

# Part Eight: The Affirmative Action Program

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## CHAPTER 840: Equal Employment Plan for Affirmative Action

A full description of SUNY Cortland'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

**Policy Title: Equal Opportunity: Access, Employment and Fair Treatment in the State University of New York**

#### Summary

It is the policy of the State University of New York ("the State University" or "SUNY") that no discrimination against or harassment of individuals will occur on any of the campuses or in the programs or activities of the University. Furthermore, the University provides equal opportunity in employment for all qualified persons; prohibits discrimination in employment; and promotes the full realization of equal employment opportunity through a positive, continuing program for the University as a whole and for each constituent unit of the University.

#### I. Access and Fair Treatment

It is the policy of the State University that no discrimination against or harassment of individuals will occur on any of the campuses or in the programs or activities of the State University. All judgments about and actions toward students and employees will be based on their qualifications, abilities, and performance. Attitudes, practices, and preferences of individuals that are essentially personal in nature, such as private expression or sexual orientation, are unrelated to performance and provide no basis for judgment. All State-operated campuses are expected to take appropriate action to implement this policy of fair treatment.

## **II. Employment**

- A. It is the policy of the State University to provide equal opportunity in employment for all qualified persons; to prohibit discrimination in employment; and to promote the full realization of equal employment opportunity through a positive, continuing program for the University as a whole and for each constituent unit of the State University. This policy:
1. Applies to all persons without regard to race, creed, color, national origin, age, sex, except where sex is a bona fide occupational qualification, sexual orientation, military status, disability, or marital status;
  2. Applies equally to all job classifications and titles in the State University and to all types of appointments under SUNY's jurisdiction, whether full-time or part-time;
  3. Governs all SUNY's policies, practices, and actions including but not necessarily to recruitment, employment, rate of pay or other compensation, advancement, upgrading, promotion, demotion, renewal, non-renewal, termination, transfer, layoff, leave, training, and employee benefits of whatever nature;
  4. Applies equally to all SUNY's organizational units; and
  5. Expects each contractor, supplier, union, public agency or cooperative agent to support this policy by complying with applicable state and federal equal employment opportunity laws and regulations.
- B. Full and continuing realization of this policy in the State University shall be undertaken by:
1. Developing Affirmative Action Programs which shall:
    - a. Detail actions designed to realize the SUNY's commitment to equal employment;
    - b. Analyze employment patterns within SUNY;
    - c. Set forth plans to rectify any deficiencies;
    - d. Identify and remove impediments to equal employment opportunity;
    - e. Establish goals and timetables for affirmative action;
    - f. Provide for the internal and external dissemination of SUNY policy;
    - g. Pursue the commitment to equal employment opportunity throughout the institution; and
    - h. Provide for the review, assessment, evaluation, and improvement of the State University action in carrying out this policy and affirmative action programs.
  2. Committing staff and support necessary to make effective equal employment policies and programs of the State University. SUNY-wide liaison and leadership in equal employment opportunity shall be effected through a member of the chancellor's staff. Campus liaison and leadership shall be effected through a member of the president's staff. The liaison and leadership function will embrace such activities as:
    - a. developing policy statements and Affirmative Action Programs;
    - b. developing internal and external communication techniques;

- c. assisting in the identification of problem areas and establishment of goals and objectives;
- d. assisting campus administration;
- e. internally assessing compliance;
- f. providing liaison among the State University, enforcement agencies, minority organizations, community action groups; and
- g. designing and implementing audit and reporting systems required for effective monitoring and operation of affirmative action programs.
- h. The State University affirms its right to take appropriate action if it, or other duly constituted authority, should determine that applicable federal and state equal employment opportunity laws and regulations have been violated, or that the effect and intent of this policy has been willfully or habitually abrogated.

### **III. Sexual Harassment and Harassment Based on Other Protected Characteristics**

Sexual harassment is offensive, is a violation of our policies, is unlawful, and may subject the State University to liability for harm to targets of sexual harassment. Sexual harassment is a form of workplace discrimination and employee misconduct, and all employees and students are required to work in a manner that prevents sexual harassment on State University campuses. All employees and students have a legal right to a workplace and a campus free from sexual harassment, and employees and students can enforce this right by filing a complaint internally with the State University, or with a government agency, or in court under federal or state anti-discrimination laws. Sexual harassment of university students or employees will not be tolerated. Any employee or individual covered by this policy who engages in sexual harassment or retaliation will be subject to remedial and/or disciplinary action, up to and including termination.

It is the policy of the State University to ensure fair treatment to all individuals, including students, consistent with federal and state law. Accordingly, harassment based on sex or other protected characteristics and sexual harassment is prohibited in all areas of the State University activity and programs.

Employees and students who believe they have been victims of harassment may use SUNY's Discrimination and Sexual Harassment Complaint Procedure for review of their allegations.

#### **Definitions**

**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.

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

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

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

A sexually harassing hostile work environment includes, but is not limited to, words, signs, jokes, pranks, intimidation or physical violence which are of a sexual nature, or which are directed at an individual because of that individual's sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender. Sexual harassment also consists of any unwanted verbal or physical advances, sexually explicit derogatory statements or sexually discriminatory remarks made by someone, which are offensive or objectionable to the recipient, which cause the recipient discomfort or humiliation, which interfere with the recipient's job performance. Sexual harassment also occurs when a person in authority tries to trade job benefits, including hiring, promotion, continued employment or any other terms, conditions or privileges of employment, for sexual favors.

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

(SUNY Policy Document Number: 6502 / Effective Date: October 09, 2018)

Pursuant to university policy, SUNY Cortland is committed to fostering a diverse community of outstanding faculty, staff, and students, as well as ensuring equal educational opportunity, employment, and all personnel activities, such as the recruitment, selection, training, compensation, benefits, discipline, promotion, transfer, layoff and termination processes, and access to services, programs, and activities remain free of illegal discrimination and harassment based upon an individual's race, color, national origin, religion, creed, age, disability, sex, gender identity, gender expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, or criminal conviction. Employees, students, applicants or other members of the University community (including but not limited to vendors, visitors, and guests) may not be

subjected to harassment that is prohibited by law, or treated adversely or retaliated against based upon a protected characteristic. Regular review by SUNY Cortland, as described in the AAP, helps to ensure compliance with this policy.

The University's policy is in accordance with federal and state laws and regulations prohibiting discrimination and harassment. These laws include the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, Title VII of the Civil Rights Act of

1964 as Amended by the Equal Employment Opportunity Act of 1972, and the New York State Human Rights Law. These laws prohibit discrimination and harassment, including sexual harassment and sexual violence. Inquiries regarding the application of Title IX and other laws, regulations and policies prohibiting discrimination may be directed to the EEO Administrator. Inquiries may also be directed to the United States Department of Education's Office for Civil Rights, 32 Old Slip 26th Floor, New York, NY 10005-2500; Tel. (646) 428-3800; Email [OCR.NewYork@ed.gov](mailto:OCR.NewYork@ed.gov).

## **840.02 IMPLEMENTATION OF POLICY**

SUNY Cortland's commitment to fully implement this policy and AAP include periodic reviews of mission-critical workforce factors in a number of ways, including performing an in-depth analysis of its total employment process to determine whether and where impediments to equal employment opportunity exist.

## **840.03 RESPONSIBILITIES AND AUTHORITY FOR IMPLEMENTING THE AFFIRMATIVE ACTION PROGRAM**

The president of SUNY Cortland is responsible for the Affirmative Action Program (AAP). 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.

All levels of management share responsibility for the AAP, including but not limited to the following:

1. Assisting in auditing AAP progress, including identifying problem areas, formulating solutions, establishing appropriate goals, and developing necessary training programs.
2. Reviewing the qualifications of applicants and employees to ensure qualified individuals are treated in a nondiscriminatory manner in hiring, promotion, transfers, and termination actions.
3. Making available career counseling, when appropriate.
4. In collaboration with Human Resources, reviewing the job performance of each employee to assess whether personnel actions are justified based on the employee and their duties.
5. In collaboration with Human Resources, reviewing position descriptions of the jobs in the manager's area or department to see that they adequately reflect the job to be performed.
6. Assisting employees and supervisors in the prevention of harassment.

The president has delegated procedural responsibility for monitoring the program to the associate director of human resources and affirmative action officer (AAO). In addition, the chief diversity and inclusion officer (CDIO) has responsibility to provide campus-wide leadership and support on matters relating to diversity, equity and inclusion for all members of the SUNY Cortland community and will serve as a collaborator in supporting the Affirmative Action Plan.

The duties assigned to the affirmative action officer are:

1. Developing, maintaining and, where appropriate, modifying SUNY Cortland's AAP to ensure compliance with the EEO/AA law.
2. Developing and, where appropriate, modifying procedures for effectively communicating the AAP and its elements both internally and externally.
3. Advising management on EEO/AA progress, reporting potential EEO/AA problem areas, and assisting management in finding equitable solutions, where feasible, to any identifiable EEO/AA problem areas.
4. Evaluating the effectiveness of SUNY Cortland's AAP on a regular basis, and reporting to management.
5. Designing, implementing and overseeing audit and reporting systems that periodically measures the effectiveness of the total affirmative action program. 41 C.F.R. § 2.17 (d)(1)-(4), identifying need for remedial action, and determining the degree to which objectives have been achieved.
6. Acting as institution representative and liaison with any government agencies regarding the AAP.
7. Monitoring Institution policies and procedures with regard to terms and conditions of employment to attempt to ensure compliance with affirmative action obligations.
8. Auditing the content of SUNY Cortland's bulletin board and electronic policies, as appropriate, to ensure compliance information is posted and up to date.
9. Keeping management up to date on the latest developments in the areas of EEO and affirmative action.
10. Serving as a liaison between SUNY Cortland and organizations, such as minority organizations and women's organizations.
11. When necessary, work in collaboration with institutional leadership in developing sales and management training programs to increase protected-group participation.
12. Assisting in the investigation, handling and disposition of employee harassment and discrimination complaints.
13. Discussing EEO/AA policies with all personnel, including management, to ensure that SUNY Cortland's policies and the need for their support are understood at all levels.
14. Reviewing SUNY Cortland's AAP for qualified women and minorities with all managers and supervisors to ensure the policy is understood and followed in all personnel actions.
15. Conducting periodic reviews of offices to ensure compliance in the areas of proper display of posters and notices, comparable facilities for both sexes, and opportunity for participation in Institution-sponsored recreational, educational and social activities.
16. Auditing training programs, hiring, and promotion patterns.

## **840.04 RECRUITMENT AND HIRING**

SUNY Cortland has instituted action-oriented programs designed to eliminate any problem areas, should they exist, in accordance with § 60-2.17(b), and to help achieve specific affirmative action goals. SUNY Cortland will make good-faith efforts to remove identified barriers, expand employment opportunities, and produce measurable results.

### **A. Review of Posting**

The administrative officer responsible for recommending the appointment shall conduct a review of the job description, job qualifications and title to ensure accurate reflection of job-related duties and responsibilities, and accurately complete a job posting in the applicant tracking system (ATS) in accordance with established search procedures.

### **B. Faculty, Professional and Management/Confidential**

SUNY Cortland employs appropriate methods to attempt to improve recruitment and increase the flow of qualified applicants including protected veterans, individuals with disabilities, minorities and women applicants in its recruiting process. Good-faith efforts are made to select the most qualified candidates including recruiting 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, search committee members and other administrators involved in recruitment and hiring are responsible for ensuring that good faith recruitment efforts are made to locate and attract qualified candidates. When preparing a recruitment plan, the administrative officer responsible for recommending the appointment is required by policy to seek the advice of the AAO and or the chief diversity and inclusion officer (CDIO) on the extent of recruitment necessary for each proposed position vacancy. The AAO and CDIO are ex-officio members of all search committees and assist with the development of current and adequate referral sources for recruiting affected groups.

Recruitment of faculty, non-academic professionals and management/confidential staff is conducted by search committee, governed by adherence to SUNY Cortland's Affirmative Action Program.

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

With the exception of competitive class appointments from the Civil Service Eligible List, all recruitment efforts to locate civil service staff must serve to implement the AAP. 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 SUNY Cortland. 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 Human Resources Office, and other areas as appropriate.

#### **D. SUNY Cortland Auxiliary Services**

SUNY Cortland Auxiliary Services is a private, nonprofit corporation that has a contractual relationship with SUNY Cortland. Responsibility for affirmative action in Cortland Auxiliary has been assigned to the executive director, Cortland Auxiliary office, Neubig Hall.

### **840.05 RECORDS, REPORTS AND MONITORING**

All recruitment efforts shall serve to implement the Affirmative Action Policy (AAP) of the university.

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.

### **840.06 PROMOTIONS AND SALARIES**

#### **1. Promotions**

SUNY Cortland is committed to ensuring that good-faith efforts are made to remove barriers to promotion and expand employment opportunities and that job qualifications form the basis for promotional decisions. The criteria governing the promotion of academic employees and the evaluation and promotion of professional employees are set out in the Policies of the Board of Trustees and in respective collective bargaining agreements. The SUNY Cortland Discrimination Complaint 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 and respective collective bargaining agreements.

#### **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 Cortland Discrimination Complaint Procedure.

### **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 division. Similarly, Civil Service employees of the university 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.

Anyone who wishes to file a complaint, or simply to discuss filing a complaint, should contact the affirmative action officer, or in the case of complaints related to sex discrimination, sexual harassment, or sexual assault may also contact the Title IX Coordinator.

### **840.08 INVOLUNTARY TERMINATIONS**

All involuntary terminations must be done in consultation with and endorsement of the chief human resources officer, or human resources designee.

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.

### **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. Part-time positions are recruited locally within a reasonable commuting distance; therefore, it is reasonable to limit searches to nearby communities. Generally this would include the communities of Cortland, Syracuse, Ithaca and Binghamton. All departments that regularly employ part-time people must form a pool of candidates for those positions by conducting a regional search at least annually.

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, revised February 2014.)

## **840.10 WAIVER OF SEARCH**

Although it is SUNY Cortland's practice generally to conduct a full and open search prior to filling a vacancy, if special circumstances warrant, either a temporary or permanent waiver of the search requirements may be requested. No appointments may be made without prior approval of the waiver.

### **Temporary Waiver of Search (up to 12 months)**

Temporary waivers are granted under such special circumstances as illness, death, or late resignations, i.e., conditions that preclude the possibility of a full and timely search. Late resignations are those which come at a time that prevents the department from advertising, receiving applications and making a decision in a timely manner that will not unduly interfere with departmental operations. The expectation is that temporary waivers are to ensure continuity of services and should be for as limited time as possible.

Requests for temporary waivers of search are made by a hiring manager to the affirmative action officer using the on-line applicant tracking system detailing the specifics of the request, including but not limited to the following:

- The reason for the waiver and why a full search cannot be conducted,
- The duration of the waiver (no longer than 12 months),
- The proposed incumbent or how an incumbent will be identified/selected,
- How the incumbent is qualified for the position, and
- When a full search shall commence.

The affirmative action officer shall review the specifics of the request and make a determination of approval or disapproval. Temporary waivers that are approved must commence a full search no later than six (6) months following appointment of the waiver incumbent. This shall ensure that temporary waivers do not exceed their intended 12 months maximum appointment.

Appeals of waiver of search denials may be submitted to the assistant vice president for human resources, with a copy to the affirmative action officer within ten business days of the date of denial notification. Upon receipt of the appeal, the assistant vice president for human resources (after consultation with appropriate VP and/or Cabinet)

shall provide the hiring manager of the final determination within 7 business days. There are no further appeals available in this process.

At no time shall an individual commence working under the auspices of a waiver of search until such time that the waiver has been approved as prescribed above.

### **Permanent Waiver of Search**

Under certain circumstances, a hiring manager may request a permanent waiver of search to fill a vacant position or to re-align operations to best serve the strategic direction of the university. Employees being considered for a waiver under this section must have been hired originally to SUNY Cortland under a full affirmative action search. In all cases, consideration shall be given to the placement goals for said position as identified in the affirmative action plan. The circumstances that a permanent waiver may be requested are as follows:

1. Succession Planning/Upward Mobility: In the interest of internal promotion, career advancement, and professional and personal development programs, upward mobility of a person who clearly serves as a second in charge, as demonstrated by their performance program, training, skills, and demonstrated ability, might warrant a waiver of the search requirement in order to promote an internal candidate to a director-level position. A consideration for this waiver will be the identification of a position that will be filled through a full affirmative action search so that an opportunity to further diversify our workforce can be provided.
2. Re-organization/Staff Re-alignment: Fiscal crisis, personnel reduction, or major change in institutional priorities could dictate the need for realignment of fundamental roles and functions in order to meet basic responsibilities. Such realignment of existing staff when no additional vacancies are created does not require a formal search.

When such special circumstances prevail, a request for a permanent waiver of the search stating the background and reasons should be submitted by the senior leader of the affected department/office to the affirmative action officer. The affirmative action officer shall review the request and make a recommendation to the President's Cabinet. President's Cabinet shall make the final determination regarding the request. Upon approval of a succession planning/upward mobility request, a posting shall be prepared in the university's applicant tracking system to finalize the appointment. Upon approval of a Re-organization/Staff Re-Alignment request, a copy of the approved request shall be provided to human resources for processing.

(Approved by President Erik Bitterbaum, Oct. 30, 2017)

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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](#)

- [850.03 Who Can File a Complaint](#)
- [850.04 Against Whom May Complaints be Brought?](#)
- [850.05 Supervisory and Reporting Responsibilities](#)
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## **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 [850.11 Appendices](#), Appendix A: Definitions and Prohibited Acts and Behaviors. 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 SUNY Cortland will identify, respond to, prevent and eliminate incidents of illegal discrimination.

The university 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 university's Affirmative Action Office. The AAO directs that office and reports directly to the university 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 university. 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 videotaping devices.

## **850.02 PROCEDURE FOR RESOLVING COMPLAINTS**

### **Complaint Consultation and Review**

Any member of the SUNY Cortland 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 university 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 university 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 university 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 university'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 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**

SUNY Cortland'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 university 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 university will cooperate with any requests from the law enforcement agency. Such requests may require the university 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 university 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.

### **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 university may nevertheless pursue its review of the allegations.

#### **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 university 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 their designee. If the AAO is the Respondent, the matter shall be referred to the President or their 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 university.
- 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-university 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 university. 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 university 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 they deem appropriate under their authority as the chief administrative officer of the university, including, but not limited to: termination, demotion, reassignment, suspension, reprimand, or training.

**For Students:**

In accordance with the Student Code of 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, warning or probation, residence hall suspension, suspension, dismissal, loss of privileges, restitution, a letter of apology or other education sanction as outlined in the Student Code of 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 their 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 university 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 their 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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## **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.

## **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 SUNY Cortland policies.

## **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 their 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 university 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.

## **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.

SUNY Cortland 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.

### **850.09 JURISDICTION OF THE AFFIRMATIVE ACTION OFFICE**

SUNY Cortland is responsible for providing a learning and working environment free of discrimination. The university 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 their own discretion and initiate a complaint on behalf of the SUNY Cortland 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.

## **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 SUNY Cortland 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 university'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 parallel the role of the AAO during other discrimination claims.

## **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 \(/offices/Title-IX/discrimination-complaint-policy.dot\)](/offices/Title-IX/discrimination-complaint-policy.dot).

## **Appendix C**

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

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

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# **CHAPTER 860: Sexual Harassment Response and Prevention**

- [860.01 Overview](#)
- [860.02 SUNY Cortland Policy Statement](#)
- [860.03 Definitions](#)
- [860.04 Procedures](#)
- [860.05 Title IX](#)

## **860.01 OVERVIEW**

This policy applies to all employees, applicants for employment, interns or volunteers, whether paid or unpaid, contractors and persons conducting business, regardless of immigration status, with SUNY Cortland. In this policy the terms “employees” refers to this collective group.

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

The State University of New York (SUNY) has developed a uniform Sexual Harassment Policy Statement for all State-operated campuses, community colleges, and System Administration. This uniform policy statement and SUNY Cortland specific procedures and contact information are contained in this document.

## **860.02 SUNY CORTLAND POLICY STATEMENT**

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

Sexual harassment is prohibited and will not be tolerated at SUNY. The university has implemented measures to address and prevent sexual harassment and is taking additional affirmative steps to increase awareness of, and sensitivity to, all forms of sexual harassment in order to maintain a workplace and learning environment free of its harmful effects.

Sexual harassment is a form of workplace discrimination and employee misconduct, as well as a form of discrimination in the academic setting, and all employees and students are entitled to work and learn in a campus environment that prevents sexual harassment. All employees and students have a legal right to a workplace and a campus free from sexual harassment, and employees and students can enforce this right by filing a complaint internally with the University, or with a government agency, or in court under federal or state anti-discrimination laws, as detailed in the University's Discrimination and Sexual Harassment Complaint Procedure.

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

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

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

- Seeking sexual favors or a sexual relationship in return for the promise of a favorable grade or academic opportunity;
- Conditioning an employment-related action (such as hiring, promotion, salary increase, or performance appraisal) on a sexual favor or relationship; or
- Intentional and undesired physical contact, sexually explicit language or writing, lewd pictures or notes, and other forms of sexually offensive conduct by individuals in positions of authority, co-workers or student peers, that unreasonably interferes with the ability of a person to perform their employment or academic responsibilities. Physical acts of a sexual nature, such as:
  - Touching, pinching, patting, kissing, hugging, grabbing, brushing against, or poking another person's body;



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

Such behavior can constitute sexual harassment regardless of the sex, gender, sexual orientation, self-identified or perceived sex, gender expression, status of being transgender, or gender identity of any of the persons involved. Sexual harassment is considered a form of employee and student misconduct which may lead to disciplinary action. Further, supervisors and managers will be subject to discipline for failing to report suspected sexual harassment or otherwise knowingly allowing sexual harassment to continue. Employees and students who believe they have been subjected to sexual harassment may use the University's Discrimination and Sexual Harassment Complaint Procedure for more details on how to have their allegations reviewed, including a link to a complaint form. Retaliation against a person who files a complaint, serves as a witness, or assists or participates in any manner in this procedure, is unlawful, is strictly prohibited and may result in disciplinary action.

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

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

### **860.03 DEFINITIONS**

See Appendix A in Section [850.11](#).

The definition of sexual harassment provided by the U.S. Department of Education is available on the [Title IX Website \(/titleix/\)](#). (See section 860.05).

### **860.04 PROCEDURES**

Any sex discrimination as detailed in the SUNY policy statement above, including but not limited to sexual harassment and sexual assault, regardless of the identity of the accused, may be brought to the Affirmative Action Officer or Title IX Coordinator.

Complaints or concerns that are reported to a supervisor concerning an act of discrimination or harassment, or acts of discrimination or harassment that a supervisor observes or becomes aware of must be properly responded to as a discrimination complaint; and promptly reported to the Affirmative Action Officer. The Affirmative Action Officer has authority and responsibility for investigating claims of discrimination by employees under this policy.

Allegations of discrimination made against students, including sex discrimination, sexual harassment and sexual assault may be directed to the Title IX Coordinator or the Student Conduct Office. 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 Title IX Coordinator. The Title IX Coordinator has the authority to investigate claims of sex discrimination and/or sexual harassment under this policy.

### **SUNY Cortland Resource Contact Information**

Affirmative Action Officer

Miller Building, Room 301

607-753-2302 (office)

[Affirmative Action Website \(/offices/hr/affirmative-action/\)](#).

Individuals wishing to file a claim of sexual harassment may do so by following the process set forth in SUNY Cortland's Discrimination Complaint Procedure (see SUNY Cortland Discrimination Complaint Procedure, [Chapter 850](#)).

(Revised and Approved by President's Cabinet December 17, 2018)

### **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.

### **SUNY Cortland Resource Contact Information**

Title IX Coordinator

Maggie Wetter

President's Office

Miller Building, Room 404

P.O. 2000

Cortland, NY 13045

607-753-4550

Fax: 607-753-5993

[titleix@cortland.edu](mailto:titleix@cortland.edu) (<mailto:titleix@cortland.edu>)

Additional information is available on the [Title IX \(/titleix/\)](#) website.

The Title IX website contains information on the following:

- Reporting options
- Option for confidentially disclosing sexual violence
- Students' bill of rights
- Resources
- Contact information
- Definitions
- Title IX grievance process
- Protections, accommodations and amnesty

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## **CHAPTER 870: POLICY AND PROCEDURES REGARDING DISCRIMINATION OR HARASSMENT BASED ON PROTECTED STATUSES**

SUNY Cortland is dedicated to providing a comprehensive educational experience that prepares individuals to function in a diverse society and aims to create an environment where each person's individual dignity is valued. The university prohibits, and will not tolerate discrimination or harassment on the basis of race, color, national origin, religion, creed, age, disability, sex, gender, sexual orientation, self-identified or perceived sex, gender expression, status of being transgender, or gender identity, familial status, pregnancy, predisposing genetic characteristic or carrier status, military status, U.S. Veteran status, domestic violence victim status, prior criminal conviction unrelated to employee's job or, any other characteristic protected by applicable local, state or federal law. SUNY Cortland will comply with all applicable equal employment opportunity/non-discrimination laws. Employees, students, applicants or other members of the SUNY Cortland community (including but not limited to vendors, visitors, and guests) may not be subjected to harassment that is prohibited by law or treated adversely based upon a protected characteristic.

Harassment is unwelcome or offensive conduct based on a protected characteristic. Offensive conduct may include, but is not limited to, offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance.

Harassment can occur in a variety of circumstances, including, but not limited to, the following:

- The harasser can be a supervisor, a supervisor in another area, an agent of the employer, a co-worker, or a non-employee.
- The victim does not have to be the person harassed, but can be anyone affected by the offensive conduct.
- Unlawful harassment may occur without the loss of employment or economic injury to the victim.

Discrimination or harassment is considered a form of employee and student misconduct which may lead to disciplinary action. Further, supervisors and managers will be subject to discipline for failing to report suspected discrimination or harassment or otherwise knowingly allowing discrimination or harassment to continue.

Employees and students who believe they have been subjected to discrimination or harassment may use SUNY Cortland's [Discrimination Complaint Procedure \(PDF\)](/offices/hr/Policies-and-Procedures/pdfs/Discrimination%20Complaint%20Policy%20and%20Procedure.pdf) (</offices/hr/Policies-and-Procedures/pdfs/Discrimination%20Complaint%20Policy%20and%20Procedure.pdf>) for more details on how to have their allegations reviewed, including a link to a complaint form.

Discriminatory acts committed by an employee, agent of the university, or non-employee (vendor, campus visitor or guest) should be promptly reported to the Affirmative Action Officer. Cases involving sex discrimination claims against employees can also be reported to the Title IX Coordinator. The Affirmative Action Officer has authority and

responsibility for investigating claims of discrimination and harassment by employees under this policy and can work to facilitate appropriate responses by non-employees and visitors. Acts committed by a student, or visitor of a student, should promptly be reported to a residence hall director, the Student Conduct Office, or in cases of sex discrimination, including sexual harassment, and sexual assault, may be directed to the Title IX Coordinator. The Title IX Coordinator has the authority to investigate claims of sex discrimination including sexual harassment under this policy.

In situations where a person believes there is an immediate danger please contact University Police 607-753-2111.

Retaliation against a person who files a complaint, serves as a witness, or assists or participates in any manner in this procedure, is unlawful, is strictly prohibited and may result in disciplinary action. Retaliation is an adverse action taken against an individual as a result of complaining about or provides information regarding unlawful discrimination or harassment, exercising a legal right, and/or participating in a complaint investigation as a third-party witness. Adverse action includes being discharged, disciplined, discriminated against, or otherwise subject to adverse action because the individual reports an incident of discrimination or harassment, provides information, or otherwise assists in any investigation of a discrimination or harassment complaint. Participants who experience retaliation should contact the campus Affirmative Action Officer, or Title IX Coordinator as appropriate, and may file a complaint pursuant to these procedures.

Inquiries regarding the application of non-discrimination laws and policies may be directed to the Affirmative Action Officer or in cases of sex discrimination, including sexual harassment, and sexual assault, the Title IX Coordinator may also be contacted. Their contact information office locations are detailed below:

**Affirmative Action Officer**

Miller Building, Room 301

607-753-2302 (office)

[Affirmative Action Website \(/offices/hr/affirmative-action/\)](/offices/hr/affirmative-action/)

**Title IX Coordinator**

Miller Building, Room 404

607-753-2263 (office)

607-753-4550 (direct)

[Title IX Website \(/offices/Title-IX/\)](/offices/Title-IX/)

Inquiries may also be directed to the United States Department of Education's Office for Civil Rights (OCR), 32 Old Slip 26th Floor, New York, NY 10005-2500; Tel, (646) 428-3900; Email [OCR.NewYork@ed.gov](mailto:OCR.NewYork@ed.gov) (<mailto:OCR.NewYork@ed.gov>).

Individuals wishing to file a claim of discrimination or harassment under this policy may do so by following the process set forth in SUNY Cortland's [Discrimination Complaint Procedure \(PDF\)](http://offices/hr/Policies-and-Procedures/pdfs/Discrimination%20Complaint%20Policy%20and%20Procedure.pdf) ([/offices/hr/Policies-and-Procedures/pdfs/Discrimination%20Complaint%20Policy%20and%20Procedure.pdf](http://offices/hr/Policies-and-Procedures/pdfs/Discrimination%20Complaint%20Policy%20and%20Procedure.pdf)).

Related Policies:

- [SUNY – Equal Opportunity: Access, Employment and Fair Treatment in the State University of New York](http://sunypp/documents.cfm?doc_id=533) ([/sunypp/documents.cfm?doc\\_id=533](http://sunypp/documents.cfm?doc_id=533)).
- [SUNY Policies on Sexual Violence Prevention and Response](http://system.suny.edu/media/suny/content-assets/documents/sexualviolenceprevention/SUNY-Policies-Sexual-Violence-Prevention-Response-Dec012014.pdf) (<http://system.suny.edu/media/suny/content-assets/documents/sexualviolenceprevention/SUNY-Policies-Sexual-Violence-Prevention-Response-Dec012014.pdf>).
- [SUNY Policy on Mandatory Reporting and Prevention of Child Sexual Abuse](http://sunypp/documents.cfm?doc_id=759) ([/sunypp/documents.cfm?doc\\_id=759](http://sunypp/documents.cfm?doc_id=759)).
- [SUNY Cortland Bullying in the Workplace and Civility Standards](http://dotAsset/4cf5bb9a-77ae-4964-b1a3-7dd5ee34d483.pdf) ([/dotAsset/4cf5bb9a-77ae-4964-b1a3-7dd5ee34d483.pdf](http://dotAsset/4cf5bb9a-77ae-4964-b1a3-7dd5ee34d483.pdf)).
- [SUNY Cortland Sexual Harassment Response and Prevention Policy](http://offices/hr/pdfs/SHP%20Final%20Policy%20Stmt%2009.03.19.pdf) ([/offices/hr/pdfs/SHP%20Final%20Policy%20Stmt%2009.03.19.pdf](http://offices/hr/pdfs/SHP%20Final%20Policy%20Stmt%2009.03.19.pdf)).
- [SUNY Cortland Workplace Violence Policy and Procedures](http://dotAsset/581418f0-6572-4a17-9ab6-72be6240f09f.pdf) ([/dotAsset/581418f0-6572-4a17-9ab6-72be6240f09f.pdf](http://dotAsset/581418f0-6572-4a17-9ab6-72be6240f09f.pdf)).
- [New York State Human Rights Law](https://ag.ny.gov/civil-rights/new-york-state-human-rights-law) (<https://ag.ny.gov/civil-rights/new-york-state-human-rights-law>).
- [U.S. Equal Employment Opportunity Commission](https://www.eeoc.gov/employees/index.cfm) (<https://www.eeoc.gov/employees/index.cfm>).

*Revised and approved President's Cabinet Dec. 17, 2018.*

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