



# SUNYADIRONDACK

<b>Policy Title:</b>	Discrimination and Sexual Harassment Complaints
<b>Document #:</b>	3309
<b>Effective Date:</b>	11/14/19
<b>Category:</b>	Human Resources
<b>Responsible Office:</b>	Human Resources
<b>This policy applies to:</b>	Employees, Affiliated Entity Employees, Students, Interns, Vendors and Visitors

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## Summary:

SUNY Adirondack is committed to maintaining its campuses and a workplace free from unlawful discrimination and sexual harassment. The College, 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 policy and procedure for the prompt and equitable investigation and resolution of allegations of unlawful discrimination on the basis of race, color, national origin, religion, creed, age, sex, sexual orientation, disability, gender identity, gender expression, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, or criminal conviction. Harassment is one form of unlawful discrimination on the basis of the above protected categories. The College will take steps to prevent discrimination and harassment, to prevent the recurrence of discrimination or harassment, and to remedy its discriminatory effects on the complainant(s) and others, if appropriate.

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## Policy:

Any student or employee of SUNY Adirondack, applicants for employment, interns, whether paid or unpaid, contractors and persons conducting business with the College, as well as third-parties who are participating in a College sponsored program or affiliated activity may file a discrimination or sexual harassment complaint. Employee grievance procedures established through negotiated contracts, academic grievance review committees, student disciplinary grievance boards, and any other procedures defined by contract or policy will be followed. A complainant also has the right to file with outside enforcement agencies such as the NYS 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 College's Affirmative Action Officer [AAO] or in the case of sexual harassment/discrimination, the Title IX Coordinator, for investigation with legal counsel.

The AAO who receives any complaint of alleged discrimination, will inform the complainant about the complaint process and other options to resolve the issue, assist the complainant in the use of the complaint form and understanding the nature of the incident, and 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.

Upon receipt of a sexual harassment/discrimination complaint, the Title IX Coordinator will provide to the complainant a written notice describing the available options, including pursuing a criminal complaint with a law enforcement agency, pursuing a College investigation and disciplinary process, or pursuing both options at the same time; and the potential consequences of pursuing both options (i.e., possible temporary delay of the fact-finding aspect of the College's investigation while the law enforcement agency is in the process of gathering evidence). Additionally, the Title IX Coordinator will ensure that complainants in sexual harassment/discrimination cases are made aware of their Title IX rights, available remedies and resources on and off-campus (such as counseling, local rape crisis center), and interim measures of protection. Assistance will be available whether or not a formal complaint is contemplated, or even possible. More information and related policies are available on the College's website at <http://sunyacc.edu/sexual-assault-prevention-and-response>.

The College will promptly investigate all incidents of discrimination or sexual harassment reported. Complaints and investigations will be kept private, to the extent possible.

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 providing information regarding unlawful discrimination or harassment, exercising a legal right, and/or participating in a complaint investigation as a third-party witness. Adverse action includes being discharged, disciplined, discriminated against, or otherwise subject to adverse employment action because the employee 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 AAO, and may file a complaint.

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### **Definitions:**

Affiliated Entity. Per the Board of Trustees Policy Manual Section 9.1 - 9.3, the purpose, relationship, responsibility and agreements between the SUNY Adirondack Foundation, Faculty-Student Association and the Adirondack Housing Association, are outlined.

College. Use of this term explicitly refers to Adirondack Community College and/or the College's acceptable short name, SUNY Adirondack.



Employee. Any person who works for the College for wages, salaries or stipends including part-time and full-time faculty, staff and administrators. Excludes consultants such as instructors for the Office of Continuing Education. Students who are also employees will, in most instances, be categorized for purposes of the policy as a student. The Associate Vice President for Human Resources will make the determination based on the situation presented.

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 and/or serious, 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.

Intern. A student/trainee from another institution enrolled in a formal education program to provide practical experience in an occupation or profession.

Sexual Assault. A physical sexual act or acts committed against a person's will and consent or when a person is incapable of giving active consent, incapable of appraising the nature of the conduct, or incapable of declining participation in, or communicating unwillingness to engage in, a sexual act or acts. Sexual assault is an extreme form of sexual harassment. Sexual assault includes what is commonly known as "rape," whether forcible or non-forcible, "date rape" and "acquaintance rape."

Sex Discrimination. Behaviors and actions that deny or limit a person's ability to benefit from, and/or fully participate in the educational programs or activities or employment opportunities because of a person's sex. This includes but is not limited to sexual harassment, sexual assault, sexual violence by employees, students, or third parties. Employees should report sex discrimination, including but not limited to, sexual harassment and assault that they observe or become aware of, to the Title IX coordinator.

Sexual Harassment. A form of sex discrimination, unlawful under federal and state law. Sexual harassment includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender.

Sexual harassment includes unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual's sex when:

- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment, even if the reporting individual is not the intended target of the sexual harassment;
- Such conduct is made either explicitly or implicitly a term or condition of employment; or
- Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual's employment.

A sexually harassing hostile work environment includes, but is not limited to, of words, signs, jokes, pranks, intimidation or physical violence which are of a sexual nature, or which are directed at 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. Sexual harassment



also consists of any unwanted verbal or physical advances, sexually explicit derogatory statements or sexually discriminatory remarks made by someone which are offensive or objectionable to the recipient, which cause the recipient discomfort or humiliation, which interfere with the recipient's job performance. Sexual harassment also occurs when a person in authority tries to trade job benefits, including hiring, promotion, continued employment or any other terms, conditions or privileges of employment, for sexual favors.

Sexual harassment in the educational setting 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.

Sexual Violence. Physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent.

Student. All SUNY Adirondack students, full-time, part-time, credit and non-credit.

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#### **Other Related Information:**

Board of Trustees Policy Manual Section 7 Human Resources – 7.03A-B Workplace Environment – Discrimination, Sex Discrimination

[N:\Policies, Processes, Procedures and Guidelines\Board of Trustees\Board of Trustees Policy Manual 2015-12-17](#)

Non-Discrimination and Anti-Harassment Policy

[N:\Policies, Processes, Procedures and Guidelines\Human Resources/ # 3306 Non-Discrimination and Anti-Harassment](#)

Sexual Harassment Response and Prevention Policy

[N:\Policies, Processes, Procedures and Guidelines\Human Resources/ # 3303 Sexual Harassment Response and Prevention](#)

Sexual and Romantic Relationships Policy

[N:\Policies, Processes, Procedures and Guidelines\Human Resources/ # 3304 Sexual and Romantic Relationships](#)

Sexual Assault Violence Response and Prevention Policy

<http://sunyacc.edu/sexual-assault-prevention-and-response>

Records Retention Policy [in development]

[SUNY Policy Doc. No. 6501, Discrimination and Sexual Harassment Complaint Procedure](#)

[SUNY Policy Doc. No. 6502, Equal Opportunity: Access, Employment and Fair Treatment in the State University of New York](#)

[SUNY Policy Doc. No 6507, SUNY Sexual Harassment Response and Prevention Statement](#)

New York State Human Rights Law at the [New York State Division of Human Rights website](#)

[\[https://dhr.ny.gov/law\]](https://dhr.ny.gov/law)



Title IX of the Education Amendments of 1972

<https://www.justice.gov/crt/title-ix-education-amendments-1972>

Related guidance available with the United States Department of Education

[Office for Civil Rights Publications page \[https://www2.ed.gov/about/offices/list/ocr/index.html\]](https://www2.ed.gov/about/offices/list/ocr/index.html)

U.S. Equal Employment Opportunity Commission, the federal agency with oversight of the following laws [\[https://www.eeoc.gov/laws/statutes/index.cfm\]](https://www.eeoc.gov/laws/statutes/index.cfm): [Title VII of the Civil Rights Act of 1964](#); [The Age Discrimination in Employment Act of 1967](#); [Titles I and V of the Americans with Disabilities Act of 1990 \(ADA\)](#); [The Equal Pay Act of 1963](#) and [The Pregnancy Discrimination Act](#).

Office of Federal Contract Compliance of the United States Department of Labor

[\[https://www.dol.gov/ofccp/\]](https://www.dol.gov/ofccp/)

Local law enforcement can be contacted if the harassment involves unwanted physical touching, coerced physical confinement or coerced sex acts, the conduct may constitute a crime.

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### **Processes and Procedures:**

A complaint procedure provides a mechanism through which the College may identify, respond to, and prevent incidents of discrimination. The College believes that the establishment of an internal grievance process will benefit students, faculty, staff, and administration, permitting investigation and resolution of problems.

The complainant is not required to pursue the College's internal procedures before filing a complaint with a state or federal agency. In addition, if the complainant chooses to pursue the College's internal procedure, the complainant may also to file a complaint with the appropriate state or federal agency at any point during the process.

#### **Complaint Consultation and Review**

Any student or employee, or any third party may consult with the AAO/Title IX Coordinator regarding potential discrimination or harassment. This initial contact may occur by telephone, email, or in person--the latter being preferred. A Complaint Form can also be completed and submitted.

It is the responsibility of the AAO/Title IX Coordinator to respond to all such inquiries, reports, and requests as promptly as possible, and in a manner appropriate to the particular circumstances. This response may include interim measures to protect the parties during the investigation process. Interim measures will not disproportionately impact the complainant. Interim measures for students may include, but are not limited to, information about how to obtain counseling and academic assistance in the event of sexual assault, and steps to take if the accused individual lives on campus and/or attends class with the complainant. Interim measures involving employees in collective bargaining units should be determined in consultation with the Associate Vice President of Human Resources and/or legal counsel.

Complaints or concerns that are reported to an administrator, manager or supervisor, concerning an act of discrimination or harassment, or acts of discrimination or harassment that



administrators, managers, or supervisors observe or become aware of, shall be immediately referred to the AAO. Employees who observe or become aware of sex discrimination, including sexual harassment and sexual violence, should report this information to the Title IX Coordinator. Complaints may also be made directly to the AAO by anyone who experiences, observes, or becomes aware of discrimination or harassment.

A timely investigation will be undertaken. In the event law enforcement is involved, the College will comply with requests for cooperation, which may require temporarily delaying the College's fact-finding aspect of an investigation while the law enforcement agency is gathering evidence. The College will resume its investigation as soon as it is notified by the law enforcement agency that it has completed the evidence gathering process. The College will implement appropriate interim steps during the law enforcement agency's investigation period to provide for the safety of the complainant(s) and the campus community.

#### Written Complaints and Time Limits

Although in limited circumstances, verbal complaints may be acted upon, the submission of a written complaint that will enable a full and fair investigation of the facts as required. Employees must file a written complaint with the AAO within 180 calendar days following the alleged discriminatory act, or the date on which the complainant first knew or reasonably should have known of such act.

Students must file a complaint within 180 calendar days following the alleged discriminatory act, or 90 calendar days after a final grade is reported via the Registrar's office for the semester during which the discriminatory acts occurred, if that date is later.

If the complainant brings a complaint beyond the period in which the complaint may be addressed under these procedures, the AAO may terminate any further processing of the complaint, refer the complaint to the College's legal counsel or direct the complainant to an alternative agency. Complaints of sex discrimination brought forth beyond the 180-day period will be tracked and investigated to the extent possible, consistent with the campus Title IX obligations, including the Title IX Coordinator's duties to spot patterns and address systemic issues.

Complaints should be submitted on the Complaint Form, with required data fields. The Complaint Form will be used for both the initiation of complaints under the informal procedure, and the conversion of the complaint to the formal procedure. The AAO/Title IX Coordinator is available to assist in preparing the complaint.

#### Informal Resolution

If a complainant elects to have the matter dealt with in an informal manner, the AAO will attempt to reasonably resolve the problem to the mutual satisfaction of the parties.

In seeking an informal resolution, the AAO shall attempt to review all relevant information, interview pertinent witnesses, and bring together the complainant and the respondent, if desirable. Complaints of sexual violence will not be resolved by using mediation, but instead must be referred immediately to the Title IX Coordinator. The complainant will not be required to resolve the problem directly with the respondent in cases of sex discrimination.

If a resolution satisfactory to both the complainant and the respondent is reached within 24 calendar days from the filing of the complaint, the AAO shall close the case, and communicate



to both the complainant and respondent. If the AAO is unable to resolve the complaint to the mutual satisfaction of the complainant and respondent within 24 calendar days from the filing of the complaint, the AAO shall so notify the complainant. The AAO shall again advise the complainant of their 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 may be extended by mutual agreement of the complainant and respondent with the approval of the AAO. Such extension shall be confirmed in writing by the complainant and respondent. The AAO will also have the discretion to reasonably extend the deadlines if an investigation is deemed complex.

The complainant may elect to end the informal resolution process, and proceed to the formal resolution procedure, at any time after the Complaint Form is filed.

#### Formal Resolution

The formal complaint proceeding is commenced by the filing of a complaint form as described above. The 180-day time limit also applies to the filing of a formal complaint.

#### Notice to Parties

Upon receipt of a complaint, the AAO will provide acknowledgement of receipt to the complainant. As soon as reasonably possible after the date of filing of the complaint, the AAO 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 place where such delivery occurred, is entered in the records maintained by or for the AAO.

Within seven calendar days of receipt of the complaint, the chairperson of the College's affirmative action advisory group shall send notification to the complainant and the respondent that an investigation of the matter will be conducted.

#### Findings and Recommendations

Within 15 calendar days of completion of the investigation, the President or designee shall issue a written statement to the complainant and respondent, indicating the determination:

- a. that the complaint was not substantiated; or
- b. that the complaint was substantiated.
  - i. For employees (including student employees) not in a collective bargaining unit: The AAO may take such administrative action as they deem appropriate, including but not limited to, termination, demotion, reassignment, suspension, reprimand, or training.
  - ii. For students: The AAO 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 AAO may determine that sufficient information exists to refer the matter to their designee for investigation and disciplinary action, or other action as may be appropriate under the applicable collective bargaining



agreement. The disciplinary process and potential outcomes are described in the applicable collective bargaining agreements.

The action of the AAO is final.

#### Notice of Outcome

No later than seven calendar days following issuance of the determination statement, the AAO shall issue a letter to the complainant and respondent(s) advising them that the matter, for purposes of this discrimination procedure, is closed. In cases of sex discrimination, notice of outcome will include the sanctions, as appropriate.

#### Time Limitations

The time limitations set forth above may be extended by mutual agreement of the complainant and respondent with the approval of the panel. The panel will also have the discretion to reasonably extend the deadlines if an investigation is deemed complex. Such extension shall be confirmed in writing to the parties.

#### External Agencies

If the complainant is dissatisfied with the AAOs decision, the complainant may elect to file a complaint with one or more state and federal agencies.

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#### **Forms:**

Complaint Form

[N: Forms and Applications/Human Resources/Discrimination, Sexual Harassment or Workplace Violence Complaint Form](#)

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#### **Authority:**

Authority to Approve: Vice President for Administrative Affairs and Treasurer

Responsible for Oversight: Affirmative Action Officer

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#### **History:**

This policy was adopted pursuant to Labor Law §201-g [October 2018], which requires every employer in the State of New York to adopt a sexual harassment prevention policy that meets or exceeds enumerated minimum standards in order to prevent and combat sexual harassment in the workplace. This is the first Discrimination and Sexual Harassment Complaints policy. This policy was approved by the President on 8/6/19.

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#### **Review:**

Annually in June.

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#### **Appendices:**

None.