



Office of Institutional Equity Reporting and Investigation Procedure

Office of Institutional Equity
Equity@upstate.edu
(315) 464-9590
<https://www.upstate.edu/equity>

Table of Contents

Introduction to Upstate’s Reporting and Investigation Procedure	1
Definitions	2
Consultation and Reporting.....	2
Consultation	2
Timeframe for Reporting.....	3
Conflicts of Interest	3
Procedure for Resolving Complaints	3
Intake Interview and Filing a Complaint.....	3
Notice to Respondents	5
Informal Resolution.....	5
Formal Investigation	6
Findings, Referrals, and Notice of Outcome to the Parties	7
Timing of Investigations	8
Cooperation with Law Enforcement.....	8
Confidentiality	8
Responsibility to Report	8
Retaliation.....	8
Other Avenues for Complaint Reporting	9
Appendix A	10
Appendix B	11
Appendix C	14

1. Introduction to Upstate's Reporting and Investigation Procedure

SUNY Upstate Medical University ("Upstate") is committed to maintaining a work, educational, and clinical care environment that is free from harassment and discrimination based on race, color, national origin, religion, age, disability, sex, gender, pregnancy, gender identity, gender expression, sexual orientation, transgender status, 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, federal, or local law ("protected class"). Retaliation against a person who files a complaint, serves as a witness, or participates or assists in any manner in this procedure is strictly prohibited and may result in disciplinary or other appropriate action.

This complaint reporting and investigation procedure provides a mechanism through which the University may identify, respond to, prevent, and eliminate incidents of discrimination, harassment, and retaliation that violate Upstate's policies.

This procedure is administered by Upstate's Office of Institutional Equity ("OIE"), which is the office at Upstate designated to receive reports of discrimination, harassment, and retaliation; consult on questions relating to discrimination, harassment, and retaliation; and conduct necessary investigations into allegations of discrimination, harassment, and retaliation.

This reporting and investigation procedure will be followed for reports of protected class discrimination and/or harassment, to include claims of sexual harassment and/or sexual violence, as well as claims of retaliation alleged to have occurred on SUNY Upstate's campus or in relation to a SUNY Upstate sponsored program or activity, in violation of SUNY Upstate's Non-Discrimination and Equal Opportunity Policy (UW E-01), Harassment Prevention Policy (UW H-01), Title IX Policy (UW T-05), and other policies listed in Appendix A. If an allegation of sexual harassment is determined to meet the definition of sexual harassment under Title IX, the [Title IX investigation procedure](#) will be utilized instead of the procedure described here.

This procedure is intended to balance the rights of those raising complaints of discrimination, harassment, and retaliation (the "Complainant") with the rights of those against whom such claims are alleged (the "Respondent").

This reporting and investigation procedure may be utilized by any member of the SUNY Upstate community, including but not limited to faculty, medical providers, supervisors, managers, staff, students, trainees, applicants for employment or for admission to an academic program, volunteers, vendors, patients, visitors, guests, and all other individuals present on Upstate's campus or participating in Upstate's programs or activities, whether on or off campus, including overseas programs.

If a claim of discrimination, harassment, or retaliation involves an employee of a non-Upstate entity such as a contractor, vendor, or temporary employee, Upstate will coordinate as necessary to ensure that discriminatory or harassing behaviors are addressed, and that investigations are conducted as appropriate. This may involve referring the matter to the non-Upstate entity, or conducting a joint investigation.

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.

SUNY Upstate will keep investigations confidential to the extent possible. During any portion of the procedures detailed herein, neither the Complainant(s), Respondent(s), nor any witnesses shall employ audio or video taping devices.

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.

2. Definitions

Complainant – a person who files a complaint with the Office of Institutional Equity, as described below in section 4.

Respondent – a person named in a complaint who is alleged to have engaged in discriminatory, harassing, or retaliatory conduct in violation of Upstate policy.

Discrimination – treating a person unfavorably because of their actual or perceived membership in a protected class, so as to interfere with or limit the person’s employment, education or ability to participate in or benefit from any SUNY Upstate program, activity or service.

Harassment – unwelcome conduct directed toward, or differential treatment of a person or group because of their actual or perceived membership in a protected class, which creates an intimidating, hostile, demeaning, or offensive working or learning environment. Although repeated incidents may create a strong claim of harassment, a serious isolated incident can present sufficient grounds for a finding that harassment has occurred in violation of Upstate’s policies.

Retaliation – any adverse action taken against an individual because they engaged in any of the following protected activities:

- Raised a concern or filed a complaint, in good faith, about an actual or suspected violation of the policies listed in Appendix A;
- Filed a complaint with a government agency about discrimination or harassment on the job or in the educational setting;
- Participated in an internal or external investigation or lawsuit, including as a witness, involving claims of discrimination or harassment; or
- Opposed unlawful discrimination or harassment

Preponderance of the Evidence – the standard of proof in a case investigated by OIE, which asks whether it is “more likely than not” that the alleged activity occurred, and if so, whether the conduct violates the policies listed in Appendix A.

3. Consultation and Reporting

a. Consultation

Any member of the Upstate Community may consult with an OIE representative regarding potential discrimination, harassment, or retaliation. The OIE representative will determine the nature of the issue or concern, obtain relevant facts, and provide guidance as to whether the matter falls under

OIE's jurisdiction. If the matter does not fall under OIE's jurisdiction, information will be provided regarding the University resources available to address the concern. If the matter falls within OIE's jurisdiction and the individual wishes OIE to investigate, the reporting individual 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 filing a complaint, OIE will maintain a private record of the conversation. There may be situations where Upstate is legally obligated to investigate a complaint, regardless of the individual's willingness to proceed. In this event, the individual will be notified, and steps will be identified to protect the individual against retaliation and ensure an acceptable working or learning environment.

Individuals may contact OIE anonymously, either for consultation or to report discrimination or harassment. Note that anonymous reporting may limit OIE's ability to conduct a thorough investigation.

b. Timeframe for Reporting

OIE does not place a time limit on reporting. However, OIE encourages reporting as close in time to the alleged conduct/incident as possible. Failure to timely report may limit OIE's ability to conduct a thorough investigation.

Please note that the external agencies listed in Appendix C do have strict time frames for reporting allegations of discrimination and harassment.

c. Conflicts of Interest

In the event that the Institutional Equity Officer, Title IX Coordinator, or designee cannot conduct an impartial investigation due to a conflict of interest, or in the event that the Institutional Equity Officer, Title IX Coordinator, or designee is named as a respondent, Upstate will ensure that a report of discrimination, harassment or retaliation is investigated by individuals with experience and training in investigating these matters.

4. Procedure for Resolving Complaints

a. Intake Interview and Filing a Complaint

Upon contacting OIE to raise an allegation of discrimination, harassment, or retaliation, OIE will conduct a preliminary, intake interview with the Complainant. During this intake interview, the following will occur:

- Complainant will be advised of OIE's procedures.
- Complainant will be interviewed about the allegations to determine whether OIE is the appropriate forum for the complaint. If OIE is not the appropriate forum, Complainant will be referred to the appropriate department.
- Complainant will be interviewed about the allegations so that the charge may be clearly stated, to include dates and times if known, and will be asked to provide the identities of any witnesses.
- Complainant will be advised of the prohibition against retaliation.

- Complainant will be advised on privacy v. confidentiality.
- Complainant will be advised of option to file a complaint with the external agencies listed in Appendix C.

Upon determination that OIE has jurisdiction to investigate, the Complainant will be provided with the opportunity to file a complaint with OIE. Complaints may be made verbally or in writing. If a complainant wishes to file a verbal complaint, an OIE representative will complete a written record of the complaint. The purpose of a written record of complaint is to have a record of the allegations raised by the Complainant, which are approved by the Complainant, and which will provide a Respondent with reasonable notice of what is claimed against them. Complaints should contain the following information:

- The name, telephone number, and position (faculty, staff, student, third party, etc.) of the Complainant.
- The name(s) and any pertinent contact information for the Respondent(s) to include their position (faculty, staff, student, third party).
- A statement of facts explaining what happened and what the Complainant believes constituted harassment, discrimination, or retaliation in sufficient detail to give each Respondent reasonable notice of what is claimed against them. The statement should include the date, approximate time, and place where the alleged acts of discrimination, harassment, or retaliation occurred. If the acts occurred on more than one date, the statement should also include the dates on which the acts occurred as well as detailed information about the prior acts. The names of any potential witnesses should be provided.
- 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.
- A description of any corrective or remedial action that the Complainant would like to see taken.
- Any supporting documentation.
- Signature of Complainant and the date Complainant signed.

Written complaints can be filed via several methods:

- Through filing a complaint of protected class discrimination, harassment, or retaliation via this online reporting form:
https://cm.maxient.com/reportingform.php?SUNYUpstate&layout_id=0
- Through filing a complaint of sexual harassment, sexual assault, dating/domestic violence, or stalking via this online reporting form:
https://cm.maxient.com/reportingform.php?SUNYUpstate&layout_id=1
- Through completing the form attached at Appendix B and providing such to OIE.
- Through an email or letter containing the above information.

OIE will ensure that Complainants in sex discrimination/harassment cases are made aware of their Title IX rights, if applicable, 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. This information will be made available whether or not a complaint is made with OIE.

b. Notice to Respondent

After a complaint has been filed, Respondent will be given written notice that a complaint has been filed, and will be informed of the nature of the allegations to include dates, times, and locations of the alleged conduct.¹ In addition, Respondent's supervisor will be given written notice that OIE has opened an investigation into potential policy violations

c. Informal Resolution

After a complaint has been filed, the Complainant or Respondent may request to have the matter dealt with in an informal manner. Both parties must agree to informal resolution. Thereafter, the Institutional Equity Officer, or designee, will attempt to reasonably resolve the matter to the mutual satisfaction of the parties, and the formal investigation process will be tolled. Note that cases of sexual violence are not subject to informal resolution.

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

The act of engaging in the informal resolution process does not constitute an admission of responsibility for the alleged conduct by Respondent, and the existence of an informal resolution is not viewed as a finding against the Respondent.

In seeking an informal resolution, the Institutional Equity Officer or designee shall meet with the parties individually, review all relevant documentary information provided, interview witnesses as appropriate, and bring together the Complainant and the Respondent, if desirable and agreed to by both parties.

Any party or the Institutional Equity Officer, or designee, may elect to end the informal resolution process and proceed to the formal investigation procedure at any time. If an informal resolution process is ended, any information obtained may be used by OIE in a subsequent formal investigation.

If a resolution satisfactory to both the Complainant and the Respondent is reached, the Institutional Equity Officer, or designee, 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 maintained in the OIE 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 Institutional Equity Officer, or designee. If a term of the informal resolution is broken or incomplete, the information obtained

¹ 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.

during the informal resolution process may be submitted as evidence in a subsequent investigation involving the Complainant and/or Respondent.

If the Institutional Equity Officer or designee is unable to resolve the complaint to the mutual satisfaction of the Complainant and Respondent, the Institutional Equity Officer shall notify the parties and initiate a formal investigation.

d. Formal Investigation

A formal investigation is commenced by the filing of a complaint as described above, along with the decision to bypass an informal resolution, or by a party's decision to discontinue the informal resolution process. Formal investigations will be conducted by the Institutional Equity Officer or another designated investigator.

The investigator shall have the right to review all relevant information and to interview pertinent witnesses. When the investigator deems it warranted, they may contact University Counsel, Employee/Labor Relations, or other leadership officials for information, assistance and/or consultation. Formal investigations may involve some or all of the following actions:

- Steps will be taken to obtain and preserve any pertinent documents, emails, phone records, or other electronic communications relevant to the allegations.
- The investigator will work with the appropriate leadership or other University Officials to take the appropriate interim measures while the investigation is taking place, if necessary.
- The investigator will interview all relevant witnesses, as the investigator deems appropriate. All Upstate employees are expected to cooperate with OIE if asked to be interviewed.
 - Parties and witnesses are expected to communicate with OIE directly, not through legal counsel, other intermediaries, or persons accompanying the parties, unless required by law or contract.
 - If any witness advises the investigator that the witness has also been the subject of discrimination, harassment or retaliation, the investigator will provide the witness with the opportunity to file a separate complaint with OIE
- If the Respondent is represented by a union, and becomes the potential subject of discipline at any point during the formal investigation, the Respondent 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 OIE investigator will be present during this questioning.
- Both the Complainant and the Respondent shall be entitled to present or submit written statements or other relevant and material evidence and identify witnesses who have relevant information.

At any time during the above outlined process, the Institutional Equity Officer or designated investigator may determine that a specific complaint of unlawful discrimination, harassment, or

retaliation 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, Student Affairs or other administrators, as deemed necessary for appropriate action, which may include the initiation of disciplinary and/or other action deemed necessary and appropriate.

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

At the conclusion of the investigation, the investigator will determine whether the allegations are substantiated by a preponderance of the evidence and, if so, whether they rise to the level of discrimination, harassment, or retaliation in violation of one or more SUNY Upstate policies listed in Appendix A.

In reaching findings, the investigator will consider the totality of the circumstances, including the nature, frequency, intensity, context, and duration of the conduct. The investigator will consider all relevant evidence, to include documents and witness interviews. 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.

If the investigator determines that the allegations are substantiated and in violation of one or more policies listed in Appendix A, the investigator will refer the matter as follows:

- a. For employees (including students, residents, or fellows) 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 the 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 findings will be referred to Employee/Labor Relations for appropriate action. The disciplinary process and potential outcomes are described in the applicable collective bargaining agreements.
- c. For students, the matter will be referred to the Judicial Coordinator, 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 each receive a letter notifying them that the investigation is complete; whether the allegations were substantiated or unsubstantiated; if substantiated, whether the conduct was in violation of any policy listed in Appendix A; and whether and where the matter has been referred for appropriate action. The Respondent's supervisor will be copied on the letter to Respondent.

The witnesses interviewed, the basis for the determination to include any internal OIE notes and reports, 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 appropriate action against a Respondent, in which case disclosure shall

be as limited as possible.

There is no right for Complainant or Respondent to internally appeal an OIE finding.

6. Timing of Investigations

OIE will strive to complete investigations into complaints of discrimination, harassment and/or retaliation 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 Institutional Equity Officer 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.

Upstate will comply with law enforcement's request for cooperation, and such cooperation may require the University 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 it 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 Upstate community.

8. Confidentiality

The Office of Institutional Equity cannot guarantee strict confidentiality, but will maintain your privacy to the greatest extent possible, and requests the same of parties to the complaint and third-party witnesses.

The information provided to OIE will be relayed only as necessary for OIE or another applicable University official to investigate and/or seek a resolution as required under Federal and State law, and University policy.

Records and notes of conversations with parties or witnesses will not be released externally unless required by law or court order.

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 must be immediately referred to OIE, as detailed in the Equal Opportunity and Non-Discrimination Policy (UW E-01), the Harassment Prevention Policy (UW H-01), and the Title IX Policy (UW T-05).

10. Retaliation

Any person 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, student, or a witness who has filed or participated in the investigation of a complaint will result in appropriate sanctions or other disciplinary action as provided by collective bargaining agreements, and/or applicable University

policies. If you experience retaliation after filing or participating in the investigation of a complaint, please report this to OIE promptly.

11. 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 U.S. Equal Employment Opportunity Commission, the Office of Civil Rights of the U.S. Department of Education and the Office of Federal Contract Compliance of the U.S. Department of Labor. Contact information for these agencies is listed in Appendix C. Complainants are not required to pursue the SUNY Upstate internal complaint procedure before filing a complaint with a State or Federal agency.

APPENDIX A

Applicable SUNY Upstate Policies Relating to Protected Class Discrimination, Harassment, Retaliation and Sexual Harassment/Sexual Violence

UW E-01	Non-Discrimination and Equal Opportunity Policy
UW H-01	Harassment Prevention Policy Title IX Policy, and
UW T-05	Title IX policy
UW D-04	Disability and Workplace Reasonable Accommodation Policy
Student Handbook	Equal Opportunity, Non-Discrimination, Sexual Harassment and Title IX Policy
Student Handbook	Sexual Assault, Domestic Violence and Stalking Prevention Policy

SUNY UPSTATE

OFFICE OF INSTITUTIONAL EQUITY

Discrimination/Harassment/Retaliation Complaint Form

Name: _____ **Upstate I.D. No:** _____

Name of Department: _____ **Title:** _____

Preferred Phone: _____ **Preferred Email:** _____

May we contact you via your Upstate email address? Yes No

Status: State Employee RF Employee Student Other: _____

**Please indicate the protected class(es) that is/are the basis of the alleged behavior.
Check all that apply.**

age	gender expression	race
color	gender identity	religion/creed
criminal conviction record	marital status	sex
disability	military status	sexual orientation
domestic violence victim status	national origin	transgender status
familial status	predisposing genetic characteristic	veteran status
gender	pregnancy	other

If other please specify: _____

Date the alleged conduct took place: _____

Is the alleged discrimination/harassment ongoing? Yes No

Name of person(s) who allegedly discriminated/harassed/retaliated against you:

Name: _____ Upstate I.D. No: _____

Please provide the names and contact information, if available, for any witnesses to the above described conduct:

If you have supporting documentation, such as photographs, text messages, emails, etc., please provide copies to the Office of Institutional Equity in conjunction with the filing of this complaint.

What is your desired outcome in this matter?

Process for Resolution: Do you wish to resolve this matter informally or through Investigation?

I am requesting an Informal Resolution to this matter.

I am requesting an Investigation to this matter.

I am requesting to review my options for resolution further.

Complainant's Signature: _____ Date: _____

Confidentiality Statement: In accordance with existing policies and laws, every effort will be made to protect the privacy of all individuals throughout all phases of the complaint investigation and resolution process. Information about complaints will be maintained in confidence to the fullest extent possible

APPENDIX C

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

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

UNITED STATES DEPARTMENT OF LABOR OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

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

UNITED STATES DEPARMTENT 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