

UNIVERSITY AT ALBANY

Complaint Procedure for Review of Allegations of Unlawful Discrimination/Harassment

Overview

The University at Albany, 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 **APPENDIX A - DEFINITIONS AND PROHIBITED ACTS AND BEHAVIORS**.

This procedure may be used by any University at Albany student or employee. 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 in no way deprives 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 the Office of University Counsel for review and supervision. Contact information for these agencies is listed in **APPENDIX B - EXTERNAL ENFORCEMENT AGENCIES**.

This Complaint Procedure for the Review of Allegations of Unlawful Discrimination/Harassment 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.

The University's Director of Diversity and Affirmative Action, or designee (the "Director"), shall receive any complaint of alleged discrimination, shall assist the Complainant in the use of the complaint form (see **APPENDIX C - CHARGE OF DISCRIMINATION**) and shall 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.

Complainant is not required to pursue the University at Albany internal procedures before filing a complaint with a State or Federal agency. In addition, if the Complainant chooses to pursue the University at Albany internal procedure, the Complainant is free to file a complaint with the appropriate State or Federal agency at any point during the process.

During any portion of the procedures detailed hereafter, the parties shall not employ audio or video taping devices.

PART A: INTRODUCTION

1. The Director 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 Director 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.

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 Director. Complaints may also be made directly to the Director.

PART B: COMPLAINTS

1. Employees must file a written complaint with the Director or designee 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 at Albany (see **APPENDIX C**). This 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.

2. 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-college 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.

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.

- 3. If the Complainant brings a complaint beyond the period in which the complaint may be addressed under these procedures, the Director may terminate any further processing of the complaint, refer the complaint to University Counsel or direct the Complainant to an alternative forum (see **APPENDIX B** for a list of alternative forums).

PART C: INFORMAL COMPLAINT RESOLUTION PROCEDURE

- 1. If a Complainant elects to have the matter dealt with in an informal manner, the Director or designee will attempt to reasonably resolve the problem to the mutual satisfaction of the parties.
- 2. In seeking an informal resolution, the Director or designee 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 30 calendar days from the filing of the complaint, through the efforts of the Director or designee, the Office of Diversity and Affirmative Action (ODAA) 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 ODAA file, shall contain the terms of any agreement reached by Complainant and Respondent, and shall be signed and dated by the Complainant and the Respondent (see **APPENDIX D - MEMORANDUM: STATUS – RESOLVED** for the appropriate form).
- 3. If the Director or designee is unable to resolve the complaint to the mutual satisfaction of the Complainant and Respondent within 30 calendar days from the filing of the complaint, the Director or designee shall so notify the Complainant. The Director 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 2 and 3 may be extended by mutual agreement of the Complainant and Respondent with the approval of the Director, or by the Director for good cause shown. Such extension shall be confirmed in writing by the Complainant and Respondent.

- 4. At any time, subsequent to the filing of a complaint, the Complainant may elect to proceed as specified in Part D of this document and forego the informal resolution procedure.

PART D: THE FORMAL COMPLAINT RESOLUTION PROCEDURE

1. The formal complaint resolution procedure is commenced by the filing of a complaint form as described in Part B.
2. If the Complainant first pursued the informal complaint resolution procedure 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. Upon receipt of a complaint, the Director or designee 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 Director or designee 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 Director 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 in the ODAA.
4. Within 10 calendar days of receipt of the complaint, the Director shall send notification to the Complainant, the Respondent and the President or designee, that a review of the matter shall take place.
5. The Director or designee shall review all relevant information, interview pertinent witnesses and, at their discretion, hear testimony from the Complainant and the Respondent. 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 Director or designee.
6. Within 60 calendar days from the filing of the complaint the Director shall prepare a summary of his/her findings and recommendations to the President or designee for resolution. The summary shall identify the facts upon which the findings were based. If the President is the Respondent, the findings and recommendation shall be submitted to the Chancellor or designee. When the Director transmits the findings and recommendation to the President or designee, she/he shall transmit, concurrently, copies to the Complainant and Respondent.
7. Within 30 calendar days of receipt of the written summary and recommendations, 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.

For employees (including student employees) not in a Collective Bargaining Unit the action of the President shall be final.

8. If the President is the Respondent, the following procedure shall be followed:

Within 10 business days of receipt of the complaint, the Director shall send notification to the Complainant, the Respondent and the Chancellor, or designee, 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 (see **Appendix E**).

9. 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 Director no later than 10 business days after the Complainant, the Respondent and the Chancellor received notice under Paragraph 8 above.
10. In the event that the procedural requirements governing the selection of the Tripartite Panel are not completed within 10 business days after notification, the Director shall complete the selection process.
11. The Tripartite Panel shall review all relevant information, interview pertinent witnesses and shall hear testimony from the Complainant and the Respondent. 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.
12. Within 60 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 resolution to the Chancellor, or designee. The summary shall identify the facts upon which the findings were based. When the Panel transmits the findings to the Chancellor, or designee, the Panel shall transmit, concurrently, copies to the Complainant, Respondent and the Director.
- The Chancellor or his designee shall issue a written statement to Complainant and Respondent indicating what action the Chancellor proposes to take. The Chancellor's decision shall be final for purposes of this discrimination procedure.
13. No later than 10 calendar days following issuance of the statement by the President or the Chancellor, as the case may be, the Director 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 4, 6, 7, 8, 9, 10, 12 and 13 may be extended by mutual agreement of the Complainant and Respondent with the approval of the Director, or by the Director, the President, or the Chancellor as the case may be, for good cause shown. Such extension shall be confirmed in writing.

14. 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 Director will provide general information on State and Federal guidelines and laws, as well as names and addresses of various enforcement agencies (see **APPENDIX B**).

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06/25/2003

APPENDIX A DEFINITIONS AND PROHIBITED ACTS AND BEHAVIORS

Sexual Harassment in the Employment Setting is defined as:

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.

Sexual Harassment in the Educational Setting is defined as:

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.

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.

**APPENDIX B
EXTERNAL ENFORCEMENT AGENCIES**

**New York State Division of
Human Rights**

State Headquarters

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

Albany

New York State Division of Human Rights
Empire State Plaza, Agency Building #2
18th Floor
Albany, New York 12220
Tel: (518) 474-2705
Fax: (518) 473-3422

Office of Sexual Harassment

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

Office of AIDS Discrimination

New York State Division of Human Rights
Office of AIDS Discrimination
20 Exchange Place, 2nd Floor
New York, New York 10005
Tel: (212) 480-2522 or 1-800-522-4369
Fax: (212) 480-0143

United States Department of Labor

Office of Federal Contract Compliance
Programs

201 Varick Street, Room 750
New York, NY 10014
Tel: (212) 337-2006
Fax: (212) 620-7705

**United States Department of Labor
(continued)**

Office of Federal Contract Compliance
Programs

New York District Office

26 Federal Plaza, Room 36-116
New York, NY 10278-0002
Tel: (212) 264-7742
Fax: (212) 264-8166

New York State Department of Labor

State Campus, Building 12, Room 500
Albany, NY 12240-0003
Tel: (518) 457-2741
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, NY 10007-2146
Tel: (212) 637-6466
Fax: (212) 264-3803

APPENDIX C

**CHARGE OF DISCRIMINATION
COMPLAINT FORM**

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.

(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 a complaint on _____
Date

I elect to utilize the informal complaint resolution procedure as described in Part C, paragraph 4 of the Internal Discrimination Procedure.

I elect to proceed immediately to the formal complaint resolution procedure as described in Part D, paragraph 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 (see COMPLAINT PROCEDURE, PART B: COMPLAINTS, 2.(b)) 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 _____

**APPENDIX D
MEMORANDUM : STATUS – RESOLVED**

Date:

To: Complainant
From: Director of Diversity and Affirmative Action
Subject: Status of Complaint

This is to confirm the fact that your complaint, which was filed with the Office of Diversity and Affirmative Action 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

Attachment: Terms of the Resolution

**APPENDIX E
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, investigating 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.