

Part Eight: The Affirmative Action Program



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CHAPTER 840: Equal Employment Plan for Affirmative Action

A full description of the College's Affirmative Action Program is available in the Affirmative Action Office. What follows are excerpts. Please refer to the complete description.

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840.01 STATEMENT OF POLICY AND INTENT OF AFFIRMATIVE ACTION PROGRAM

It is the policy of the State University of New York that all employment within the University system shall be free of any discrimination on the basis of age, race, creed, religion, color, national origin, ethnicity, sexual orientation, predisposing genetic characteristics, marital status, gender/sex, disability, familial status, pregnancy, arrest record, conviction record, genetic disposition, gender identity, unlawful disparate

treatment of workers with care-giving responsibilities, military status, including Vietnam-era veterans, special disabled veterans and other eligible veterans. In filling any opening on the staff, the candidate shall be selected who is best qualified to perform the duties of the position in accordance with the Affirmative Action guidelines. The search for candidates should be extensive and should recognize that certain groups may be disadvantaged because they historically have not been represented in particular professional fields. The College has a special obligation to take Affirmative Action to seek out candidates for employment from such disadvantaged groups.

This policy applies to all persons working under the aegis of the College, regardless of the source of funding with the following exceptions: While the policies of nondiscrimination, equity, and fairness apply in every case, the guidelines for recruitment and requirements for advertising do not apply to faculty and professional appointments of 16 weeks or less (full- or part-time) or to graduate assistantships. In both cases, however, information about these opportunities should be made as widely available as practicable, and competition for the positions must be open and fair.

(Approved by President Taylor May 8, 2001)

College policy also demands equitable treatment of all students and calls for continued efforts to eliminate overt and subtle forms of unfair discrimination.

On Feb. 23, 1993, the Faculty Senate of State University of New York at Cortland passed the following statement on diversity, which was approved and endorsed by President Clark on Feb. 25, 1993: "SUNY Cortland is dedicated to the affirmation and promotion of diversity in its broadest sense. Our mission requires that people of every background be able to study and work here with an expectation of respectful treatment. We seek to establish standards of behavior which honor the dignity and worth of individuals regardless of their gender, ethnicity, race, age, physical or mental abilities, religious beliefs, sexual and affectional orientation or socioeconomic class.

A major goal of our College is to develop and maintain an atmosphere that supports learning about prejudice and discrimination so that we can strive to reduce it not only on our own campus, but wherever we encounter it. We recognize that advocating for diversity frequently brings discordant viewpoints into focus. As we endeavor to educate ourselves about the effects of our biases, it is important for us to do so within an atmosphere of safety and respect. An environment where it is safe to explore our differences enables us to make more progress toward a campus which celebrates, rather than simply tolerates, the richness inherent in our pluralism."

CHAPTER 840.02 IMPLEMENTATION OF POLICY

SUNY Cortland's goal of achieving equal opportunity can best be met by concerted efforts to adhere to both the spirit and intent of the relevant legislation and by widely shared, committed efforts to provide opportunities to "affected groups" or "protected classes."

To meet the ultimate goal of having these historically underrepresented affected groups as employees and students of SUNY Cortland in proportion to their demographic representation in the population and/or in the applicant pool, the following objectives are presented:

Recruitment for positions may not be limited to word-of-mouth communication. Such communication tends to deny equal opportunity to affected groups since those groups generally have less access to informal networks. In the same way requests may not be limited to schools, professional societies, or other agencies whose constituencies under-represent affected groups.

Job descriptions, qualifications, entry examinations, and screening procedures must be realistically related to job requirements and must avoid cultural bias. Based on current availability information, utilization analyses are conducted and goals are established to achieve parity and to correct underrepresentation.

Employment – All academic and professional vacancies will be advertised according to the *Search Committee Procedure Manual* available from the Human Resources Office.

840.03 RESPONSIBILITIES AND AUTHORITY FOR IMPLEMENTING THE COLLEGE'S AFFIRMATIVE ACTION PROGRAM

The president of SUNY Cortland is responsible for the Affirmative Action Program. Vice presidents, deans, directors, chairs, and all administrative staff also bear responsibilities for fulfilling the moral and legal obligations of equal opportunity and affirmative action. The president has delegated procedural responsibility for monitoring the program to the assistant vice president for human resources and the affirmative action officer.

The duties assigned to the affirmative action officer are:

1. Assisting academic departments and administrative units with recruitment of protected class members.
2. Monitoring appointments to ensure compliance with regulations governing affirmative action searches.
3. Monitoring promotion, transfer, permanent appointment, and DSI increment transactions to ensure nondiscrimination.
4. Review and disposition of allegations of discrimination by students and employees in accordance with the SUNY Cortland Discrimination Complaint Procedure.

5. Maintenance of a database adequate to generate required periodic reports, such as (1) updating of the Affirmative Action Program; (2) filing of reports as required by the Governor's Executive Order 40.1; (3) filing of periodic reports on discrimination grievances, applicant flow, and other quantitative analyses required by Executive Order 40.1.
6. Preparation of all affirmative action reports required by federal, state, and University regulations.
7. Ongoing review of campus policies and practices to ensure campus compliance with laws and regulations protecting minorities and women, identifying problem areas and recommending solutions and corrective actions.
8. Ongoing review of campus policies and practices to achieve compliance with the Americans with Disabilities Act, Sections 503 and 504 of the Rehabilitation Act of 1973, as amended (rights of the disabled), and the Age Discrimination Acts of 1967 and 1975.
9. Ongoing review of campus policies and practices to achieve compliance with the Vietnam Era Veterans' Readjustment Assistance Act of 1974.
10. Providing information and assistance to the campus Affirmative Action Committee.
11. Providing staff assistance and data to SUNY Legal Office staff and to state and federal compliance officials reviewing discrimination grievances or conducting routine compliance reviews.
12. Conducting ongoing training sessions, briefings, and workshops to ensure high awareness on campus and in the community of campus affirmative action programs.

CHAPTER 840.04 RECRUITMENT AND HIRING

A. The administrative officer responsible for recommending the appointment shall complete a requisition to fill in accordance with established search procedures.

B. Faculty, Professional, and Management/Confidential

The College must recruit from the broadest possible group of qualified candidates for faculty, professional, and management/confidential positions, regardless of the source of funding, and in a manner that assures compliance with both contractual and affirmative action/equal opportunity requirements.

Department chairs or other administrators involved in recruitment and hiring are responsible for ensuring that good faith recruitment efforts are made to locate qualified affected group candidates. When preparing a recruitment plan, department heads are required by policy to seek the advice of the AA/EEO officer on the extent of recruitment necessary for each proposed position vacancy. The AA/EEO officer is an ex officio member of all search committees and assists with the development of current and adequate referral sources for recruiting affected groups. Recruitment of faculty is conducted by the academic department concerned, governed by adherence to the Affirmative Action Program of the College. Professional and management/confidential staff recruitment is conducted by the appropriate department or office. The use

of and composition of search committees for faculty, professional and management/confidential positions is discussed in the Search Committee Procedure Manual. The Human Resources Office files vacancy notices with the System Administration Placement Service.

C. Classified Civil Service Personnel (Full-time and Part-time)

With the exception of competitive class appointments from the Civil Service List of Eligibles, all recruitment efforts to locate civil service staff must serve to implement the affirmative action policy of the College. Job announcements for noncompetitive and/or labor class positions are posted and announced through the Human Resources Office. Noncompetitive and/or labor class positions must also be publicly advertised, unless the job can be filled by qualified persons already in the employ of the College. All entry-level, noncompetitive and/or labor class positions must be publicly advertised. Screening of applications is performed by a committee made up of representatives from the College's Affirmative Action Office, the Human Resources Office, and other areas as appropriate.

D. Auxiliary Services Corporation

The calendar Corporation (ASC) is a private, nonprofit corporation that has a contractual relationship with SUNY Cortland. Responsibility for affirmative action in ASC has been assigned to the executive director, ASC office, Winchell Hall.

CHAPTER 840.05 RECORDS, REPORTS AND MONITORING

All recruitment efforts shall serve to implement the affirmative action policy of the College.

Recruitment files must be available for a compliance audit by state and federal agencies, and thus must be supported by documented files of the recruiting unit. Files shall be kept for a minimum of three years. The Affirmative Action Office shall also maintain applicant flow data collected from each search. Monitoring of affirmative action performance is the responsibility of the affirmative action officer and of each person with responsibility for employment, retention, promotion, and salary parity.

CHAPTER 840.06 PROMOTIONS AND SALARIES

1. Promotions: The College is committed to ensuring that no employees, including affected groups, are discriminated against in promotions. The criteria governing the promotion of academic employees and the evaluation and promotion of professional employees are set out in the board of trustees policies and in collective bargaining agreements with the unions. The SUNY Discrimination Complaint Procedure (formerly the Internal Grievance Procedure) may be used for review of allegations of discrimination in the matter of promotions. Promotions of Civil Service employees are conducted in accordance with the Civil Service Law.

2. Salaries: The State University of New York salary administration policy requires that salary differences among employees are not to be related in any way to race, sex, national origin, or any other factor irrelevant to fair compensation for work performed. Complaints of discrimination in salary may be addressed through the SUNY Discrimination Complaint Procedure.

CHAPTER 840.07 COMPLAINTS

Faculty members who have complaints related to Equal Employment and Affirmative Action are advised to seek resolution with their department chair or dean. Questions not resolved with chairs or deans may be referred to the provost. Professional staff other than faculty take their complaints to their department supervisors and, when concerns are not resolved, they may be referred to the vice president for the area. Similarly, Civil Service employees of the College are requested to discuss matters of concern with their department heads and with the director of human resources. Formal allegations related to Affirmative Action and Equal Employment should be taken to the affirmative action officer (see SUNY Cortland Discrimination Complaint Procedure, **Chapter 850**).

All employees and students have a right to seek advice from and to consult with the affirmative action officer at any step in the process.

The State University of New York, in accordance with Title IX of the Education Amendments of 1972, has adopted an Internal Grievance Procedure for the prompt and equitable investigation and resolution of allegations of unlawful discrimination on the basis of race, color, national origin, religion, age, sex, disability, or marital status. Discrimination on the basis of sexual orientation is prohibited by State University Policy and by New York State Executive Order No. 28, but it is not covered under the federal statutes. The procedure does not supplant or supersede the strongly recommended method of attempting to resolve questions of discrimination within a departmental structure. Neither does the procedure in any way deprive a complainant of the right to file with outside enforcement agencies. The grievance procedure is an additional mechanism that employees of the College community may use to identify and eliminate incidents of illegal discrimination.

Anyone who wishes to file a grievance, or simply to discuss filing a grievance, should contact the affirmative action officer.

CHAPTER 840.08 TERMINATIONS

Involuntary terminations of a professional staff member with continuing appointment, or of one on a term contract within the term, can only be done pursuant to procedures specified in Article XIV of the Board of Trustees Policies and Articles 19, 32, and 35 of the Agreement between the State of New York and the United University Professions, Inc.

Involuntary terminations of employees within the Civil Service Employees Association, Council 82, NYSCOBA and the Professional Employees Federation bargaining units before becoming effective must first be reviewed by the director of human resources for compliance with state and University policies and procedures. Such terminations can only be effected following contract provisions and Civil Service laws.

CHAPTER 840.09 PART-TIME APPOINTMENTS

The Affirmative Action Plan applies to part-time as well as to full-time faculty and professional appointments with the following exceptions: scope of search and requirements for advertising. Most part-time positions are filled by local people or people who live within commuting distance; therefore, it is reasonable to limit searches to nearby communities and graduate schools. Generally this would include the communities of Cortland, Syracuse, Ithaca and Binghamton and the graduate schools within that general area. An advertisement in at least two regional newspapers and contacts with nearby schools will fulfill the requirements of a limited search. All departments that regularly employ part-time people must form a pool of candidates for those positions by conducting a regional search at least once every two years. No reappointment of part-time people can be approved unless these biennial searches are made. The Affirmative Action Office will place in regional newspapers an advertisement for part-time positions each semester. Participation in this ad will fulfill the requirements for establishing a pool.

To be eligible for appointment to a full-time position, a part-time employee must have been hired as the result of an affirmative action search. This includes national, regional and/or local searches for part-time and/or full-time temporary positions. Additionally, the employee must have served in the same capacity (i.e., same job responsibilities within the same department) and have been granted a term appointment. The Board of Trustees policies grant term appointments to part-time faculty and professional staff after six consecutive semesters (three years), because it is at this point in time an employee is seen as having more than a temporary relationship with the campus.

(Approved by President Taylor, November 2002.)

CHAPTER 840.10 WAIVER OF SEARCH

It is necessary to request a waiver of search if proposing to conduct a search of narrow scope or to deviate from the outlined search procedures.

Waivers of search for full or part-time positions can be granted only with the joint approval of the affirmative action officer and the Affirmative Action Committee. Each waiver request is provided to all committee members, who are given 48 hours to contact the chair if they have any misgivings about granting the waiver. As noted in President Clark's memo of June 30, 1982, no official appointment may be offered until it has been reviewed for compliance with Affirmative Action.

Waivers are granted under such special circumstances as illness, death, or late resignations, i.e., conditions that preclude the possibility of a full search. Late resignations are those that come at a time that prevents the department from advertising, receiving applications and making a decision generally less than six weeks before the start of a term.

The term for a waiver of search is up to one year, depending on the nature of the position and of the search.

(Approved by President Clark, April 25, 1989)

Appeals of waiver of search denials may be submitted to the affirmative action officer within 10 business days of the date of denial notification. Upon receipt of the appeal, the affirmative action officer will circulate the appeal to the Affirmative Action Committee. The committee has 48 hours to respond to the chair who notifies the affirmative action officer of the committee's decision. The affirmative action officer notifies the hiring manager of the committee's decision. Personal appeals to individual committee members or the committee as a whole are not permitted. There are no further appeals available in this process.

(Approved by President Bitterbaum, March 30, 2006)

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CHAPTER 850: Complaint Procedure for the Review of Allegations of Unlawful Discrimination

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- 850.02 Procedure for Resolving Complaints
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CHAPTER 850.01 OVERVIEW

SUNY Cortland, in its continuing effort to seek equity in education and employment and in support of Federal and State anti-discrimination legislation, has adopted a complaint procedure for the prompt and equitable investigation and resolution of allegations of unlawful discrimination on the basis of race, color, national origin, religion, creed, age, sex, sexual orientation, disability, gender identity, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, or criminal conviction. Harassment on the basis of any of the above-protected categories is a form of unlawful discrimination. Conduct that may constitute harassment is described in 950.10. These procedures also apply to complaints alleging all forms of sex discrimination, including sexual harassment, sexual assault, and sexual violence against employees, students, or third parties. For more detailed information contact the Affirmative Action Officer (hereafter AAO) or the Title IX Coordinator (hereafter TIXC). Throughout this document, AAO may refer to the Affirmative Action Officer, or, in the case of Title IX related issues, AAO may also refer to the Title IX Coordinator.

This *Complaint Procedure for the Review of Allegations of Unlawful Discrimination* provides a mechanism through which the College will identify, respond to, prevent and eliminate incidents of illegal discrimination. The College recognizes and accepts its responsibility in this regard and believes that the establishment of this internal, non-adversarial grievance 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.

This procedure has been developed in accordance with guidelines and recommendations provided by the Chancellor's Office of Affirmative Action. The policy is administered by the College's Affirmative Action Office. The AAO directs that office and reports directly to the College President and the Assistant Vice President for Human Resources. These procedures have been approved by the State University of New York, Office of General Counsel. These procedures are intended to balance the rights of those bringing complaints of discrimination, harassment and retaliation (the "Complainant") with those against whom such claims are brought (the "Respondent"). Throughout these procedures the "parties" shall refer to the Complainant, Respondent, and witnesses involved in the complaint.

This procedure may be used by any person who is the victim of discrimination by a SUNY Cortland student or employee. Employee grievance procedures established through negotiated contracts, academic grievance review committees, student disciplinary grievance boards and any other procedures defined by contract will continue to operate as before. 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 and more detailed information may be obtained from the Affirmative Action Office. More detailed information may be obtained from the Affirmative Action Office.

The Complainant is not required to pursue the SUNY internal procedure before filing a complaint with a State or Federal agency. In addition, if the Complainant chooses to pursue the SUNY internal procedure, the Complainant is free to file a complaint with the appropriate State or Federal agency at any point during the process. Upon filing with an external agency, however, the SUNY Cortland internal complaint procedure will be terminated and the matter referred to the Office of the General Counsel 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. The AAO will assist the Office of General Counsel as needed.

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

CHAPTER 850.02 PROCEDURE FOR RESOLVING COMPLAINTS

Complaint Consultation and Review

Any member of the College community may consult with the AAO or TIXC regarding potential discrimination or harassment. The length of time for the consultation varies depending on factors such as the complexity of the situation, office workload, or whether the situation involves actual or imminent loss of employment or academic standing, potential physical harm, or an ongoing relationship between the involved individuals. In a telephone conversation or in person appointment, the AAO or TIXC will:

- receive complaints of alleged discrimination or harassment.
- discuss the facts of the situation and help the individual identify the problem(s).
- assist the Complainant in the use of the complaint form to define the charge.
- determine if the Affirmative Action Office is the appropriate College resource to address the concern.
- inform the individual of the ways in which the Affirmative Action Office approaches the investigation and problem solving.

- explore methods of resolving the situation on one's own, if that is the individual's preference.
- advise an individual of alternate available College resources and external options for resolution.
- provide the Complainant with information about the various internal and external mechanisms through which the complaint may be filed, including applicable time limits for filing with each agency.

If the initial consultation takes place with the TIXC, the complaint may then be turned over to the Affirmative Action Office for investigation as appropriate.

The AAO will ask a Complainant to participate in an initial interview. During the initial contact known as the Intake Interview, the Complainant will be:

- asked to complete an Intake and Information Sheet (the Complainant may be asked to have this completed prior to the Intake Interview.).
- interviewed about the allegations so that the charge may be clearly stated.
- asked to provide information about witnesses and other possibly aggrieved persons.
- advised of the Office's intake procedures to enhance the complainant(s) understanding and to facilitate realistic expectations as to the role of the Office.
- referred to a proper College department/agency if the complaint does not fall within the jurisdiction of the Affirmative Action Office.
- advised of the protection against retaliation.
- advised of the College's policy on confidentiality.
- advised of the option to file a complaint with one of the external Federal/State investigative agencies at any time.
- advised that the Complainant will not be required to resolve the problem directly with the Respondent and that there will be instances when the informal resolution mechanism may be inappropriate.
- advised of the Complainant's right to end the informal process at any time and begin the formal stage of the complaint process.
- made aware of their rights under Title IX, if applicable, and any applicable available resources, such as counseling and rape crisis centers.

Each Party's Rights and Responsibilities

The College's formal review procedures are not designed to replicate an external judicial process.

Consequently:

- Complainants and Respondents are expected to meet with the AAO as requested and needed.
- Legal counsel retained by a Complainant or Respondent may not participate or be present at any meeting convened by the AAO, unless otherwise required by law.
- Complainants are expected to communicate with the AAO either directly or with the assistance of a person serving in an advocacy or supportive role, but not through legal counsel.
- Respondents are expected to communicate with the AAO directly, not through legal counsel, other intermediaries or persons accompanying them.

- Complainants and Respondents have the right to receive simultaneous written notification of determinations and findings made by the AAO.
- Both the Complainant and the Respondent(s) shall be entitled to submit written statements or other relevant and material evidence and witness names.

Investigative Procedures

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 within 30 calendar days. If these informal efforts are not successful, and the AAO has determined that the complaint merits further investigation, the Complainant and Respondent shall be advised in writing of the initiation of an investigation. During the investigation the AAO will:

- provide an initialed, signed, date-stamped copy of the complaint to the Complainant.
- review all College records that concern the complaint.
- interview witnesses and other relevant persons.
- review statements provided by the Complainant and the Respondent(s).
- review other relevant and material evidence.
- take all reasonable steps necessary to complete the investigation within ninety (90) calendar days after receipt of the complaint. If such is not possible, the AAO may extend this deadline for a reasonable period of time. The Complainant will receive notification from the Affirmative Action Office regarding the basis for extension.

In the case that the investigation involves outside law enforcement, the College will cooperate with any requests from the law enforcement agency. Such requests may require the College to temporarily suspend the fact finding aspect of a discrimination or Title IX investigation, which will resume once the law enforcement agency has completed its evidence gathering process.

In the case that the investigation involves outside law enforcement, the College will implement appropriate interim steps during the law enforcement's investigation period to provide for the safety of the victim and the campus community and the avoidance of retaliation. The preponderance of evidence standard will be used in investigating alleged sex discrimination and sexual harassment.

CHAPTER 850.03 WHO CAN FILE A COMPLAINT

Employees may file a written complaint with the AAO or TIXC 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. Complainants may complete an intake form, available from the Affirmative Action Office, to

initiate an investigation. Students must file a complaint within 180 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.

It is the Complainant's responsibility to be certain that any complaint is filed within the applicable 180 day period. In the event that the Complainant would be barred under these procedures, the Complainant may contact the Affirmative Action Office with regard to other avenues of recourse that may be available.

If a Complainant elects to withdraw a complaint, this decision must be communicated in writing to the AAO indicating the reason for withdrawal. The College may nevertheless pursue its review of the allegations.

CHAPTER 850.04 AGAINST WHOM MAY COMPLAINTS BE BROUGHT?

A complaint of unlawful discrimination may be brought against any student or employee. If your complaint concerns behavior by a vendor or contractor or some other individual who may not be a member of the College community, but who may have an affiliation or a recognized connection to SUNY Cortland, The concerns may be brought to the attention of the AAO or TIXC for assistance.

If the President is the Respondent, the AAO reserves the right to refer the complaint to the Chancellor. The finding and recommendation shall be submitted to the Chancellor or his/her designee. If the AAO is the Respondent, the matter shall be referred to the President or his or her designee.

If a student is the Respondent, the AAO may refer the complaint to the Student Conduct Office for review, investigation and appropriate action through the student conduct process as outlined in the Code of Student Conduct.

Should the Affirmative Action Office determine that a complaint of unlawful discrimination merits further review, the AAO will immediately commence an investigation. The complaint shall contain:

- (a) The name, local and permanent address(s), and telephone number(s) of the Complainant.
- (b) A statement of facts explaining what happened and what the Complainant believes constituted the unlawful discriminatory acts in sufficient detail to give each Respondent reasonable notice of what is claimed against him/her. The statement should include the date, approximate time and place where the alleged acts of unlawful discrimination or harassment occurred. If the acts occurred on more than one date, the statement should also include the last date on which the acts occurred as well as detailed information about the prior acts. The names of any potential witnesses should be provided, if appropriate.

(c) The name(s), address(es) and telephone number(s) of the Respondent(s), i.e., the person(s) claimed to have committed the act(s) of unlawful discrimination.

(d) Identification of the status of the persons charged whether faculty, staff, student or persons otherwise affiliated with the College.

(e) A statement indicating whether or not the Complainant has filed or reported information concerning the incidents referred to in the complaint with a non-college official or agency, under any other complaint or complaint procedure. If an external complaint has been filed, the statement should indicate the name of the person or department or agency with which the information was filed and its address or to which it was reported

(f) Other supplemental information as may be requested.

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 General Counsel or direct the Complainant to the appropriate alternative forum (see Appendix B for a list of alternative forums).

Evaluating the Evidence and Resolution

In reaching its finding, the Affirmative Action Office shall 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 Affirmative Action Office shall make every reasonable effort to resolve the matter. Resolution can take any form that is acceptable to the College. It may, for example, take the form of:

- separate meetings with the Complainant and Respondent
- joint meetings between the Complainant and Respondent with the AAO as facilitator
- separate and/or joint meetings with the Complainant and/or Respondent's supervisor(s)
- a written agreement or memorandum of understanding signed by one or both of the parties
- mandated training in the area of discrimination for the Respondent or departmental unit
- a verbal counseling session with the Respondent
- a written counseling memo issued to the Respondent
- no further action at the request of the Complainant

This list is not exhaustive and other forms of resolution may be appropriate although they are not listed here.

Determination

The AAO issues a written statement to the Complainant and Respondent, indicating the finding at the conclusion of the investigation. If a resolution satisfactory to both the Complainant and the Respondent is reached through the efforts of the AAO, the AAO will close the case, sending a written notice to that effect to the Complainant and the Respondent.

The actions proposed in the finding may consist of:

A determination that the complaint was not substantiated.

If the AAO determines that there is insufficient credible evidence to support the allegation(s) of discrimination, the complaint shall be dismissed, the matter shall be concluded and the College shall take no further action.

A determination that the complaint was substantiated.

For Employees (including student employees) not in a Collective Bargaining Unit:

In consultation with the Human Resources Office and the Office of General Counsel, the President may take such administrative action as he/she deems appropriate under his/her authority as the chief administrative officer of the college, including, but not limited to: termination, demotion, reassignment, suspension, reprimand, or training.

For Students:

In accordance with the Code of Student Conduct, the Director of Student Conduct may initiate the student disciplinary process, which might result in sanctions including but not limited to: community service, counseling, reprimand, residence hall suspension, suspension, dismissal, loss of privileges, restitution, or a letter of apology, as outlined in the Code of Student Conduct.

For Employees in Collective Bargaining Units:

The AAO may determine that sufficient information exists to refer the matter to Human Resources for investigation and disciplinary action or other action as may be appropriate under the applicable collective bargaining agreement including, but not limited to: reprimand, probation, suspension, termination of employment, or non-renewal of a contract.

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

The Affirmative Action Office may:

- Place a confidential written report in its file, subject to applicable law and policy, and disclosure, if required by law.
- Prepare and distribute a written report to the President and any other person designated by the AAO as a person who has a need to know how the complaint was resolved.
- Refer the matter to another department or administrator in the College for review.

If the AAO is unable to resolve the complaint to the satisfaction of the Complainant, the AAO shall again notify the Complainant of his or her right to separately file with appropriate external enforcement agencies.

There is no right of appeal to this procedure. The AAO's decision is considered final for the purposes of this procedure.

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CHAPTER 850.05 SUPERVISORY AND REPORTING RESPONSIBILITIES

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 must be immediately referred to the AAO. Employees with Title IX compliance responsibilities and/or employees who have the authority to take action to redress the harassment must report any complaints to the TIXC. Employees who observe or become aware of sex discrimination, including sexual harassment and sexual violence, should report this information to the campus TIXC. Complaints may also be made directly to the AAO by anyone who experiences, observes, or becomes aware of discrimination or harassment.

CHAPTER 850.06 RETALIATION

Any participant in the procedure has the right to do so without fear of or actual retaliation. It will be made clear that retaliation against an employee or a student who have filed a discrimination complaint, including a sex discrimination complaint under Title IX, or an individual who serves as a witness will result in appropriate sanctions or other disciplinary action as covered by collective bargaining agreements, and/or applicable College policies.

CHAPTER 850.07 COMPLAINANTS' RIGHTS DURING INVESTIGATIONS

In the case of an investigation of sex discrimination, interim measures will be taken to protect the parties involved while the investigation is taking place. These provisions may include counseling and academic assistance or temporary arrangements if the alleged perpetrator lives on campus and/ or attends classes with the victim. Such interim measures will not disproportionately impact the complainant.

Failure to Cooperate

If the Respondent refuses to cooperate and/or respond in a timely manner, the Affirmative Action Office may forego completion of an investigation and refer the matter to Human Resources or the Student Conduct Office as appropriate, or the office may take any other action it deems necessary and appropriate to address the situation. 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 Affirmative Action Office, or if the office determines that the Complainant no longer wishes to pursue his/her complaint, the Affirmative Action Office may consider the matter closed and take no further action or may continue the investigation, if necessary, with appropriate notification. However, 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 or involvement.

CHAPTER 850.08 CONFIDENTIALITY

Every effort will be made to protect the privacy of all individuals throughout all phases of the complaint and resolution process. Information about complaints or inquiries will be maintained in confidence to the fullest extent possible. However, an investigation will generally include interviewing necessary parties and coordination when necessary with relevant offices.

In responding to complaints, the AAO will take appropriate action to provide remedies and protect the privacy of all those involved to the fullest extent possible. The AAO will instruct the parties and all other affected persons that the complaint investigation procedure is best able to achieve a mutually acceptable agreement for resolution of the complaint when confidentiality is not breached. Once breached, it will make it difficult for the AAO to successfully conclude the complaint investigation process to the satisfaction of the complainant. Additionally, Federal law prohibits retaliation. Adverse action taken against any individual who files a complaint, or who assists or participates in any manner in an investigation proceeding, or hearing is against the law.

The complainant and respondent will receive a preliminary report summarizing the complaint and the initial findings of fact.

The College will make every effort to prevent discrimination and harassment, to prevent the reoccurrence of discrimination and harassment, and to remedy the discriminatory effects on victims and others affected by discrimination or harassment.

CHAPTER 850.09 JURISDICTION OF THE AFFIRMATIVE ACTION OFFICE

SUNY Cortland is responsible for providing a learning and working environment free of discrimination. 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 or involvement. Based on information received by the Affirmative Action Office, the AAO or designee may exercise his/her own discretion and initiate a complaint on behalf of the College community.

In addition, the Affirmative Action Office 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 this process should be accelerated or eliminated. This determination, if made, shall be communicated to the Human Resources or Student Conduct Office for appropriate action, which may include the initiation of disciplinary and/or other action.

If, at any time during the course of resolving or investigating a complaint of discrimination, the AAO or designee determines that a complaint is not within the jurisdiction of the office, the complaint and complainant shall be referred to the appropriate office and the matter shall be considered concluded for the purposes of the Affirmative Action Office.

CHAPTER 850.10 ROLE OF THE AFFIRMATIVE ACTION OFFICER

The AAO is trained in investigating and resolving complaints. The officer is available for assistance in filing the complaint with the College and will remain impartial during an investigation. The Affirmative Action Office does not represent any individual or department, but does advocate on behalf of the College's goals of equal opportunity and nondiscrimination.

The AAO may receive initial inquiries, reports and requests for consultation and counseling. Assistance will be available whether or not a formal complaint is contemplated or even possible. It is the responsibility of the AAO to respond to all such inquiries, reports and requests as promptly as possible and in a manner appropriate to the particular circumstances. 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 certain instances verbal complaints may be acted upon, the procedures set forth here rest upon the submission of a written complaint that will enable the AAO to conduct a full and fair investigation of the facts.

The Affirmative Action Office shall solicit information concerning any factors that might prejudice an objective evaluation of the evidence and shall reassign an investigation if a conflict or potential conflict emerges.

In instances of sex discrimination, including sexual harassment, the role of the Title IX Coordinator may mirror the role of the AAO during other discrimination claims.

CHAPTER 850.11 APPENDICES

APPENDIX A

Definitions and Prohibited Acts and Behaviors

Sexual Harassment in the Employment Setting is defined as:

Unwelcome sexual advances, requests for sexual favors, or verbal or physical conduct of a sexual nature when any of the following occurs:

- Submission to such conduct is made a term or condition of an individual's continued employment, promotion, or other condition of employment.
- Submission to or rejection of such conduct is used as a basis for employment decisions affecting an employee or job applicant.
- Such conduct is intended to interfere, or results in interference, with an employee's work performance, or creates an intimidating, hostile, or offensive work environment.

Sexual Harassment in the Educational Setting is defined as:

Unwelcome conduct of a sexual nature. Sexual harassment can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature. Sexual harassment of a student denies or limits, on the basis of sex, the student's ability to participate in or to receive benefits, services, or opportunities in the educational institution's program.

Harassment on the Basis of Protected Characteristic(s) other than Sex/Gender:

Harassment based on race, color, age, religion, or national origin, disability, sexual orientation or other protected characteristics may be oral, written, graphic or physical conduct relating to an individual's race, color, or national origin (including an individual's ancestry, country of origin, or country of origin of the

student's parents, family members, or ancestors) or other 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, or terms, conditions or status of employment.

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 TIXC or AAO.

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." 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 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.

Retaliation:

An employee or student who participates in the procedure has the right to do so without fear of retaliation. It will be made clear that retaliation against an employee or a student who has filed a discrimination complaint or a person who serves as a witness will result in appropriate sanctions or other disciplinary action as covered by collective bargaining agreements, and/or applicable University policies.

Appendix B

External Enforcement Agencies:

For a list of statewide external enforcement agencies, see the **Title IX website** (<http://www2.cortland.edu/offices/Title-IX/discrimination-complaint-policy.dot>).

Appendix C

Complaint Intake and Information Sheet (/dotAsset/642f46fb-2f4f-45df-b9cb-1b35cd40dfe5.pdf)

(Revised complaint form and procedures approved by SUNY Legal Counsel October 2015.)

TOP

CHAPTER 860: Procedures for Dealing with Sexual Harassment

- 860.01 SUNY Cortland Policy Statement
- 860.02 Purpose
- 860.03 Definitions
- 860.04 Procedures
- 860.05 Title IX

860.01 SUNY CORTLAND POLICY STATEMENT

The College is committed to maintaining a learning and working environment that is free of unwelcome conduct of a sexual nature that adversely affects a student's learning environment or an employee's working environment.

Harassment on the basis of sex is a form of discrimination and is a violation of Title VII of the 1964 Civil Rights Act and Title IX of the Educational Amendments of 1972. It is also a violation of New York State law, SUNY policy and Cortland College policy. Sexual harassment may be either subtle or overt.

Sexual harassment includes such categories as seductive behavior, sexual bribery and sexual coercion. Seductive behavior is unwanted, inappropriate and offensive physical or verbal sexual advances. Sexual bribery includes the solicitation of sexual activity or other sex-linked behavior by promise of reward or

benefit of some kind. Coercion of sexual activity or other sex-linked behavior by threat of punishment is sexual coercion.

860.02 PURPOSE

The purpose of these procedures is to protect the student or employee. The intention is to create a climate in which the student or employee can feel free to discuss sexual harassment concerns short of formal complaint and to guarantee the student or employee protection from retaliation. At the same time, the procedures recognize that the charge of sexual harassment is a serious one and the student or employee must be protected from false or capricious accusations.

Incidents of sexual harassment are reported at various places – often to the Counseling Center, sometimes to the University Police Department, sometimes to a trusted faculty member, residence hall director, residence assistant and sometimes to the affirmative action officer. It is important to establish a clearinghouse for these complaints so as to identify patterns of offensive behavior if it exists. Persons hearing complaints are asked to encourage complainants to speak with the affirmative action officer so that the officer can perform this clearinghouse function.

A student or employee may feel free to discuss with the affirmative action officer problems of definition and identification of sexual harassment. At the initial inquiry stage, confidentiality to the extent possible will be promised to the student or employee for all internal procedures. If, after informal discussion, the student wishes to file a complaint, the affirmative action officer will explain the necessary procedural steps.

See also paragraphs 5 and 6 of **Section 220.09** (</offices/publications/handbook/part-two/index.dot>), "Code of Ethics," as it relates to consensual relationships.

860.03 DEFINITIONS

See Appendix A in Section **850.11**.

860.04 PROCEDURES

Since sexual harassment has been ruled a form of sexual discrimination, the Complaint Procedure for the Review of Allegations of Unlawful Discrimination is available to all accusers. The procedure is available for informal resolution of complaints before more formal steps are taken.

Use of the Complaint Procedure for the Review of Allegations of Unlawful Discrimination in no way deprives a student or employee of the right to use other internal processes or to file with external enforcement agencies. The Complaint Procedure for the Review of Allegations of Unlawful Discrimination is outlined in

Chapter 850.

860.05 TITLE IX

Title IX of the Education Amendments of 1972 is a federal law that prohibits sex discrimination in education. It states:

"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."

(Title IX of the Education Amendments of 1972, and its implementing regulation at 34 C.F.R., Part 106)

Sex discrimination includes sexual harassment, sexual assault, and sexual violence.

While it is often associated with athletics programs, the Title IX law is much broader and applies to many programs at SUNY Cortland. Oversight of campus-wide compliance with Title IX is the primary responsibility of the SUNY Cortland Title IX Coordinator. Contact information is listed below.

Title IX Coordinator

Nan Pasquarello

President's Office

Miller Building, Room 403

P.O. 2000

Cortland, NY 13045

607-753-4550

Fax: 607-753-5993

nan.pasquarello@cortland.edu (mailto:nanette.pasquarello@cortland.edu)

Additional Information is available on the Title IX (<http://www2.cortland.edu/titleix/>) website.

TOP

CHAPTER 870: Procedures for Dealing with Charges of Discrimination or Harassment in Employment Based on Sexual Orientation

- 870.01 Statement of Policy
- 870.02 Definitions
- 870.03 Complaints

NOTE: This procedure shall be liberally construed to effect the purpose of Executive Order No. 28 (State of New York).

870.01 STATEMENT OF POLICY

- A. The College will not discriminate against an applicant or employee because of sexual orientation. This includes all employment practices such as hiring, appointing, promoting, retaining, training, granting permanent appointment, assigning work, or engaging in other conduct that otherwise adversely affects the employment opportunity of applicants or employees on the basis of sexual orientation of the employee or applicant.
- B. The College will not discriminate on the basis of sexual orientation against any individual in the provision of services or benefits by the College. Harassment on the basis of sexual orientation will not be countenanced at SUNY Cortland in the employment relationship.
- C. The College will ensure that no discrimination against a person because of sexual orientation will occur on campus.

870.02 DEFINITIONS

Sexual orientation is defined as the disposition of a person for heterosexuality, homosexuality, asexuality or bisexuality or a history of such a disposition or any identification with having such a disposition.

Discrimination is defined as any conduct that has the purpose or effect of making sexual orientation the basis for an employment decision or that interferes with an employee's work performance or that creates an intimidating, hostile or offensive work environment.

870.03 COMPLAINTS

Complaints will be processed in accordance with the Complaint Procedure for the Review of Allegations of Unlawful Discrimination (**Chapter 850**).

