

## **Complaint Procedure for Review of Allegations of Unlawful Discrimination/Harassment**

### **Overview**

The State University of New York, College at Delhi ("SUNY Delhi " or "the College"), in its continuing effort to seek equity in education and employment and consistent with 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, creed, age, sex, sexual orientation, disability, gender identity, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, or criminal conviction. Sex discrimination also includes sexual harassment and sexual violence. Harassment on the basis of any of the above categories is unlawful discrimination. Employees who observe or become aware of any form of discrimination including sex discrimination, sexual harassment and sexual violence, should report this information to the Director of Employee Relations and Affirmative Action ("Director ER&AA") who is also the campus Title IX Coordinator. Conduct that may constitute harassment is described in Appendix A.

This Complaint Procedure for the Review of Allegations of Unlawful Discrimination provides a mechanism through which SUNY Delhi may identify, respond to, and prevent incidents of illegal discrimination. The College will take steps to prevent discrimination and harassment, to prevent the recurrence of discrimination and harassment, and to remedy its discriminatory effects on the victim(s) and others, if appropriate. The College recognizes and accepts its responsibility in this regard and believes that the establishment of this internal, non-adversarial complaint process will benefit students, 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.

These measures are intended to balance the rights of those bringing complaints of discrimination, harassment, and retaliation (the "Complainant") with those against whom claims are brought (the "Respondent"). This procedure is administered by the Director ER&AA. The State University of New York, Office of General Counsel has approved this procedure.

This procedure may be used by any SUNY Delhi student or employee, as well as by third-parties who are participating in a College-sponsored program or affiliated activity. 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. 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. Contact information for these agencies is listed in Appendix B.

A complainant is not required to pursue the SUNY Delhi procedure before filing a complaint with the appropriate State or Federal agency, and the Complainant may file such a complaint at any time during the process. However, after filing with one of these outside enforcement agencies, or upon the initiation of litigation, the complaint shall be referred to the campus Director ER&AA for investigation with the Office of General Counsel for review and defense or, if deemed appropriate by Counsel, involvement in mediation, conciliation or settlement with the external agency or such other actions as may be in the interests of the College, including termination of the internal procedure.

**Time Limits**

Employees of SUNY Delhi and third parties must file a written complaint with the Director ER&AA 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 College.

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. For alleged discriminatory acts in a spring semester, students will have 90 calendar days from the beginning of the following fall semester to file a complaint.

It is the Complainant's responsibility to be certain that any complaint is filed within the 90-day period.

If the Complainant brings a complaint not involving sex discrimination beyond the period in which the complaint may be addressed under these procedures, the Director ER&AA may, after consultation with the Office of General Counsel, terminate any further processing of the complaint, refer the complaint to General Counsel, or direct the Complainant to an alternative forum (see Appendix B for a list of alternative forums).

Should a complaint of sexual violence or sexual harassment be filed later than 90 days following the alleged act, the complainant will still be offered all appropriate and available services and resources for victims of sexual violence and harassment, including interim measures to protect the parties. In addition, the matter will be investigated and may be referred for appropriate employee or student disciplinary action.

As soon as reasonably possible after the date of filing of the complaint, the Director ER&AA/Title IX Coordinator will mail a notice of the complaint and a copy of the complaint to the Respondent(s).

**Jurisdiction of the Director of Employee Relations and Affirmative Action**

Complaints of illegal discrimination should be made to the Director ER&AA. Complaints or concerns that are reported to a College 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 Director ER&AA. Complaints may also be made directly to the Director ER&AA by anyone who experiences, observes, or becomes aware of discrimination or harassment. The Director ER&AA will also receive initial inquiries, reports, and requests for consultation. The Director ER&AA will respond as appropriate in a timely manner.

SUNY Delhi is committed to providing a learning and working environment free from discrimination. The College reserves the right to pursue any complaint of discrimination about which it becomes aware. Based on information received, the Director ER&AA may exercise her/his discretion and initiate a complaint on behalf of the College community, regardless of complainant cooperation or involvement.

In addition, the Director ER&AA may determine that a specific complaint of unlawful discrimination or harassment is of such a serious or potentially criminal nature that the investigative steps outlined in the process should be accelerated or eliminated. Such a circumstance will be communicated to the President (or his/her designee) for appropriate action, including the initiation of disciplinary action. If the Respondent is a student, the referral will be to the Dean of Students.

The Director ER&AA is available to assist in preparing the complaint. The Director ER&AA will ensure that complainants are 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. SUNY Delhi will comply with law enforcement requests for cooperation and such cooperation may require the campus to temporarily suspend the fact-finding aspect of an investigation while the law enforcement agency is in the process of gathering evidence. The campus will resume its Title IX investigation as soon as it is notified by the law enforcement agency that it has completed the evidence gathering process.

### **Retaliation**

Anyone who participates in the procedure has the right to do so without fear of or actual retaliation. It will be made clear to all parties that retaliation against an employee, a student, or a third party who has filed a discrimination complaint, or against any witness or other participant in this process, will result in appropriate sanctions or disciplinary action as covered by College policies or applicable collective bargaining agreements. These sanctions will be invoked for retaliation regardless of the merits of the original complaint.

Retaliation is an adverse action taken against an individual as a result of complaining about unlawful discrimination or harassment, exercising a legal right, and/or participating in a complaint investigation as a third-party witness. Participants who experience retaliation should contact the Director ER&AA.

### **Confidentiality**

To the extent practicable or allowable by law, all aspects of the complaint and investigation conducted in accordance with these procedures will be confidential. All affected parties shall cooperate fully in the investigation and shall maintain and preserve the confidentiality of the investigation.

No party shall employ audio or video taping devices during any portion of the procedures detailed hereafter.

## **Procedures for Resolving Complaints**

### **Complaint Consultation and Review**

Any student or employee of SUNY Delhi, or any third party may consult with the Director ER&AA regarding potential discrimination or harassment. This initial contact may occur by telephone, e-mail, or in person--the latter being preferred. The Director ER&AA will assist the individual in understanding the nature of the incident, the complaint process, resources available to the individual, and other options to resolve the issue. The individual need not take any further action.

### **Investigation and Resolution of Informal Complaints**

The individual may elect to have the matter resolved informally, if appropriate. In seeking an informal resolution, the Director ER&AA shall review all relevant information and interview Complainant, Respondent, and pertinent witnesses. The Director ER&AA will take all reasonable steps to complete the inquiry in a timely manner. If the Director ER&AA can find a resolution satisfactory to both the Complainant and the Respondent within 24 calendar days from the filing of the complaint, the Director ER&AA will send a written notice to that effect to both parties, with a written report to the President. The matter will be closed.

If the Director ER&AA is unable to resolve the complaint to the mutual satisfaction of the complainant and respondent within 24 calendar days from the filing of the informal complaint, the officer will so notify the complainant, with a written report to the President. The Director ER&AA will again advise the complainant of her or his right to proceed with a formal complaint.

The College may take interim measures to protect the parties during the investigation process. Interim measures will not disproportionately impact the complainant.

Complaints of sexual violence will not be resolved by using mediation, but instead must be referred immediately to the campus Director ER&AA.

At any time in this process, the Complainant may elect to sign a formal complaint, as long as it is within the 90-day time limit. (See "Time Limits" above.)

If the individual decides to do so, there is a form designated for this purpose and the complaint form should be signed. The Complainant will receive a copy of the complaint form signed and dated by the Director ER&AA (or designee), as will the Respondent.

An individual may refuse to reduce a complaint to writing. However, notwithstanding that refusal, there may be a continuing obligation on the part of the campus to investigate the verbal complaint to the best of its ability and proceed with any action that is warranted. Although in some instances verbal complaints may be acted upon, the procedures set forth here rest upon the submission of a written complaint that will enable a full and fair investigation of the facts.

### **Investigation of Formal Complaints**

If there is a formal complaint filed, or if the Director ER&AA determines that the matter deserves further examination, s/he will immediately begin an investigation. The Director ER&AA will take all reasonable steps necessary to complete the investigation and file a written report with the President within twenty four (24) calendar days after receipt of the complaint. If such is not possible, the Director ER&AA may extend this deadline for a reasonable period of time. Both the Complainant and the Respondent will receive notification from the Director ER&AA regarding the basis for this extension.

The Director ER&AA, consulting with the President, may decide to designate an alternate investigator or team of investigators. This may occur, for example, if there are repeated complaints against a respondent; if the respondent is a particularly high-profile member of the college community; or other circumstances. The designee may take the form of a tri-partite panel (with one member designated by the complainant, one by the respondent, and a third by the first two members). In all cases where investigations are referred to a designee or designees, the Director ER&AA will train the designees on relevant regulations (e.g., Title IX requirements) and investigation techniques.

The investigation shall consist of:

- Reviewing statements of and interviewing both Complainant and Respondent;
- Reviewing all College records that concern the complaint;
- Interviewing witnesses;
- Reviewing other relevant material and evidence.

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. Complainant has

the right to request alternative arrangements if the complainant does not want to be in the same room as the accused. These alternative arrangements must be consistent with the rights of the accused, and must enable both parties and the panel to hear each other during any hearing.

In reaching findings, the Director ER&AA (or designee) will evaluate the conduct alleged to have been discriminatory by considering the totality of the circumstances, including the nature, frequency, intensity, context, and duration of the conduct. Although repeated incidents would create a strong claim of discrimination, a serious isolated incident can present sufficient grounds for corrective action. The burden of proof in cases of sex discrimination is preponderance of the evidence.

**Failure to Cooperate:** If the Respondent refuses to cooperate and/or respond in a timely manner, the Director ER&AA may terminate any further processing of the complaint. Failure to cooperate meaningfully in a review of a complaint of discrimination may be grounds for discipline.

**Inaction by Complainant:** If at any time during an investigation, a Complainant declines to cooperate with the Director ER&AA, or if the Director ER&AA determines that the Complainant no longer wishes to pursue her/his complaint, the matter may be considered closed, with appropriate notification.

If legal counsel is retained by a Complainant or Respondent, that counsel may not participate or be present at any meeting convened by the Director ER&AA. Respondents and Complainants are expected to communicate with the Director ER&AA directly, not through legal counsel or other intermediaries.

### **Resolution of Formal Complaint**

The Director ER&AA shall make every reasonable effort to resolve the matter informally in any form that is acceptable to the parties and to the College. Resolution may take the form of:

- Letters exchanged between the parties through the Director ER&AA, including any apology from the Respondent;
- A meeting with the supervisor of the Complainant or Respondent;
- Mandated training in the areas of discrimination for the Respondent or the departmental unit;
- A verbal warning to the Respondent in accordance with any applicable collective bargaining agreements;
- A written warning to the Respondent in accordance with any applicable collective bargaining agreements.

This list is not exhaustive and other forms of resolution may be appropriate.

When there is a signed, formal complaint, and after a full investigation, if the Director ER&AA cannot negotiate a resolution agreeable to both the Respondent and Complainant, the Director ER&AA will issue a report to all parties and to the President.

The Director ER&AA's determination may be that:

1. The complaint was not substantiated. If the Director ER&AA determines that there is insufficient credible evidence to support the allegation of discrimination, the complaint shall be dismissed and the College shall take no further action.
2. The complaint was substantiated.
  1. For Respondents who are students, the Director ER&AA may determine that sufficient information exists to refer the matter to the Dean of Students for review and appropriate action under the student conduct code.

2. For Respondents who are employees (including student employees) not in a collective bargaining unit, the Director ER&AA may recommend to the President that s/he take such administrative action as deemed appropriate under authority as the chief administrative officer of the College, including but not limited to termination, demotion, reassignment, suspension, reprimand, or training.
3. For Respondents who are employees in collective bargaining units, the Director ER&AA may determine that sufficient information exists to recommend to the President disciplinary action appropriate under the applicable bargaining agreement. Corrective action may include, but is not limited to: reprimand, mandatory counseling, written counseling, probation, suspension, termination of employment, or non-renewal of contract.

Within ten working days from the Director ER&AA's recommendation, the President will issue a written statement indicating what action will be taken. The statement will be sent to the Complainant, the Respondent, and the Director ER&AA. The President's decision will be final for the purposes of this discrimination procedure.

If the President is the Respondent, the Chancellor or her/his designee shall issue a written statement indicating what action the Chancellor proposes to take. The Chancellor's decision shall be final for the purposes of this discrimination procedure.

If the Director ER&AA is the Respondent, the President's designee will investigate the allegation.

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 ER&AA will provide general information on State and Federal guidelines and laws, as well as names and addresses of various enforcement agencies. (See Appendix B).

### **Contact Information**

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### **Appendix A: Definitions and Prohibited Acts and Behaviors**

**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.

**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 sexual harassment that they observe or become aware of to the Director ER&AA.

**Sexual assault** is defined as 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." Nothing contained in this definition shall be construed to limit or, conflict with the sex offenses enumerated in Article 130 of the New York State Penal Law, which shall be the guiding reference in determining if alleged conduct is consistent with the definition of sexual assault.

**Sexual Harassment in the Educational Setting** – 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.

**Sexual Harassment in the Employment Setting** – 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 Violence** - physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent.

**Preponderance of the Evidence** – the standard of proof in sexual harassment and sexual assault cases, which asks whether it is "more likely than not" that the sexual harassment or sexual violence occurred. If the evidence presented meets this standard, then the accused should be found responsible.

#### **Appendix B: External Enforcement Agencies**

See up-to-date list by clicking [here](#).