



Discrimination and Harassment Policy

Summary

The University at Buffalo 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, breastfeeding, transgender status, or sexual violence victim status. This policy describes how the university will investigate or resolve reports of discrimination and harassment.

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, gender expression, sexual orientation, predisposing genetic characteristics, marital status, familial status, veteran status, military status, domestic violence victim status, or criminal conviction 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 ensure the full participation of individuals in university programs, when such accommodations are reasonable and necessary due to an individual's disability, religion, pregnancy, maternity, breastfeeding, transgender status, or sexual violence victim status. The university will provide accommodations to individuals with disabilities in accordance with its *Reasonable Accommodation Policy*. Religious accommodations will be provided in accordance with the university's *Religious Accommodation and Expression Policy*.

Retaliation against anyone who reports discrimination, participates or assists in an investigation, or opposes a discriminatory act, practice, or policy is unlawful and is prohibited by this policy. Retaliation will not be tolerated and may result in a referral to the university's disciplinary process.

Discrimination Reporting

Equity, Diversity and Inclusion (EDI) is the campus office designated to manage reports of discrimination. EDI will receive reports of discrimination, conduct necessary investigations, report findings, and make recommendations in accordance with the process outlined below.

The discrimination reporting process 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 they have 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 or harassing behaviors are addressed.

Timeframes for Reporting Discrimination

Ordinarily, discrimination should be reported within one year after the last act of alleged discrimination or harassment occurred. In instances involving a student charge of discrimination against a faculty member that occurred in the context of a subordinate-supervisor academic

POLICY INFORMATION

Date Established:

3/01/2010

Date Last Updated:

12/03/2020

Category:

Human Resources

Responsible Office:

Equity, Diversity and Inclusion

Responsible Executive:

President

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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. For allegations of sexual harassment, including sexual violence, the time period for reporting is extended to within seven years of the alleged acts of sexual harassment. Failure to report discrimination within the relevant limitation period may lead to dismissal of the claim.

Investigatory Process

Initial Consultation with Complainant

Any member of the UB community, including contractors, guests, and visitors to UB, 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, 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 EDI to conduct an investigation, 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 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 an 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.

Victims of sexual assault, domestic violence, dating violence, and stalking have multiple options for redress, as well as the right to obtain assistance in order to ensure they can continue to participate in university programs and activities. These options and rights are described in *Appendix B - Student's Bill of Rights*.

The complainant will be asked to complete an initial Intake and Information Form, and will be provided assistance in completing this form when necessary. Failure or refusal to complete this form will not preclude investigation of the discrimination report. Individuals may contact EDI anonymously, either for consultation or to report discrimination. It is important to note that due process considerations may limit the ability to investigate or resolve anonymous complaints.

Conducting the Investigation

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 an investigation are afforded the following rights and protections:

- EDI maintains the confidentiality of discrimination reports to the fullest extent possible, and requests the same of parties to the investigation 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 them and an opportunity to respond. No presumption of wrongdoing will be made absent factual evidence.
- Complainants and respondents will each have notice of the evidence presented during the investigation, as well as an opportunity to explain and respond to the evidence.
- Complainants and third party witnesses are protected against retaliation for reporting discrimination or participating in an investigation. If a party feels that any negative action has been taken as a result

of reporting discrimination 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.
- For instances involving sex discrimination, complainants will be made aware of their Title IX rights and available resources on and off-campus, and the right, if any, to file a complaint with local law enforcement.

For reports of discrimination that also involve law enforcement proceedings, EDI will comply with law enforcement requests for cooperation, including when such cooperation may require EDI to temporarily suspend the fact-finding aspect of an investigation while the law enforcement agency is in the process of gathering evidence. EDI will resume its investigation as soon as it is notified by the law enforcement agency that it has completed the evidence gathering process.

EDI may refer allegations of serious misconduct that could warrant disciplinary action to the applicable disciplinary offices (e.g., Employee Relations, Student Conduct and Advocacy) for investigation and adjudication. EDI will provide notice to the complainant of this referral, and will assist in providing information to the complainant about participation in applicable disciplinary process.

In conducting investigations, EDI considers relevant laws, policies and procedures, documentation, and information obtained from the complainant, respondent, and third party witnesses. The standard of proof in complaints made under this policy is preponderance of the evidence. The timeframe for investigating a report of discrimination 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 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 harassment
- There is sufficient evidence to support a finding of a violation of the university's policies against discrimination and harassment; in this event, EDI will recommend appropriate action to the supervisor or unit head to remedy such violation(s). Employee or student misconduct referred to campus disciplinary mechanisms may include, but is not limited to, a reprimand, suspension, or termination. Non-disciplinary remedies for misconduct may include, but are not limited to, training, reassignment, or informal or formal counseling.

The parties to a complaint will receive notice of the outcome of the investigation.

Funding agencies may require the university to report findings or determinations of sexual harassment, other forms of harassment, or sexual assault, as well as instances when the university places employees on administrative leave, including when employees have been suspended. EDI will coordinate with Sponsored Projects Services to comply with these funding agency requirements.

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 is thorough and impartial. These measures may include reassignment of the responsibility for the investigation. In the event that EDI cannot conduct an investigation due to a conflict of interest, the university will ensure that the report of discrimination is investigated by individuals with experience and training in discrimination compliance. If EDI is precluded from investigating a report of discrimination, the office may still assist complainants and respondents in seeking a voluntary resolution to the matter, as appropriate.

Allegations of discrimination against the university's president will be handled in accordance with the State University of New York (SUNY) *Discrimination and Sexual Harassment Complaint Procedure*.

Failure to Cooperate

If a complainant refuses to cooperate 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 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 Reporting Discrimination

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 report of discrimination pursuant to the process may not extend the time limits established by state and federal enforcement agencies. It is not necessary to pursue university reporting 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, NY 14202
Phone: [716-847-7632](tel:716-847-7632)

Equal Employment Opportunity Commission
300 Pearl St
Buffalo, NY 14202
Phone: [1-800-669-4000](tel:1-800-669-4000)

Office for Civil Rights, New York Office
U.S. Department of Education
32 Old Slip, 26th Floor
New York, NY [10005-2500](tel:10005-2500)
Phone: [646-428-3900](tel:646-428-3900)

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Background

The university's policy is in accordance with federal and state laws and regulations prohibiting discrimination and harassment. These laws include the *Americans with Disabilities Act* (ADA), *Section 504 of the Rehabilitation Act of 1973*, *Title IX of the Education Amendments of 1972*, *Title VII of the Civil Rights Act of 1964 as Amended by the Equal Employment Opportunity Act of 1972*, and the *New York State Human Rights Law*. These laws prohibit discrimination and harassment, including sexual harassment and sexual violence. There may also be local laws prohibiting discrimination and harassment, including sexual harassment and sexual violence.

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Applicability

This policy:

- Applies to all persons without regard to race, color, national origin, sex, 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, and criminal conviction 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 volunteer
 - 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
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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, gender expression, sexual orientation, predisposing genetic characteristics, marital status, familial status, veteran status, military status, domestic violence victim status, or criminal conviction 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.

Harassment is a form of discrimination. Sex discrimination also includes, but is not limited to sexual harassment, sexual assault, and sexual violence.

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, breastfeeding, transgender status, or sexual violence victim status.

Harassment

A form of discrimination consisting of oral, written, graphic or physical conduct relating to an individual's protected characteristics that has the effect of subjecting the individual to inferior terms, conditions or privileges of employment or interferes with or limits the ability of an individual to participate in or benefit from the university's programs or activities. Such conduct must amount to more than petty slights or trivial inconveniences, but need not be severe or pervasive. Engaging in speech or expression protected by the First Amendment is not a violation of the university's policies against discrimination and harassment.

Preponderance of the Evidence

The standard of proof in discrimination cases, which determines whether it is “more likely than not” that the discriminatory or harassing act(s) occurred.

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, opposing discriminatory practices or harassment, or participating in or assisting a complaint investigation. Adverse actions may include, but are not limited to: termination or 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, or the provision of negative references with respect to academic work or employment.

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 participation in other university activities 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. Employees who observe or become aware of sexual harassment, sexual violence, and other forms of sex discrimination or harassment should report this information to the Director of EDI, who also serves as the university's Title IX Coordinator.

The Appendices provide additional information:

Appendix A - sexual harassment

Appendix B - full explanation of the rights of victims of sexual assault, domestic violence, dating violence, and stalking

Appendix C - State University of New York (SUNY) Sexual Harassment Response and Prevention Policy Statement

Sexual Harassment Information Advisors

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

Title IX

Title IX of the Education Amendments of 1972, a federal law that prohibits sex discrimination in any education program or activity that receives federal financial assistance.

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Responsibility

President, Provost, Vice Presidents, Deans, Directors, Department Heads, Managers, Supervisors

- Prevent discrimination and harassment whenever possible; initiate a referral for disciplinary or corrective action when appropriate.
- Provide information to individuals in their units regarding the process described in this policy.
- Refer persons with inquiries or complaints to this policy and EDI.

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

- Make decisions based upon legitimate, non-discriminatory reasons.
- Report instances of discrimination and harassment based upon a protected characteristic to EDI.
- Consider requests for accommodation based on disability, religion, pregnancy, maternity, breastfeeding, transgender status, or sexual violence victim status. Contact EDI with questions or concerns about implementing accommodation requests.

Director of Equity, Diversity and Inclusion (EDI)

- Administer this policy.
- Investigate allegations of discrimination and harassment.
- Supervise the activities of the Sexual Harassment Information Advisors.
- Comply with sponsor notification requirements in coordination with Sponsored Projects Services.

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 EDI 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, Students

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

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Contact Information






Contact An Expert









Contact	Phone	Email
Equity, Diversity and Inclusion	716-645-2266	diversity@buffalo.edu

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Related Information

University Links

- [Academic Grievance Policy and Procedures for Undergraduate Students](#) 
- [Equity, Diversity and Inclusion](#) 
- [Nepotism Policy](#) 
- [Notice of Non-Discrimination](#) 
- [Office of Graduate Medical Education Discrimination and Harassment Policy](#) 

- ▶ [Options for Confidentially Disclosing Sexual Violence](#) 
- ▶ [Reasonable Accommodation Policy](#) 
- ▶ [Religious Accommodation and Expression Policy](#) 
- ▶ [Sexual Violence Response Policy](#) 
- ▶ [Students' Bill of Rights](#) 
- ▶ [The Graduate School Policy Library](#) 
- ▶ [University Policies and Guidelines for Faculty and Staff](#) 
- ▶ [Unwanted Sexual Experience](#) 

Related Links

- ▶ [Research Foundation Equal Opportunity and Antidiscrimination Policy](#) 
 - ▶ [Research Foundation Resolving Discrimination, Harassment, and Retaliation Complaints Procedure](#) 
 - ▶ [Research Foundation Sexual Harassment Policy](#) 
 - ▶ [State University of New York Discrimination and Sexual Harassment Complaint Procedure, Document 6501](#) 
 - ▶ [U.S. Equal Employment Opportunity Commission \(EEOC\)](#) 
 - ▶ [U.S. Equal Employment Opportunity Commission \(EEOC\) - Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors](#) 
 - ▶ [U.S. Equal Employment Opportunity Commission \(EEOC\) - Guidelines on Discrimination Because of Sex, U.S. Code of Federal Regulations, Part 1604](#) 
 - ▶ [U.S. Equal Employment Opportunity Commission \(EEOC\) - Policy Guidance on Employer Liability Under Title VII for Sexual Favoritism](#) 
 - ▶ [U.S. Equal Employment Opportunity Commission \(EEOC\) - Sexual Harassment](#) 
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History

Policy Revision History

December 2020	Updated to remove binary language.
December 2019	<p>Updated the policy to:</p> <ul style="list-style-type: none"> • Specify that the timeline for reporting discrimination is extended to within seven years of the alleged acts of sexual harassment for allegations of sexual harassment including sexual violence • Revise the definition of "discrimination" to specify that discrimination may also result from failure of the university to provide accommodations to individuals when required due to the individual's transgender status or sexual violence victim status • Revise the definition of "harassment" based on changes to the New York State Human Rights Law. The previous definition of "harassment" was "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, gender expression, sexual orientation, predisposing genetic characteristics, marital status, familial status, veteran status, military status, domestic violence victim status, and criminal conviction status; harassment is a form of discrimination." • Revise <i>Appendix A</i>, definition of "hostile environment" to: <ul style="list-style-type: none"> ◦ Delete the words "is sufficiently severe or pervasive to" and replace with the words "has the effect of altering" ◦ Add a reference to the New York State Human Rights Law (see, N.Y. Exec. Law § 296)
March 2019	<p>Full review. Updated the policy to:</p> <ul style="list-style-type: none"> • Add transgender and sexual violence victim status to the reasons for an accommodation • Revised the definition of Retaliation to include opposing discriminatory practices or harassment and assisting a complaint investigation • Include a responsibility for supervisors, instructors, and others with authority to make decisions on behalf of the university to consider requests for accommodation based on disability, religion, pregnancy, maternity, breastfeeding, transgender, or sexual violence

	<p>victim status</p> <ul style="list-style-type: none"> • Clarify that contractors, guests, and visitors are considered part of the UB community and that they may file a discrimination complaint • Refer all allegations of serious misconduct that could warrant disciplinary action to the applicable disciplinary offices • Incorporate new requirements of funding agencies for reporting findings or determinations of sexual harassment, other forms of harassment, or sexual assault, or when the university places employees on administrative leave including suspension • Clarify that sexual harassment is a form of misconduct with enforceable sanctions (Appendix A) • Add Appendix C, SUNY Sexual Harassment Response and Prevention Policy Statement
November 2015	Updated to add familial status as an additional bias that is protected by law.
October 2015	Updated <i>Appendix B</i> to reflect New York State legislation modifying the <i>Students' Bill of Rights</i> , formerly the <i>Sexual Violence Victim/Survivor Bill of Rights</i> .
June 2015	Updated <i>Appendix B</i> to reflect the current SUNY <i>Sexual Violence Victim/Survivor Bill of Rights</i> .
June 2014	Updated to comply with a Resolution Agreement between SUNY and the Department of Education Office for Civil Rights. The major changes include the addition of some definitions, clarification of the legal standard for considering complaints, and an expansion of the description of rights available to victims of sexual violence, dating violence, domestic violence, and stalking (captured in the policy and a revised <i>Appendix B</i>).
April 2012	Updated procedures pertaining to a potential conflict of interest and added <i>Appendix B</i> 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).

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Presidential Approval

Signed by President Satish K. Tripathi

12/6/2019

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Satish K. Tripathi, President

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Date

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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 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 they are based on sex, sexual orientation, gender identity, or gender expression.

Sexual harassment can take different forms, and the determination of what constitutes sexual harassment will vary according to the particular circumstances. Sexual harassment may occur regardless of the sex, sexual orientation, gender identity, or gender expression of the harasser or the target(s) of the behavior. Harassment that is sexual in content is always actionable regardless of the harasser's sex, sexual orientation, or gender orientation, regardless of the harasser's intent or motivation.

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 their 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 has the effect of altering the conditions of the victim's employment or academic pursuits and creates 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)) and the New York State Human Rights Law (see, N.Y. Exec. Law § 296)).

Sexual harassment is a form of misconduct, and sanctions will be enforced against individuals engaging in sexual harassment and against supervisory and managerial personnel who knowingly allow such behavior to continue.

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 or unacceptable in a work or academic environment.

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Appendix B

Students' Bill of Rights

The State University of New York and UB are committed to providing options, support and assistance to victims and survivors of sexual assault, domestic violence, dating violence, or stalking to ensure that they can continue to participate in university-wide and campus programs, activities, and employment. All victims and survivors of these crimes and violations, regardless of race, color, national origin, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, or criminal conviction, have the following rights, regardless of whether the crime or violation occurs on campus, off campus, or while studying abroad:

All students have the right to:

1. Make a report to local law enforcement and state police;
2. Have disclosures of domestic violence, dating violence, stalking, and sexual violence assault treated seriously;
3. Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and criminal justice process free from pressures from the institution;
4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
5. Be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services, where available;
6. Be free from any suggestion that the reporting individual or victim or survivor is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;

7. Describe the incident to as few institutional representatives as practicable and not to be required to unnecessarily repeat a description of the incident;
8. Be free from retaliation by the university, the accused or the respondent, and their friends, family, and acquaintances within the jurisdiction of UB;
9. Access to at least one level of appeal of a determination;
10. Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or respondent throughout the judicial or conduct process including during all meetings and hearings related to such process;
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the university.

Options in Brief

Victims and survivors have many options that can be pursued simultaneously, including one or more of the following:

- Receive resources, such as counseling and medical attention;
- Confidentially or anonymously, disclose a crime or violation (for detailed information on confidentiality and privacy, visit [Options for Confidentially Disclosing Sexual Violence](#)).
- Make a report to:
 - An employee with the authority to address complaints, including the Title IX Coordinator, a Student Conduct employee, or a Human Resources employee
 - [University Police](#)
 - Local law enforcement
 - Family Court or Civil Court

Copies of this Bill of Rights shall be distributed annually to students, made available on UB's website, and posted in each campus residence hall, dining hall, and student union or campus center and shall include links or information to access the [Sexual Violence Response Policy](#) and the [Options for Confidentially Disclosing Sexual Violence](#).

Revised August 13, 2015

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Appendix C

SUNY Sexual Harassment Response and Prevention Policy Statement

Sexual harassment is a form of sex discrimination which is unlawful in the workplace under *Title VII of the Civil Rights Act of 1964*, as amended, and the *New York State Human Rights Law*. Under *Title IX of the Educational Amendments of 1972*, sexual harassment also is prohibited in the provision of educational services and protects students and employees from sexual harassment.

Sexual harassment is prohibited and will not be tolerated at SUNY. SUNY and UB have implemented measures to address and prevent sexual harassment and is taking additional affirmative steps to increase awareness of, and sensitivity to, all forms of sexual harassment in order to maintain a workplace and learning environment free of its harmful effects. Sexual harassment is a form of workplace discrimination and employee misconduct, as well as a form of discrimination in the academic setting, and all employees and students are entitled to work and learn in a campus environment that prevents sexual harassment. All employees and students have a legal right to a workplace and a campus free from sexual harassment, and employees and students can enforce this right by filing a complaint internally with the university, or with a government agency, or in court under federal or state anti-discrimination laws, as detailed in the University's [Discrimination and Harassment Policy](#).

In accordance with applicable law, sexual harassment is generally described as unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature when:

- Submission to such conduct is made either explicitly or implicitly a term or condition of employment or academic benefit; or
- Submission to or rejection of the conduct is used as the basis for an employment or academic decision affecting the person rejecting or submitting to the conduct; or
- The conduct has the purpose or effect of unreasonably interfering with an affected person's work or academic performance, or creating an intimidating, hostile or offensive work or learning environment.

Sexual harassment can include physical touching, verbal comments, non-verbal conduct such as leering or inappropriate written or electronic communications, or a combination of these things. Examples of sexual harassment may include, but are not limited to:

- Seeking sexual favors or a sexual relationship in return for the promise of a favorable grade or academic opportunity;
- Conditioning an employment-related action (such as hiring, promotion, salary increase, or performance appraisal) on a sexual favor or relationship; or
- 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 their employment or academic responsibilities.
- Physical acts of a sexual nature, such as:
 - Touching, pinching, patting, kissing, hugging, grabbing, brushing against, or poking another person's body;
 - Rape, sexual battery, molestation or attempts to commit these assaults.
- Unwanted sexual advances or propositions, such as:
 - Requests for sexual favors accompanied by implied or overt threats concerning a target's job performance evaluation, a promotion or other job benefits or detriments, or an educational benefit or detriment;
 - Subtle or obvious pressure for unwelcome sexual activities.
- Sexually oriented gestures, noises, remarks, jokes or comments about a person's sexuality or sexual experience, which create a hostile environment.
- Sex stereotyping occurs when conduct or personality traits are considered inappropriate simply because they may not conform to other people's ideas or perceptions about how individuals of a particular sex should act or look.
- Sexual or discriminatory displays or publications, such as:
 - Displaying pictures, posters, calendars, graffiti, objects, promotional material, reading materials or other materials that are sexually demeaning or pornographic. This includes such sexual displays on computers or cell phones and sharing such displays while in the workplace or classroom.
- Hostile actions taken against an individual because of that individual's sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity, and the status of being transgender, such as:
 - Interfering with, destroying or damaging a person's workstation, tools or equipment, or otherwise interfering with the individual's ability to perform their employment or academic duties;
 - Sabotaging an individual's work;
 - Bullying, yelling, name-calling.

Such behavior can constitute sexual harassment regardless of the sex, gender, sexual orientation, self-identified or perceived sex, gender expression, status of being transgender, or gender identity of any of the persons involved. Sexual harassment is considered a form of employee and student misconduct which may lead to disciplinary action. Further, supervisors and managers will be subject to discipline for failing to report suspected sexual harassment or otherwise knowingly allowing sexual harassment to continue. Employees and students who believe they have been subjected to sexual harassment may file a report under the University's *Discrimination and Harassment Policy*.

Retaliation against a person who files a complaint, serves as a witness, or assists or participates in any manner in this procedure, is unlawful, is strictly prohibited and may result in disciplinary

action. Retaliation is an adverse action taken against an individual as a result of complaining about or provides information regarding unlawful discrimination or harassment, exercising a legal right, or participating in a complaint investigation as a third-party witness. Adverse action includes being discharged, disciplined, discriminated against, or otherwise subject to adverse action because the individual reports an incident of sexual harassment, provides information, or otherwise assists in any investigation of a sexual harassment complaint. Participants who experience retaliation should contact the Office of Equity, Diversity and Inclusion, and may file a complaint pursuant to these procedures.

SUNY campuses and System Administration shall take the necessary steps to ensure that this *Sexual Harassment Response and Prevention Policy Statement* is distributed, implemented, and enforced in accordance with their respective policies.

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