

# **SUNY Cobleskill Discrimination Complaint Procedure**

## **Summary**

SUNY Cobleskill, 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 is one form of unlawful discrimination on the basis of the above protected categories. The University will take steps to prevent discrimination and harassment, to prevent the recurrence of discrimination and harassment, and to remedy its discriminatory effects on the victim(s) and others, if appropriate. Conduct that may constitute harassment is described in the Definitions section. Sex discrimination includes sexual harassment and sexual violence. Retaliation against a person who files a complaint, serves as a witness, or assists or participates in any manner in this procedure is strictly prohibited and may result in disciplinary action.

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## **Process**

### **Applicability**

This procedure may be used by any student or employee of a state-operated campus of the University, as well as third-parties who are participating in a University sponsored program or affiliated activity. Employee grievance procedures established through negotiated contracts, academic grievance review committees, student disciplinary grievance boards, and any other procedures defined by contract will continue to operate as before. Furthermore, 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. However, after filing with one of these outside enforcement agencies, or upon the initiation of litigation, the complaint will be referred to the campus Affirmative Action Officer, or in the case of sex discrimination, the Title IX Coordinator (hereinafter “AAO” will refer to both the Affirmative Action Officer and Title IX Coordinator), for investigation with the Office of General Counsel. Contact information for these agencies is listed in the Other Related Information section below. More detailed information may be obtained from the campus or SUNY-wide AAO.

All campuses must use this procedure unless the campus has made an application for an exception. Requests for an exception, along with a copy of the requesting campus’s discrimination complaint procedure, must be filed with the Office of General Counsel. The request for an exception will be acted upon by the Office of General Counsel after a review of the campus’s complaint procedure. The AAO [\[1\]](#) on each University campus and the AAO for the SUNY System Office, who receives any complaint of alleged discrimination, shall inform the complainant about the complaint process and other options to resolve the issue, assist the

complainant in the use of the complaint form and understanding the nature of the incident, and provide the complainant with information about various internal and external mechanisms through which the complaint may be filed, including applicable time limits for filing with each agency.

Upon receipt of a sex discrimination complaint or report, each University campus and the SUNY System Office will provide to the complainant with a written notice describing the available options, including pursuing a criminal complaint with a law enforcement agency, pursuing SUNY's investigation and disciplinary process, or pursuing both options at the same time; and the potential consequences of pursuing both options (*i.e.*, possible temporary delay of the fact-finding aspect of SUNY's investigation while the law enforcement agency is in the process of gathering evidence). Additionally, the Title IX Coordinator will ensure that complainants in sex discrimination cases are made aware of their Title IX rights, available remedies and resources on and off-campus (such as counseling, local rape crisis center), and interim measures of protection. For more information, see the [Victim/Survivor Bill of Rights](#). Assistance will be available whether or not a formal complaint is contemplated, or even possible.

All distributed and published versions of this procedure must contain the name or title, office address, email address, and telephone number of the individual with whom to file a complaint for each campus location, and for System Administration.

SUNY Cobleskill's Affirmative Action Officer and Title IX Coordinator is Lynn Berger. Lynn can be reached by phone at (518) 255-5465, by email at [bergerla@cobleskill.edu](mailto:bergerla@cobleskill.edu), or in person or by mail, Knapp Hall 123 - Human Resources, 106 Suffolk Circle, Cobleskill, NY 12043.

The System-wide Affirmative Action Officer is Gloria Lopez. Gloria can be reached by phone at (518) 320-1156, by email at [gloria.lopez@suny.edu](mailto:gloria.lopez@suny.edu), or by mail at State University Plaza, 353 Broadway, Albany, New York 12207.

## **Procedure**

The following Discrimination Compliant Procedure applies to both the informal and formal processes. This procedure provides a mechanism through which the University may identify, respond to, and prevent incidents of illegal discrimination. The University recognizes and accepts its responsibility in this regard, and believes that the establishment of this internal grievance process will benefit student, faculty, staff, and administration, permitting investigation and resolution of problems.

SUNY Cobleskill, through the Affirmative Action Officer/Title IX Coordinator, reserves the right to promptly investigate all incidents of sex discrimination of which the campus and/or SUNY system office has notice. Based on information received, the Affirmative Action Officer/Title IX Coordinator will make reasonable efforts to investigate and address instances of sex discrimination when it knows or should have known about such instances, regardless of complainant cooperation and involvement, consistent with the [SUNY Policies on Sexual](#)

[Violence Prevention and Response](#), including the [Options for Confidentially Disclosing Sexual Violence](#).

SUNY Cobleskill will comply with law enforcement requests for cooperation, and such cooperation may require the campus to temporarily delay the fact-finding aspect of an investigation while the law enforcement agency is in the process of gathering evidence. The campus will resume its investigation as soon as it is notified by the law enforcement agency that it has completed the evidence gathering process. SUNY Cobleskill will implement appropriate interim steps during the law enforcement agency's investigation period to provide for the safety of the victim(s) and the campus community, as described below.

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

During any portion of the procedures detailed hereafter, the parties shall not employ audio or video taping devices. Complaints and investigations will be kept confidential to the extent possible.

Retaliation against a person who files a complaint, serves as a witness, or assists or participates in any manner in this procedure, is strictly prohibited and may result in disciplinary action. Retaliation is an adverse action taken against an individual as a result of complaining about unlawful discrimination or harassment, exercising a legal right, and/or participating in a complaint investigation as a third-party witness. Participants who experience retaliation should contact the campus AAO, and may file a complaint pursuant to these procedures.

#### *Complaint Consultation and Review*

Any student or employee, or any third party may consult with the AAO regarding potential discrimination or harassment. This initial contact may occur by telephone, email, or in person-- the latter being preferred.

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. This response may include interim measures to protect the parties during the investigation process. Interim measures will not disproportionately impact the complainant. Interim measures for students may include, but are not limited to, information about how to obtain counseling and academic assistance in the event of sexual assault, and steps to take if the accused individual lives on campus and/or attends class with the complainant. Interim measures involving employees in collective bargaining units should be determined in consultation with campus employee relations departments.

Complaints or concerns that are reported to an administrator, manager or supervisor, concerning an act of discrimination or harassment, or acts of discrimination or harassment that administrators, managers, or supervisors observe or become aware of, shall be immediately

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

### *Filing Complaints and Time Limits*

Although in limited circumstances, verbal complaints may be acted upon, the procedures set forth here rest upon the submission of a written complaint that will enable there to be a full and fair investigation of the facts. The University prefers written complaints. It is the complainant's responsibility to be certain that any complaint is filed within the applicable time limit.

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

All complaints must be submitted on the forms provided by the University (see Forms below). The Charge of Discrimination form will be used for both the initiation of complaints under the informal procedure, and the conversion of the complaint to the formal procedure. The AAO is available to assist in preparing the complaint.

As soon as reasonably possible, after the date of filing of the complaint, the AAO will mail a notice of the complaint to the filer, and a copy of the complaint to the Respondent(s).

*Employees:* Employees must file a written complaint with the AAO within 180 calendar days following the alleged discriminatory act, or the date on which the complainant first knew or reasonably should have known of such act.

*Students:* 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.

### *Complaint Contents*

The complaint shall contain:

1. The name, local and permanent address(es), telephone number(s), and status (faculty, staff, student, third party) of the complainant.
2. 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.

3. 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.
4. Identification of the status of the persons charged whether faculty, staff, or student.
5. A statement indicating whether or not the complainant has filed or reported information concerning the incidents referred to in the complaint with a non-campus 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 department or agency with which the information was filed and its address.
6. A description of any corrective or remedial action that the complainant would like to see taken.
7. Such other or supplemental information as may be requested.
8. Signature of complainant and the date complaint signed.

### *Informal Resolution*

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

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

If a resolution satisfactory to both the complainant and the respondent is reached within 24 calendar days from the filing of the complaint, through the efforts of the AAO, the officer shall close the case, sending a written notice to that effect to the complainant and respondent. The written notice, a copy of which shall be attached to the original complaint form in the officer's file, shall contain the terms of any agreement reached by complainant and respondent, and shall be signed and dated by the complainant, the respondent and the AAO. (See Forms for the Memorandum: Status - Resolved form)

If the AAO is unable to resolve the complaint to the mutual satisfaction of the complainant and respondent within 24 calendar days from the filing of the complaint, the AAO shall so notify the complainant. The AAO shall again advise the complainant of his or her right to proceed to the next step internally, and/or the right to separately file with appropriate external enforcement agencies.

The time limitations set forth above may be extended by mutual agreement of the complainant and respondent with the approval of the AAO. Such extension shall be confirmed in writing by

the complainant and respondent. The AAO will also have the discretion to reasonably extend the deadlines if an investigation is deemed complex.

The complainant may elect to end the informal resolution process, and proceed to the formal resolution procedure, at any time after the Charge of Discrimination form is filed.

### *Formal Resolution*

The formal complaint proceeding is commenced by the filing of a complaint form as described above. The 180 day time limit also applies to the filing of a formal complaint. If the complainant first pursued the informal process, and subsequently wishes to pursue a formal complaint, he/she may do so by checking the appropriate box, and signing and dating the complaint form.

The complaint, together with a statement from the AAO indicating that informal resolution was not possible, if applicable, shall be forwarded to the chairperson of the campus affirmative action committee within 7 calendar days from the filing of the formal complaint. If an informal resolution was not pursued, the AAO shall forward the complaint to the chairperson of the campus affirmative action committee within 7 calendar days from the filing of the complaint.

*Notice to Parties:* Upon receipt of a complaint, the AAO will provide an initialed, signed, date-stamped copy of the complaint to the Complainant. As soon as reasonably possible after the date of filing of the complaint, the AAO will mail a notice of complaint and a copy of the complaint to the Respondent(s). Alternatively, such notice with a copy of the complaint may be given by personal delivery, provided such delivery is made by the AAO (or designee) and, that proper proof of such delivery, including the date, time and place where such delivery occurred, is entered in the records maintained by or for the AAO.

*Tripartite Panel Selection:* Within 7 calendar days of receipt of the complaint, the chairperson of the campus affirmative action committee shall send notification to the Complainant, the Respondent and the campus president that a review of the matter shall take place by a tripartite panel to be selected by the Complainant and the Respondent from a pre-selected pool of eligible participants (Appendix B).

The tripartite panel shall consist of one member of the pre-selected pool chosen by the complainant, one member chosen by the respondent, and a third chosen by the other two designees. The panel members shall choose a chair among themselves. Selection must be completed, and written notification of designees submitted, to the chairperson of the campus affirmative action committee no later than 7 calendar days after the complainant, the respondent and the campus president received notice under paragraph four above. If the President is the Respondent, then the third member of the panel shall be selected by the Chancellor or designee at System Administration.

In the event that the procedural requirements governing the selection of the tripartite panel are not completed within 7 calendar days after notification, the chairperson of the campus affirmative action committee shall complete the selection process.

*Panel Review:* The tripartite panel shall review all relevant information, interview pertinent witnesses, and, at their discretion, hear testimony from the complainant and the respondent, if desirable. Both the complainant and the respondent(s) shall be entitled to submit written statements and/or other relevant material evidence and witnesses, and to provide rebuttal to the written record compiled by the tripartite panel. The complainant and respondent have the right to request alternative arrangements if the complainant does not want to be in the same room as the other party. These alternative arrangements must be consistent with the rights of the accused, and must enable both parties and the panel to hear each other during any hearing.

*Findings and Recommendations:* Within 15 calendar days from the completion of selection of the panel, the chairperson of the tripartite panel shall submit a summary of its findings, and the panel's recommendation(s) for further action, on a form to be provided by the AAO, to the President. The burden of proof in cases of discrimination is preponderance of the evidence. If the President is the respondent, the findings and recommendation shall be submitted to the Chancellor or their designee. When the panel transmits the summary of its Findings and the panel's recommendations to the President, the panel will also send, concurrently, copies of both the summary of its findings and recommendation(s) to the Complainant, Respondent, and the AAO.

Within 10 calendar days of receipt of the written summary, the President or designee shall issue a written statement to the complainant and respondent, indicating what action the President proposes to take. The President or designee will use the preponderance of the evidence standard. The action proposed by the President or designee, may consist of:

- a. A determination that the complaint was not substantiated; or
- b. A determination that the complaint was substantiated.
  - i. For employees (including student employees) not in a collective bargaining unit: 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.
  - ii. For students: The President may determine that sufficient information exists to refer the matter to the student judiciary, or other appropriate disciplinary panel for review, and appropriate action under the appropriate student conduct code. For examples of sanctions, please see the relevant section of the applicable student code of conduct.
  - iii. For employees in collective bargaining units: The President may determine that sufficient information exists to refer the matter to his/her designee for investigation and disciplinary action, or other action as may be appropriate under the applicable collective bargaining agreement. The disciplinary process and potential outcomes are described in the applicable collective bargaining agreements.

The action of the 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.

*Notice of outcome:* No later than 7 calendar days following issuance of the statement by the President or the Chancellor, as the case may be, the AAO shall issue a letter to the complainant and to the respondent(s) advising them that the matter, for purposes of this discrimination procedure, is closed. In cases of sex discrimination, notice of outcome will include the sanctions, as appropriate.

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

*External Agencies:* If the complainant is dissatisfied with the President's or Chancellor's decision, the complainant may elect to file a complaint with one or more state and federal agencies. The campus AAO will provide general information on state and federal guidelines and laws, as well as names and addresses of various enforcement agencies (Appendix A).

## **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 and/or serious, pervasive, or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the educational institution's programs or activities.

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

Sexual Assault is defined as a physical sexual act or acts committed against a person's will and consent or when a person is incapable of giving active consent, incapable of appraising the nature of the conduct, or incapable of declining participation in, or communicating unwillingness to engage in, a sexual act or acts. Sexual assault is an extreme form of sexual harassment.\* Sexual assault includes what is commonly known as "rape," whether forcible or non-forcible, "date rape" and "acquaintance rape." Nothing contained in this definition shall be construed to limit or, conflict with the sex offenses enumerated in Article 130 of the New York State Penal



Law, which shall be the guiding reference in determining if alleged conduct is consistent with the definition of sexual assault.

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

Sexual Harassment in the Employment Setting – unwelcome sexual advances, requests for sexual favors, or verbal or physical conduct of a sexual nature when any of the following occurs:

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

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

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

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[1] As stated above, for any complaints involving sex discrimination, the Title IX Coordinator or designee will be involved.

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## **Forms**

[Form A](#) - Charge of Discrimination

[Form B](#) - Template for Memorandum Outlining Mutual Agreement Between Parties

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## **Related Procedures**

[SUNY Policies on Sexual Violence Prevention and Response](#)

[Available on the Sexual Violence Prevention Workgroup website](#)

Includes: Definition of Affirmative Consent, Policy for Alcohol and/or Drug Use Amnesty in Sexual Violence Cases, Campus Climate Assessment Policy, Sexual Violence Victim/Survivor Bill of Rights, Sexual Violence Response Policy, Options for Confidentially Disclosing Sexual Violence, and Student Onboarding and Ongoing Education Guide

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

[SUNY Policy Doc. No. 6504, Policy on Mandatory Reporting and Prevention of Child Sexual Abuse](#)

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## Other Related Information

[SUNY Procedure Doc. No. 6503](#) - Sexual Orientation Nondiscrimination

Compliance Website pages on [Equity and Diversity](#)

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## Authority

New York State Human Rights Law, available on the [New York State Division of Human Rights website](#), or in [PDF format](#) from the same site.

[Title IX of the Education Amendments of 1972](#), Federal Law

Related guidance available with the United States Department of Education [Office for Civil Rights Publications page](#)

[All of the laws that are available on the [U.S. Equal Employment Opportunity Commission website](#), the federal agency with oversight of the laws]

- [Title VII of the Civil Rights Act of 1964](#)
- [The Age Discrimination in Employment Act of 1967](#)
- [Titles I and V of the Americans with Disabilities Act of 1990 \(ADA\)](#)
- [The Equal Pay Act of 1963](#)
- [The Pregnancy Discrimination Act](#)

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## History

This document was updated in May 2015 pursuant to a SUNY-wide compliance review with the Office for Civil Rights.

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## **Appendices**

[Appendix A](#) - External Enforcement Agencies

[Appendix B](#) - Selection and Training of Panel and Tripartite Hearing Committee