

Procedure:	Discrimination Complaint Procedure	Reference No.: 5.18
Authority:	College President	Cross Reference:
Approved:	September 30, 1998	
Revised:	September 29, 2015	

Commitment

SUNY Broome Community College is committed to maintaining a learning and work environment that is free from discrimination and harassment. As such, SUNY Broome Community College does not discriminate on the basis of race, sex, color, creed, religion, age, national origin, disability, marital status, sexual orientation, gender identity, transgender status, pregnancy, domestic violence victim status or veteran status in the recruitment of students, in the recruitment and employment of faculty and staff, or in the operation of any of its programs and activities. In this context sexual discrimination, includes sexual harassment, sexual assault, and sexual violence. State and federal laws apply where relevant.

Discrimination Complaint Procedure

In accordance with SUNY Broome Community College's non-discrimination commitment and applicable law, SUNY Broome Community College maintains a Discrimination Complaint Procedure. This procedure provides for prompt investigation and resolution of allegations of discrimination, including allegations of sexual harassment, sexual assault and sexual violence.

Sexual harassment is conduct of a sexual nature including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, the conditioning of decisions about employment conditions or benefits, or the conditioning of access or educational advancement upon sexual favors. This includes conduct of a sexual nature that interferes with an employee's work performance or a student's academic performance, or creates an intimidating, hostile or offensive work or academic environment. Sex discrimination here includes sexual harassment as well as sexual assault and sexual violence. Sexual violence refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent. Inability to give consent may be due to a victim's disability that limits informed sexual decision making, impairment due to drugs or alcohol, lack of consciousness, being involuntarily restrained or any of the parties being under the age of 17. Sexual violence includes rape, sexual assault, sexual battery, and sexual coercion.

The Discrimination Complaint Procedure is non-adversarial and fact-finding in nature. It does not supplant any other complaint or grievance procedures provided

for by collective bargaining agreement or the student code of conduct. A complainant using this procedure retains the right to file a complaint with the appropriate state and/or federal agency in accordance with their respective filing requirements and deadlines. A complainant is not required to pursue the SUNY Broome Community College procedure before filing a complaint with a state or federal agency. Further, if a complainant chooses to pursue the SUNY Broome Community College procedure, the complainant is free to file a complaint with the appropriate state or federal agency at any point during the process. Except in the case of complaints of sexual violence, upon filing with an external agency, the SUNY Broome Community College internal complaint procedure will be terminated and the matter referred to the Broome County Law Department for review, defense or, if deemed appropriate by counsel, involvement in mediation, conciliation or settlement with the external agency where the complaint was filed, or such other actions as may be in the interests of the College.

Retaliation

Anyone who participates in the Discrimination Complaint Process has the right to do so without fear of retaliation. Individuals who file a sex discrimination complaint under Title IX and those persons who assist in or cooperate in the investigation of a complaint will not be subject to retaliation by any member of the college community for submitting and pursuing a complaint under this procedure.

Confidentiality

To the extent possible, the complaint procedure will respect the confidentiality of the parties involved. A discussion concerning potential discrimination may remain confidential with no action taken when an individual wishes only to make an inquiry and does not disclose any identifying information about herself or himself or about the other party (ex: name, department, and unit). Please note – lack of information can limit the type of effectiveness of our response. However, even in the absence of a written complaint, the College has an obligation to make reasonable efforts to investigate and address instances of sex discrimination when it knows or should have known about such instances, regardless of complainant cooperation and involvement.

Scope

The Discrimination Complaint Procedure may be used by SUNY Broome Community College students, faculty, staff, campus organizations, and other individuals who believe they have been victims of discrimination in violation of federal, state, or local laws, or in violation of SUNY Broome's non-discrimination commitment. The procedure will be published in the Employee Information Booklet and in the Student Handbook for Safety, Health, and Code of Conduct.

The Affirmative Action Officer is a resource person for information concerning discrimination and for people who believe they have been subjected to discrimination. SUNY Broome's Affirmative Action Officer and Deputy Title IX Coordinator is Paige Sedlacek, in the Human Resources Office, room 103 in the Wales Building, at 778-5213 and sedlacekpm@sunybroome.edu. SUNY Broome's Title IX Coordinator is Dr. Scott Kane, Dean of Students, located in the Commons room 104, at 778-5009 and kanes1@sunybroome.edu. Contact information about the Affirmative Action Officer and Title IX Coordinator will be posted in each campus building along with the name, office location, e-mail address and phone number. Additionally, people who have been subjected to discrimination should feel free to contact and seek the assistance of College officials including among others, chairs, deans, directors, counselors, advisors and supervisors.

Responsibility

Any employee who receives a report or complaint of harassment, discrimination or sexual violence should contact the AAO or Title IX Coordinator.

President, executive vice president, vice president, deans, directors, department heads, officers, chairs, and supervisors

- Must report sexual harassment, discrimination or sexual violence that they observe or learn about to the AAO or Title IX Coordinator.
- Be proactive in preventing discrimination and harassment when possible.

Faculty, staff, and students

- Understand and refrain from behavior that violates this policy or otherwise creates a hostile environment for others. Remember that it is not the intent of the individual's behavior rather the perception of the individual that the behavior is hostile or discriminatory that gives rise to a claim under this policy.
- Talk to the person involved if you feel you can do so safely. You might explain why you were offended by what occurred. Sometimes a clearing of the air is all that is necessary.
- Keep a record of what occurred. Include direct quotes, witnesses, and patterns to the harassing behavior. Save any relevant cards, letters, or e-mail messages sent, however harmless they may seem.
- Do not ignore the situation. Take action. Seek out assistance of your supervisor, professor, advisor, and/or report directly to the AAO or Title IX Coordinator.

Definitions

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.

-*Sexual Harassment* - is conduct of a sexual nature including unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, the conditioning of decisions about employment conditions or benefits, or the conditioning of access or educational advancement upon sexual favors. This includes conduct of a sexual nature that interferes with an employee's work performance or a student's academic performance, or creates an intimidating, hostile or offensive work or academic environment.

-*Sexual Assault* – a physical sexual act or acts committed against a person's will and consent or when a person is incapable of giving 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 rape, date rape, and acquaintance rape.

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

Consent – Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

- A) Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.
- B) Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- C) Consent may be initially given but withdrawn at any time.
- D) Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.

- E) Consent cannot be given when it is the result of coercion, intimidation, force, or threat of harm.
- F) When consent is withdrawn or can no longer be given, sexual activity must stop.

Title IX – Title IX of the Education Amendments of 1972 prohibits sex discrimination in educational programs and activities. No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

Informal Complaint - An informal complaint may take the form of an inquiry or discussion with the Affirmative Action Officer, Title IX Coordinator or another college representative. An informal complaint need not be in written form. It may or may not involve the complainant disclosing identifying information about him or herself or about a respondent.

Please note: Complaints of sexual violence may not be processed through informal complaint, but must go immediately to the formal complaint process or to the appropriate employee or student disciplinary process. The College must also take immediate steps to protect a student complainant and may not wait for the conclusion of a pending criminal investigation or proceeding.

Formal Complaint -A formal complaint is a written, dated, and signed document which alleges a violation of federal, state, or local anti-discrimination laws or regulations, or of SUNY Broome's non-discrimination commitment, and details the facts that the complainant believes support that complaint.

Complainant - An individual or organization that submits a complaint under this procedure.

Respondent - The respondent is the person the complainant claims is responsible for violations alleged in a complaint. The term may be used to designate persons with direct responsibility for a particular action, or persons with supervisory responsibility for procedures and policies in the areas covered in the complaint.

Affirmative Action Officer and Title IX Coordinator - Resources for those who believe they have been subjected to discrimination. The Affirmative Action Officer and Title IX Coordinator are charged with making recommendations to the President to insure that SUNY Broome complies with federal, state, and local anti-discrimination laws and with SUNY Broome's non-discrimination commitment.

College Representative - A counselor or someone who works in an administrative or supervisory capacity at the college, such as a department chair, a dean, advisor or a supervisor.

Day - A business day, i.e., a day when the college is officially open.

Discrimination Complaint Procedure for Review of Allegations of Unlawful Discrimination

Informal Complaint

Anyone may seek advice, information, or assistance in dealing with matters related to discrimination without having to file a formal complaint. With the exception of sexual violence, such matters frequently can be resolved on an informal basis.

Persons who feel they are being subjected to discrimination, or who are uncertain as to whether what they are experiencing is discrimination, are encouraged to talk to the Affirmative Action Officer, Title IX Coordinator, to another college representative, such as a counselor, advisor, or someone who works in an administrative or supervisory capacity at the college, to the Human Resources Officer, a director, a department chair, a dean, or a supervisor. A college representative who receives an informal complaint should seek the assistance of the Affirmative Action Officer or Title IX Coordinator in responding to an informal complaint.

The aim of informal complaint resolution is to ensure that the alleged offending behavior ceases and that the matter is resolved as expeditiously as possible. During the informal resolution process, the person seeking information and advice will be counseled as to the options for action available to her or him. In matters of sexual violence, the matter must move to the formal complaint procedure and the college must pursue an investigation.

There are several ways of resolving most matters informally. For example, the Affirmative Action Officer, Title IX Coordinator, or the college representative working with the person bringing an informal complaint might offer advice on how the individual might resolve the matter directly with the other party, or might serve as an informal mediator, working with both parties to assure that the offending behavior stops. The college representative responding to an informal complaint should maintain a file about the situation and the outcome of the informal complaint.

It is important to note that informal resolution procedures will only be used if the parties voluntarily agree to use this mechanism. The complainant is not required to resolve the problem directly with the respondent and there are instances which the informal resolution mechanism may be inappropriate (ex. Sexual assault or a student complaint of sexual harassment against an employee in a position of authority over the student). The complainant has the right to end the informal process at any time and begin the formal stage of the complaint process.

Formal Complaint

A. Any party who chooses to file a formal complaint alleging unlawful discrimination, or discrimination in violation of SUNY Broome's non-discrimination commitment, shall file the complaint with the Affirmative Action Officer or Title IX Coordinator. Any complaint of sexual violence in violation of Title IX must be handled as a formal complaint. Formal complaints are written, dated and signed by the complainant (SUNY Broome Community College Discrimination Complaint form, Appendix A). The Affirmative Action Officer or Title IX Coordinator shall provide assistance to any complainant needing help to prepare his/her complaint. The Affirmative Action Officer or Title IX Coordinator shall also inform the complainant of their Title IX rights, additional internal and external resources, their right to file a complaint with a local law enforcement agency, and additional avenues through which a complaint may be filed, including the applicable time limits for filing with each agency.

B. The Affirmative Action Officer or Title IX Coordinator shall seek to resolve the complaint (except for any complaint of sexual violence) through informal mediation. (In the case of a complaint of sexual violence, the Affirmative Action Officer or Title IX Coordinator must continue the formal complaint and investigation process.) She/he shall have the right to conduct an investigation and shall have access to all information relevant to the case. It should be noted that rights and allowances (ex. to have representation, to present witnesses or other evidence) must be available to both parties.

If within 30 days from the date of the filing of the complaint, (except for any complaint of sexual violence) the Affirmative Action Officer or Title IX Coordinator is able to resolve the complaint by informal mediation, she or he shall close the case, sending a written notice to the complainant and respondent.

C. Both complainant and respondent are entitled to prompt, adequate, reliable and impartial investigation of all complaints including the opportunity for the parties to present witnesses and other evidence.

Within 3 days after receiving a formal complaint, the Affirmative Action Officer or Title IX Coordinator shall give a copy of the complaint to the respondent.

D. There will be available interim measures to the complainant during the College's investigation of possible sexual harassment. For example, how to obtain counseling and academic assistance, and/or interim measures to be taken should the alleged perpetrator live on campus near or attend classes with the victim.

E. The preponderance of the evidence standard will be used for the investigation of alleged sexual discrimination and sexual harassment. Preponderance of

the evidence is defined as the amount of evidence which demonstrates that it is more likely than not the conduct occurred.

- F. If the evidence supports a finding that there is no basis for a complaint alleging discrimination, the Affirmative Action Officer or Title IX Coordinator shall recommend, in writing, to the President, the complainant, and the respondent that the case be closed. The President may accept that finding and may direct the Affirmative Action Officer or Title IX Coordinator to close the case. If the complainant is dissatisfied with a decision to close a case, the complainant may file a formal complaint with the appropriate state or federal agency in accordance with the agency's filing deadlines.
- G. After investigating the case and in consultation with the Human Resources Officer and the college attorney, the Affirmative Action Officer or Title IX Coordinator shall make a recommendation to the President as to the resolution of the case. The recommendation shall include a synopsis of the case and evidence collected with an analysis of such evidence and rationale for the recommendation.
- H. Within 30 days after receiving the complaint, the President shall make his or her determination as to whether or not unlawful discrimination or discrimination in violation of the College's non-discrimination commitment occurred. This timeframe can be extended, due to complexity of the investigation, timing of the reporting, availability of witnesses, etc. The need for an extension of time will be communicated in writing to the parties. The action of the president shall be final. Within 7 calendar days following the issuance of determination by the president, The President or designee shall send a notice of outcome of the investigation to both the complainant and respondent. The Affirmative Action Officer or Title IX Coordinator will receive a copy of the letter.
- I. Upon conclusion of the investigation there are several potential outcomes of a formal complaint. Each situation is unique and is reviewed in the context of applicable laws and policies and within the standard of preponderance of the evidence presented. Below is a list of possible outcomes (this is not an exhaustive list):
 - The matter is able to be resolved informally by the parties and there are no other issues requiring the AAO or Title IX Coordinator involvement (this option is not appropriate for sexual violence complaints).
 - The complainant elects to withdraw the complaint and/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 College's policies against discrimination and/or harassment.
 - There is sufficient evidence for the AAO or Title IX Coordinator to

recommend appropriate action:

1. For Students – The Dean of Students, in consultation with the AAO, the college attorney and in some cases the Director of Health & Safety, will determine the specific charge(s) and apply corrective or disciplinary actions as outlined in the student handbook.
2. For Employees in a Collective Bargaining Agreement – The AAO or Title IX Coordinator in consultation with the Human Resources Officer, the college attorney and Union Representatives will determine specific charges(s) and follow the discipline procedures in the appropriate union contract.
3. For Employees not in a Collective Bargaining Agreement – The AAO or Title IX Coordinator in consultation with Human Resources, the college attorney and the appropriate Vice President may make recommendations to the President as to the specific charges and corrective or disciplinary action.

- J. If the applicable campus disciplinary mechanism allows for an appeal, both parties will be given the opportunity to appeal the decision. Any appeal will be conducted in an impartial manner by an impartial decision maker.
- K. If the complainant is dissatisfied with the President's response, the complainant may file a formal complaint with the appropriate state or federal agency, in accordance with agency filing requirements.

Employees may seek relief through the following:

- Equal Employment Opportunity Commission, NY District Office, 33 Whitehall Street, New York, NY 10004
- New York State Division of Human Rights, 44 Hawley Street, Room 603, Binghamton, NY 13901
- Court action

Students may seek relief through the following:

- Office for Civil Rights, New York Office, U.S. Department of Education, 32 Old Ship Road, 26th Floor, New York, NY 10005
- New York State Division of Human Rights, 44 Hawley Street, Room 603, Binghamton, NY 13901
- Court action

Time Frame for Reporting and Further Provisions

- A. Timely reporting is encouraged as the College must take steps to prevent discrimination and harassment, prevent the recurrence of discrimination and

harassment and to remedy the discriminatory effects on the victim(s) and others. Time limits in each step of the procedure may be extended by mutual written notification to the complainant and respondent.

- B. If the Affirmative Action Officer or Title IX Coordinator or the President fails to review or respond within the time limits provided, the complainant may proceed to the next step.
- C. If the complainant fails to pursue an action within the time limits provided, except in the case of sexual violence, the complaint shall be deemed to have been withdrawn, unless evidence is provided to the Affirmative Action Officer or Title IX Coordinator to show good cause for the delay.
- D. The College will comply with law enforcement requests for cooperation and such cooperation may require the College to temporarily suspend the fact-finding aspect of a Title IX investigation while the law enforcement agency is in the process of gathering evidence. The College will promptly resume its Title IX investigation as soon as 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 victim(s) and the campus community and the avoidance of retaliation.
- E. The statute of limitations for filing with the Equal Employment Opportunity Commission (EEOC) is 300 calendar days, with the Office for Civil Rights of the U.S. Department of Education is 180 calendar days, and with the New York State Division of Human Rights is 365 calendar days from the date of the alleged discriminatory behavior.
- F. In the event that the complaint is against the President of the College, the Affirmative Action Officer or Title IX Coordinator will contact the Chairperson of the SUNY Broome Community College Board of Trustees to discuss the situation. In consultation with the Board of Trustees and/or the college attorney, an external hearing officer may be appointed. The external hearing officer will perform the actions of the Affirmative Action Officer or Title IX Coordinator. The external hearing officer shall make his or her recommendation to the Chairperson of the Board of Trustees. The President will not be involved in any aspect of the case, except as respondent.
- G. In the event that the complaint is against the Affirmative Action Officer or Title IX Coordinator, the complainant should contact the President, who will then appoint an external hearing officer. The external hearing officer will facilitate the complaint through this complaint procedure, performing all of the functions of the Affirmative Action Officer or Title IX Coordinator. The Affirmative Action Officer or Title IX Coordinator will not be involved in any aspect of the complaint, except as respondent.

Appendix A

SUNY Broome Community College
Discrimination Complaint

This form is to be used by students, faculty, staff, organizations, and other individuals to file a formal complaint of discrimination based on race, sex (including sexual harassment and sexual violence), color, creed, religion, age, national origin, disability, marital status, sexual orientation, gender identity, transgender status, pregnancy, domestic violence victim status, or veteran status.

1. Name _____ Phone No. _____

☐ Faculty ☐ Staff ☐ Student ☐ Campus organization ☐ Other _____

Address _____

City _____ State _____ Zip Code _____

2. Alleged Discrimination is based on (Please check all that apply):

- ☐ Race or color ☐ Religion or creed ☐ National Origin ☐ Disability ☐ Marital Status
☐ Age ☐ Veteran status ☐ Sex (Sexual Harassment or Sexual Violence)
☐ Pregnancy ☐ Gender Identity/Transgender Status ☐ Sexual Orientation
☐ Domestic Violence Victim Status

3. Date(s) of occurrence (on or about) _____
(mm/dd/yyyy, if known; mm/yyyy if approximate; or if ongoing give date range)

4. Respondent(s) Name(s) _____

Title (if known) _____

5. Please check the appropriate box:

- ☐ I choose to utilize the informal complaint procedure as described in the SUNY Broome Community College DISCRIMINATION COMPLAINT PROCEDURE (except for complaints of sexual violence).
☐ I choose to utilize the formal complaint process as described in the SUNY Broome Community College DISCRIMINATION COMPLAINT PROCEDURE (mandatory for complaints of sexual violence).

☐ Yes ☐ No

[illegible]

Date:

By signing this document you are agreeing to the provisions provided regarding an informal or formal complaint. If formal complaint is checked, a copy of the complaint will be sent to the respondent within 3 days of filing.