate. If the Respondent is represented by a union, and becomes the potential subject of discipline at any point during the investigation, he or she may have the right to representation when questioned, in which case an Employee/Labor Relations Representative will conduct the questioning under the relevant collective bargaining agreement rules. The investigator may be present during this questioning.
- If a Complainant refuses to cooperate and/or respond to requests for information in a timely manner, OIE may proceed with an investigation based on the information it has and can obtain from other sources. In the event that the information OIE has does not allow for an effective investigation, the complaint will be closed with notice to the Complainant.
- If a witness claims to be the subject of discrimination during an interview, the

Investigator will give the person the option of filing a written complaint on his or her own behalf. A witness will only be informed of information related to an investigation outcome for a complaint that they personally file / make on their own behalf.

- In reaching findings, the investigator will evaluate the conduct alleged to have been discriminatory by considering the totality of the circumstances, including the nature, frequency, intensity, context, and duration of the conduct. Although repeated incidents would create a strong claim of discrimination, a serious isolated incident can present sufficient grounds for corrective action. The standard of proof in harassment and assault cases is “preponderance of the evidence”, which means that if the investigator finds that it is “more likely than not” that discrimination or harassment based on a protected class occurred, the accused should be found responsible.
- The investigator will be responsible for making credibility assessments of the witnesses and to substantiate such assessments with facts that support why one witness was or was not credible, or was more credible than another witness or party.

At any time during the above outlined process, the IEO or designated investigator may determine that a specific complaint of unlawful discrimination or harassment is of such a serious or potentially criminal nature that the investigative steps outlined in this process should be accelerated or eliminated. This determination, if made, shall be communicated to University Police, Employee/Labor Relations or Student Affairs or other administrators, as deemed necessary for appropriate action, which may include the initiation of disciplinary and/or other action.

If, at any time during the course of resolving or investigating a complaint of discrimination, the IEO or designee determines that a complaint is not within the jurisdiction of the office (e.g., the complaint does not relate to discrimination or harassment based on a protected class, the alleged incident(s) did not involve Upstate staff or students and did not occur on Upstate premises or involve Upstate programs, etc.), the complaint shall be referred to the appropriate office and the matter shall be considered concluded for purposes of the OIE. In all such cases, the Complainant will be notified in writing that the complaint was outside OIE's jurisdiction and that the case has been referred to a different office, if applicable.

If the Complainant is not a State employee, OIE may notify their employer of the complaint. OIE will encourage the Complainant to also report the complaint directly to their employer.

If the Respondent is not a State employee, OIE will notify the Respondent's employer of the complaint. The OIE may, within its discretion, defer to the Respondent's employer to investigate the conduct complained of or, may conduct a joint investigation with Respondent's employer, depending on the facts alleged. In such cases, OIE will determine whether it is appropriate to defer to the Respondent's employer's investigation procedure and will take all steps necessary to ensure that the investigation and complaint remains confidential to the fullest extent possible.

5. Findings, Recommendations, and Notice of Outcome to the Parties.

At the conclusion of the investigation, the investigator will decide whether the allegations were substantiated and, if they were, whether they rise to the level of discrimination or harassment in violation of one or more SUNY Upstate policies listed in Appendix A.

If the investigator determines that the complaint was substantiated and in violation of one or more policies listed in Appendix A, the investigator may refer the matter as follows:

- a. For employees (including student, resident or fellow employees) not in a collective bargaining unit or subject to the disciplinary procedures therein, the matter will be referred to Employee/Labor Relations to work with the Department Management in which Respondent works to determine appropriate action, including but not limited to termination, demotion, reassignment, suspension, reprimand and/or training.
- b. For employees in collective bargaining units, the matter will be referred to Employee/Labor Relations for investigation and disciplinary action, or other action as may be appropriate under the applicable collective bargaining agreement. The disciplinary process and potential outcomes are described in the applicable collective bargaining agreements.
- c. For students, the matter will be referred to the student judiciary, or other appropriate disciplinary panel for review, and appropriate action under the code of student conduct or other code. For examples of sanctions, please see the relevant section of the applicable code of student conduct.

The Complainant and Respondent will receive a letter notifying them that the investigation is complete, whether the allegations were substantiated or unsubstantiated, if they were substantiated, whether the conduct was in violation of SUNY Upstate's Non-Discrimination and Equal Opportunity Policy, Harassment Prevention Policy, or Student Title IX policy, and whether the matter has been referred for appropriate action. The witnesses interviewed, the basis for the determination and corrective action imposed, if any, shall remain confidential to the fullest extent possible. However, the University may need to disclose such information if required by law or to pursue disciplinary or other action against a Respondent, in which case disclosure shall be as limited as possible.

The Complainant will be informed of his or her right to file a complaint or charge externally.

6. Timing of Investigations.

OIE will strive to complete investigations into complaints of discrimination and/or harassment within sixty (60) days from the filing of such complaint, absent good cause. Additional time may be needed to complete an investigation due to its complexity.

7. Cooperation with Law Enforcement.

The IEO or designee will ensure that Complainants are aware of their legal rights and available resources on and off campus, and the right to file a complaint with local law enforcement where the acts alleged may be criminal in nature. SUNY Upstate will comply with law enforcement's request for cooperation and such cooperation may require the campus to temporarily suspend the factfinding aspect of an investigation while the law enforcement agency is in the process of gathering evidence. The campus will resume its investigation as soon as it is notified by the law enforcement agency that has completed the evidence gathering process and the time period for completing the investigation will begin to run again. SUNY Upstate will implement appropriate, reasonable, and available interim steps during the law enforcement agency's investigation period to provide for the safety of the Complainant and the campus community.

8. Confidentiality.

SUNY Upstate 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. An investigation may require coordination when necessary with offices such as the relevant Department or Dean, Employee/Labor Relations, Graduate Medical Education and/or Student Affairs. It is important to note that due process considerations may limit the ability to investigate or resolve anonymous complaints.

9. Responsibility to Report.

Complaints or concerns of discrimination or harassment that are reported to or witnessed by an administrator, manager, supervisor, or anyone else in a position of leadership shall be immediately referred to OIE. Complaints may also be made directly to the IEO or his/her designee.

10. Retaliation.

Any employee or student who participates in this procedure in good faith has the right to do so without retaliation or the fear of retaliation. Retaliation against an employee, a student or a witness who has filed or participated in the investigation of a discrimination complaint will result in appropriate sanctions or other disciplinary action as provided by collective bargaining agreements, and/or applicable University policies.

11. Each Party's Rights and Responsibilities.

These formal review procedures are not designed to replicate an external judicial process. Therefore:

- a. Complainants and Respondents are expected to meet with representatives of OIE as needed and as requested.
- b. Legal counsel retained by a Complainant or a Respondent may only be present at meetings convened by OIE with express permission of the investigator, unless required by law or contract.
- c. Respondents and Complainants are expected to communicate with OIE directly, not

through legal counsel, other intermediaries or persons accompanying the parties, unless required by law or contract.

- d. Both the Complainant and the Respondent(s) shall be entitled to present or submit written statements or other relevant and material evidence and identify witnesses who have relevant information.

12. Other Avenues for Complaint Reporting.

Filing an internal complaint with OIE does not in any way deprive a Complainant of the right to file a complaint with outside enforcement agencies, such as the New York State Division of Human Rights, the Equal Employment Opportunity Commission, the Office of Civil Rights of the Department of Education and the Office of Federal Contract Compliance of the Department of Labor. Contact information for these agencies is listed in **Appendix D**. Complainants are not required to pursue the SUNY Upstate internal complaint procedure before filing a complaint with a State or Federal agency. In addition, if the Complainant chooses to file a complaint with OIE, the Complainant is free to file a complaint with an outside enforcement agency at any point during or at the conclusion of the internal investigation process. There is no right to appeal an OIE finding.

Contact Information

Office of Institutional Equity
707 Jacobsen Hall
(315) 464-9590

Appendix A

**Applicable University Policies Defining Prohibited Acts And Behaviors
Of Discrimination, Harassment, and Sexual Assault**

UW E-01 - Non-Discrimination and Equal Opportunity Policy

UW H-01 - Harassment Prevention Policy

UW V-03 - Workplace Violence Prevention Program

HCP C-12 – Fair Treatment of Personnel

STUDENT

HANDBOOK - Equal Opportunity, Non-Discrimination, Sexual Harassment and Title IX Policy

STUDENT

HANDBOOK – Sexual Assault, Domestic Violence and Stalking Prevention

SUPPORT RESOURCES

Title IX Coordinator

Office of Diversity and Inclusion
711 Jacobsen Hall
175 Elizabeth Blackwell Street
Syracuse, NY 13210
Phone: (315) 464-5234
Fax: (315) 464-5232

Employee Assistance Program (EAP)

703 Jacobsen Hall
175 Elizabeth Blackwell Street
Syracuse, NY 13210
Phone: (315) 464-5760
Fax: (315) 464-5773

Employee and Student Health Services

Jacobsen Hall, 4th floor
175 Elizabeth Blackwell Street
Syracuse, NY 13210
Phone: (315) 464-4260
Fax: (315) 464-5471

Student Affairs Office

1223 Weiskotten Hall
766 Irving Avenue
Syracuse, NY 13210
Phone: (315) 464-4816
Fax: (315) 464-8823

Student Counseling Center

Psychiatry and Behavioral Sciences Building,
3rd Floor
713 Harrison Street
Syracuse, NY 13210
Phone: (315) 464-3120, ext. 6
Fax: (315) 464-3163

University Police

University Hospital, 1st Floor
Phone: (315) 464-4000
Fax: (315) 464-4142

Vera House / Rape Crisis Center

723 James Street
Syracuse, NY 13203
Phone - General: (315) 425-0818
Phone - Crisis & Support Line: (315) 468-3260

Appendix D

EXTERNAL ENFORCEMENT AGENCIES

NEW YORK STATE DIVISION OF HUMAN RIGHTS

Syracuse Local Office
New York State Division of Human Rights
333 E. Washington Street, Room 543
Syracuse, New York 13202
Telephone No. (315) 428-4633
E-mail: InfoSyracuse@dhr.ny.gov

**UNITED STATES DEPARTMENT OF LABOR
OFFICE OF FEDERAL CONTRACT COMPLIANCE**

Buffalo Area Office
Olympic Towers
300 Pearl Street, Suite 175
Buffalo, NY 14202-2199
Telephone No. (716) 464-5353
Fax: (518) 464-5341

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Buffalo Local Office
Olympic Towers 300 Pearl Street, Suite 450
Buffalo, New York 14202
Telephone No. 1-800-669-4000
TTY 1-800-669-6820
Fax: (716) 551-4387

**UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF CIVIL RIGHTS**

Office of Civil Rights, New York Office 32 Old Slip, 26th Floor
New York, New York 10005-2500
Telephone No. (646) 428-3800
Fax: (646) 428-3843
E-mail: OCR.NewYork@ed.gov