

## **Affirmative Action Officer/Title IX Coordinator**

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## **Filing a Complaint**

Any member of the campus community may speak confidentially with the AAO/Title IX Coordinator regarding potential or actual discrimination or harassment. The College will maintain a confidential record of the conversation, to the extent allowed by law. If the individual wishes to pursue a complaint, the complainant will be advised of the subsequent steps in the investigatory process.

In cases where the reporting individual wishes to discuss the matter but not proceed with the complaint investigation process, the College will maintain a confidential record of the conversation, to the extent allowed by law. It should be noted that in instances of discrimination or harassment, there may be situations where the university is legally obligated to pursue an investigation regardless of the individual's willingness to proceed. In this event, the individual will be notified, and steps identified to protect the complainant against retaliation and ensure an acceptable working or learning environment for the complainant. In instances involving allegations of serious misconduct, the matter may be referred to appropriate disciplinary channels for investigation.

Victims of sexual assault, domestic violence, dating violence, and stalking have multiple options for redress, as well as the right to obtain assistance in order to ensure they can continue to participate in College programs and activities. More information about these options and rights can be found at this link: <http://www.oldwestbury.edu/title-ix/policies-procedures>.

The complainant will be asked to complete a written [complaint form](#), and will be provided assistance in completing this form when necessary. As soon as reasonably possible after the date of filing of the complaint, the College will mail a notice of the complaint to the filer, and a copy of the complaint to the respondent(s). Failure or refusal to complete this form will not necessarily preclude investigation of the complaint. Individuals may contact the AAO/Title IX Coordinator anonymously, either for consultation or to file a complaint. It is important to note that due process considerations may limit the ability to investigate or resolve anonymous complaints.

## **REPORTING AN INCIDENT**

Complaints or concerns that are reported to an administrator, manager or supervisor concerning an act(s) of discrimination or harassment that administrators, managers, or supervisors observe or become aware of, must be immediately referred to the AAO/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 AAO/Title IX Coordinator. 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.

Early reporting and intervention have proven to be the most effective method of resolving actual or perceived incidents of harassment, discrimination or retaliation. The College strongly urges the prompt reporting of complaints or concerns so that rapid and constructive action can be taken. Individuals who have experienced conduct that they believe is contrary to the College's policies or who have concerns about such matters should contact the College's AAO/Title IX Coordinator. Reports may also be made to any member of supervision or faculty member the individual feels comfortable with, who is then obligated to report the complaint to the AAO/Title IX Coordinator. Individuals should not feel obligated to file their complaints with their immediate supervisor -- or a member of supervision -- before bringing the matter to the attention of the AAO/Title IX Coordinator.

If you disclose an incident, but wish to maintain confidentiality or do not consent to the institution's request to initiate an investigation, the AAO/Title IX Coordinator must weigh your request against the College's obligation to provide a safe, non-discriminatory environment for all members of our community, including you. Even College offices and employees who cannot guarantee confidentiality will maintain your privacy to the greatest extent possible.

### **The Investigatory Process**

The investigatory process is guided by the need to balance the remedy of unlawful discrimination and harassment with principles of fairness, due process, and privacy. Accordingly, parties to a complaint are afforded the following rights and protections to ensure a prompt, adequate, reliable and impartial investigation:

- Privacy will be maintained by the College throughout the investigatory process to the greatest extent possible, and in an effort to protect the process, the College requests parties to the complaint and third party witnesses keep information related to the complaint private. Records of conversations with parties or witnesses will not be released unless required by law or court order.
- The respondent is entitled to due process, including knowledge of the specific allegation(s) against him or her and an opportunity to respond. No presumption of wrongdoing will be made absent factual evidence.
- Complainants and respondents will each have the opportunity to identify witnesses and other evidence, notice of the evidence presented during the investigation, as well as an opportunity to explain, supplement, and/or respond to the evidence.
- All participants are protected against retaliation. If a party feels that any negative action has been taken as a result of filing a complaint or participating in a complaint investigation, this allegation will be investigated separately.

- Complainants and respondents may choose to be accompanied by a person of their choice; the College requests that these individuals maintain privacy and may not impede or interfere with the investigator's ability to obtain necessary information.
- For instances involving sexual assault, and those involving a student complaining of sexual harassment against an employee in a position of authority over the student, mediation is prohibited.
- For instances involving sex discrimination, complainants will be made aware of their Title IX rights and available resources on and off-campus, and the right, if any, to file a complaint with local law enforcement; and the potential consequences of pursuing both options (i.e., possible temporary delay of the fact-finding aspect of the College's investigation while the law enforcement agency is in the process of gathering evidence).

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

In conducting a complaint investigation, the College considers relevant laws, policies and procedures, documentation, and information obtained from the complainant, respondent, and third party witnesses. The standard of proof in complaints made under this policy is preponderance of the evidence. The following are potential outcomes of a complaint investigation:

- the matter is resolved between the parties and there are no other issues requiring College involvement
- the complainant elects to withdraw the complaint and/or requests that there be no further investigation, and there are no other factors which require continuation of the investigation
- there is insufficient evidence to support a finding of a violation of the university's policies prohibiting discrimination and/or harassment
- there is sufficient evidence to support a finding of a violation of the College's policies prohibiting discrimination and/or harassment; in this event, the AAO/Title IX Coordinator will recommend appropriate action to the supervisor or unit head to remedy such violation(s); employee or student misconduct may result in the referral of the matter through the applicable campus disciplinary mechanism(s). Disciplinary recommendations for misconduct may include, but are not limited to, a reprimand, suspension, termination or dismissal from the College. Non-disciplinary remedies for misconduct may include, but are not limited to, training, reassignment, or counseling.

For employees, disciplinary proceedings will be conducted in accordance with applicable collective bargaining agreements. Disciplinary proceedings for students will be conducted in accordance with the Code of Conduct.

### **Failure to Cooperate**

If a complainant refuses to cooperate and/or respond to requests for information in a timely manner, the College will proceed with an investigation based on the information already provided. In the event that this information does not allow for an effective investigation, the complaint will be closed with notice to the complainant.

If a respondent refuses to cooperate and/or respond in a timely manner, the AAO/Title IX Coordinator may forego completion of an investigation and may take other action he/she deems necessary and appropriate to address the situation. Failure to cooperate fully in a review of a complaint of discrimination may be grounds for discipline.

### **Other Avenues for Complaint Reporting**

A complainant may file a charge of discrimination with the appropriate state or federal enforcement agencies at any point in the process, subject to applicable time limitations. It is important to note that filing an internal complaint pursuant to the procedure may not extend the time limits established by state and federal enforcement agencies.

State and federal enforcement agencies include:

#### **New York State Division of Human Rights**

##### **Central Headquarters**

One Fordham Plaza

4th Floor

Bronx, New York 10458

Tel: (718) 741-8400, (718) 741-8332

Toll free: 1-888-392-3644

Fax: (718) 741-8322

TDD/TTY: (718) 741-8300

Email: [complaints@dhr.ny.gov](mailto:complaints@dhr.ny.gov)

##### **Long Island – Nassau County**

50 Clinton Street, Suite 301

Hempstead, New York 11550

Tel: (516) 539-6848

Fax: (516) 240-2882

Email: [complaints@dhr.ny.gov](mailto:complaints@dhr.ny.gov)

## **Long Island – Suffolk County**

State Office Building  
250 Veterans Memorial Highway, Suite 2B-49  
Hauppauge, New York 11788  
Tel: (631) 952-6434  
Fax: (516) 240-2882  
Email: [complaints@dhr.ny.gov](mailto:complaints@dhr.ny.gov)

## **EEOC**

### **New York District Office**

33 Whitehall Street, 5<sup>th</sup> Floor  
New York, NY 10004  
Tel: 1-800-669-4000  
Fax: (212) 336-3790  
TTY: 1-800-669-6820

### **Office for Civil Rights**

#### **New York Office**

32 Old Slip, 26<sup>th</sup> Floor  
New York, NY 10005-2500  
Tel: (646) 428-3900  
Fax: (646) 428-3843  
TDD: 1-800-877-8339  
Email: [OCR.NewYork@ed.gov](mailto:OCR.NewYork@ed.gov)

## **DEFINITIONS**

Sex discrimination is illegal under federal, state and local laws. This includes but is not limited to sexual harassment; sexual assault; and sexual violence by employees, students or third parties. Harassment on the basis of any other protected characteristic is also strictly prohibited.

**Hostile environment** harassment 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 (1) interfere with or limit the ability of an individual to participate in or benefit from the educational institution's programs or activities; (2) has the purpose or effect of creating an intimidating, hostile or offensive work or study environment; or (3) otherwise adversely affects an individual's employment or learning opportunities.

**Quid pro quo harassment** occurs when unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature are made; for example: (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic treatment; (2) submission to or rejection of such conduct by an individual is used as the

basis for employment or academic decisions affecting such individual; or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work or study performance or creating an intimidating, hostile or offensive working or learning environment.

Sexual harassment may include a range of subtle and not so subtle behaviors and may involve individuals of the same or different gender. Depending on the circumstances, these behaviors may include, but are not limited to: unwanted sexual advances or requests for sexual favors; sexual jokes and innuendo; verbal abuse of a sexual nature; commentary about an individual's body, sexual prowess or sexual deficiencies; leering, catcalls or touching; insulting or obscene comments or gestures; display or circulation on the campus of sexually suggestive objects or pictures (including through e-mail); and other physical, verbal or visual conduct of a sexual nature.

Harassing conduct includes, but is not limited to: epithets, slurs or negative stereotyping; threatening, intimidating or hostile acts; denigrating jokes and display or circulation on the campus of written or graphic material that denigrates or shows hostility or aversion toward an individual or group (including through e-mail).

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

**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," "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.

**Preponderance of the evidence** is the standard of proof in sexual harassment and sexual assault cases. The evidence presented must show that is "more likely than not" that the sexual harassment or sexual violence occurred for the accused to be found responsible.

#### **RELATED DOCUMENTS AND LINKS:**

[Statement of Charge Complaint Form](#)

[Sexual Violence Response Policy](#)

[Options for Confidentially Disclosing Sexual Violence](#)

[Student Code of Conduct](#)

[Students' Bill of Rights](#)

[Where to Get Help/Resources](#)

[Sex Crimes Information](#)

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