



**UNIVERSITY AT BUFFALO  
STATE UNIVERSITY OF NEW YORK**

**SEXUAL HARASSMENT POLICY AND PROCEDURES**

**Equity, Diversity, &  
Affirmative Action Administration  
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# UNIVERSITY AT BUFFALO, THE STATE UNIVERSITY OF NEW YORK SEXUAL HARASSMENT POLICY AND PROCEDURES

## I. PURPOSE

Sexual harassment is demeaning, degrading, and illegal. It affects an individual's self-esteem, and can have a negative impact on an individual's work or academic performance. This document states the policy of the State University of New York at Buffalo (UB) on sexual harassment and describes the options and resources available to all persons who participate in university programs and activities for resolution of sexual harassment problems. It includes procedures for UB officials to follow in receiving, reporting, and referring complaints and identifies existing policies for university discipline/corrective action that apply in matters of sexual harassment. This policy reflects UB's determination to deal firmly and fairly with all occurrences through the framework of local reporting procedures and the application of existing policies.

## II. DEFINITIONS

### A. Sexual Harassment

The University definition of sexual harassment is based on Equal Employment Opportunity Commission (EEOC) and Office of Civil Rights (OCR) regulations and is as follows:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

1. Submission to or enduring such conduct when rejected is made either explicitly or implicitly a term or condition of instruction, employment, or participating in other University activity; or
2. Submission to or rejection of such conduct by an individual is used as a basis for evaluation in making academic or personnel decisions affecting an individual; or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's performance or creating an intimidating, hostile, or offensive University environment.

In determining whether conduct constitutes harassment, consideration will be given to the record as a whole and to the totality of circumstances, including the nature of the sexual advances and the context in which the incidents occurred.

Certain behavior can be classified as sexual harassment even if a relationship appears voluntary in the sense that one was not coerced into participating. A central element in the definition of sexual harassment is that the behavior is unwelcome.

Some acts or practices that have the effect of discouraging individuals of either sex from pursuing academic or professional interests may not constitute sexual harassment because they are not sexual in nature. Such acts may nevertheless constitute illegal sex discrimination if the behavior is directed toward members of one sex and not the other.

Sexual harassment can take different forms, and the determination of what constitutes sexual harassment will vary according to the particular circumstances. Note: sexual harassment may involve behavior by a person of either sex against a person of the same or opposite sex. Harassment that is sexual in content is always actionable regardless of the harasser's sex, sexual orientation or motivations.

Examples of sexual harassment may include but are not limited to:

1. Seeking sexual favors or relationships in return for the promise of a favorable grade or other academic opportunity; or
2. Conditioning an employment-related action (such as hiring, promotion, salary increase, or performance appraisal) on a sexual favor or relationship; or
3. 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, or co-workers or student peers, that unreasonably interfere with the ability of a person to perform his or her employment or academic responsibilities.

The first two examples illustrate what is characterized as the "quid pro quo" form of sexual harassment. The third example illustrates the "hostile environment" form of sexual harassment. "Hostile environment" sexual harassment is unwelcome sexual behavior toward another employee or a student that is sufficiently severe or pervasive to alter the conditions of the victim's employment or academic pursuits and create a work or educational environment that a reasonable person would find abusive. (This explanation of "hostile environment" sexual harassment is based on U.S. Supreme Court decisions. See, e.g., *Meritor Savings Bank, FSB v Vinson* 477 U.S. 57, 67 (1986)).

Isolated instances, e.g., a sexual overture, comment, or joke, ordinarily will not constitute sexual harassment unless the circumstances are egregious. Nor does such sexual behavior constitute harassment if it is welcomed (i.e., voluntary and consensual).

Speech occurring in an instructional or research context is covered by academic freedom principles. Academic freedom is protected in both the Policies of the Board of Trustees (Policies, Article XI, Title I) and the State-UUP Agreement (1995-1999 Agreement, Article 9). Both provisions speak of and protect the right of faculty to "without limitation, discuss their own subject in the classroom." However, the right is not without limitation, as speech, that has no relation to the subject being taught and does not advance any valid educational objectives would not be held to be protected by academic freedom. The question of whether particular speech meets that standard must be decided on a case by case basis.

Employees and students who believe they are being sexually harassed are encouraged to refer to Office of Equity, Diversity and Affirmative Action Administration (EDAAA) brochures on sexual harassment for additional information and definitions.

**B. Sexual Harassment Complaint**

A sexual harassment complaint shall be defined as any meeting or discussion between the complainant and a University official (see below), the purpose of which is to inform the University that sexual harassment may be occurring and to provide information sufficient to identify the accused. Once this meeting or discussion has occurred, the University is considered by law to be "on notice" and may be required to investigate such a complaint.

A complaint is an allegation of a violation of University policy. Until an investigation process has been completed, no inferences can be drawn as to the truth or falsity of the allegation.

A University official is any person charged with the responsibility for preventing, investigating, resolving or reporting sexual harassment complaints (e.g., The Director, Associate and Assistant Directors of the Office of Equity, Diversity and Affirmative Action Administration (EDAAA), Sexual Harassment Information Advisor, Employee Relations Specialist, Supervisor, Department Head, Dean, Vice President).

**C. Sexual Harassment Information Advisors**

Sexual Harassment Information Advisors are university personnel who have received extensive sexual harassment training, conducted by the Director of EDAAA, to act as educators and trainers on sexual harassment.

Vice Presidents, Deans and Senior Administrative Officers will designate an individual to serve as the Sexual Harassment Information Advisor in their respective areas to provide general information to anyone with concerns regarding sexual harassment.

The primary responsibilities of the Sexual Harassment Information Advisor are information dissemination and education; to act as a resource for faculty, staff and students on issues of sexual harassment; to provide information regarding questions or concerns about sexual harassment; and to direct individuals to the EDAAA office for a more in-depth assessment of situations or concerns brought to their attention.

Sexual Harassment Information Advisors' activities are supervised by the Director of the Office of Equity, Diversity and Affirmative Action Administration (EDAAA).

Sexual Harassment Information Advisors are not authorized to conduct investigations, nor will they maintain records of confidential discussions.

### **III. GENERAL POLICY STATEMENT**

The University at Buffalo is committed to creating and maintaining a community in which all persons who participate in University programs and activities can work together in an atmosphere free of all forms of harassment, exploitation, or intimidation, including sexual. Specifically, every member of the University community should be aware that the University is strongly opposed to sexual harassment and that such behavior is prohibited both by law and by University policy. Retaliation is also prohibited toward an individual on the basis of his/her filing a complaint of sexual harassment. It is the intention and responsibility of the University to prevent, correct, and, if necessary, discipline behavior that violates this policy. Discipline may include suspension or termination where appropriate. Programmatically the University will provide appropriate education and training with respect to the meaning, significance and impact of sexual harassment for all University faculty, staff, and students.

#### **A. Assignment of Responsibility**

1. President, Provost, Senior Vice President, Vice Presidents, Deans, Directors, Department Heads, Supervisors and Managers.
  - a. It is the responsibility of these officials to prevent sexual harassment if possible and correct it where it occurs. This responsibility includes taking disciplinary and/or corrective action when appropriate.
  - b. It is the responsibility of these officials to provide information to their employees, staff, faculty, and students regarding the procedures and resources described in this document. Because of the serious and sensitive nature of sexual harassment and the developing case law in this area, persons with inquiries or

complaints should be referred to the EDAAA Office. When issues relating to sexual harassment are brought to their attention, University officials should refer to this policy and call the EDAAA Office for assistance.

2. The Director of EDAAA has overall responsibility for the administration of these policies, for investigation of allegations of sexual harassment, for the conduct of formal sexual harassment resolution proceedings, and for supervision of the activities of the Sexual Harassment Information Advisors. The EDAAA Director and the EDAAA Associates are available at all times to assist in handling complaints.

**B. Education**

Promoting awareness of the definition and consequences of sexual harassment is an essential element of this policy. Programs will be developed and implemented to educate members of the UB community to the nature and seriousness of this offense; to promote awareness and prevention; and to identify appropriate procedural processes to address sexual harassment offenses. The intent of the policy is to inform all persons who participate in University programs and activities about their right to file a harassment complaint and the procedures for doing so if there is an infringement upon that right.

The Director of EDAAA shall develop, coordinate and implement training for Sexual Harassment Information Advisors and other persons involved in counseling, investigating or adjudicating sexual harassment complaints under this policy.

**C. Protection from Retaliation for Complaining Party and Witnesses**

Federal and State law and University policy prohibits any form of retaliation against a person who files a discrimination complaint, including a charge of sexual harassment. It is the responsibility of the Director and designated Investigators from EDAAA to state clearly to the charged party that any form of retaliation against a person for having filed a complaint is expressly prohibited and will result in serious disciplinary sanctions. This protection from retaliation similarly applies to persons who participate as witnesses in discrimination investigations or adjudicatory proceedings.

**D. Charged Party: Protection from Bad Faith Complaints**

In the interest of protecting charged parties from bad faith complaints, if the investigation by the Director of EDAAA (or designated Investigators of the Office of EDAAA or the Investigation Panel which are conducted under the auspices of the Director of EDAAA) reveals that the complaint is malicious, or knowingly false, or fundamentally frivolous, the Director of EDAAA shall

dismiss such charges and the investigation will be promptly terminated. As with any complaint brought in bad faith, the aggrieved party may resort to any applicable grievance procedure. In addition, the administration reserves the right to consider and ultimately commence disciplinary action against anyone who egregiously misuses the process.

**E. Confidentiality**

All individuals who are involved in the complaint reporting, informal resolutions and investigative process are required to maintain confidentiality of the proceedings and not reveal any information that they learn in the course of these proceedings.

Persons seeking information on a situation or behavior that may constitute sexual harassment should be aware of the following: If the person making the inquiry wishes to ensure that the discussion remains completely confidential and that no action is taken unless he/she wishes to pursue the matter, it is essential that the inquiry or request for information remain non-specific and the person making the inquiry not disclose information sufficient to identify the accused. This is necessary because the University is legally obligated to investigate, even without the inquirer's consent, once it is informed that harassment may be occurring.

Once the person discloses information sufficient to identify the accused, he/she will be considered to have filed a complaint with the University. The confidentiality of the information received, the privacy of the individuals involved, and the wishes of the complainant regarding action by the University cannot be guaranteed, but will be protected to as great a degree as is legally possible. While the expressed wishes of the complainant regarding confidentiality will be considered, they must be weighed against the responsibility of the University to act upon the information and the right of the charged party to receive information about the allegations.

When a complainant requests an informal review, the names of the involved individuals and units must be identified to the EDAAA Investigator. If a decision is made to go forward with an informal review, the charged party has a right to the name of the complainant and the charge. Non-complaining parties, e.g., witnesses, will not be disclosed and the privacy interests of these non-complaining parties will be protected. If a formal grievance is later filed, access to documents is governed by law and by regulations established pursuant to the specific procedure being implemented.

**IV. COMPLAINT PROCEDURES**

Employees and students may seek resolution through the Office of EDAAA. Employees and students are also encouraged to seek information from any Sexual Harassment Information Advisor, their Supervisors, Department Chairs, or other

University officials. Employees and students also retain the right to seek resolution through external alternatives such as agencies of the federal or state government or, for those to whom they are applicable, the sexual harassment procedures of the Graduate Medical and Dental Education Consortium of Buffalo.

**A. Complaint Reporting**

Any faculty member, staff employee, or student who believes she/he has been victimized by sexual harassment is encouraged to promptly confer with a Sexual Harassment Information Advisor or directly contact the EDAAA Office.

In the event a situation occurs that warrants immediate action during non-business hours (weekends, evenings and at night) the complainant should contact Public Safety for assistance (645-2222).

The Director of EDAAA reports to the President and is charged with the implementation of the University's non-discrimination obligations. The Director has the primary responsibility of accepting and processing discrimination complaints, including complaints charging a faculty member, staff employee or student with sexual harassment. Complaints initially made to other University officers or personnel must be reported by the official or personnel to the Director of EDAAA. Efforts to resolve complaints through informal intervention, mediation or investigation will be undertaken impartially and in as prompt and as confidential a manner as possible.

In the event an informal or formal complaint is filed against the Provost, Sr. Vice President, or a Vice President, the Director of EDAAA will conduct an investigation, consult with SUNY Counsel and report the findings to the President.

In the event an informal complaint is filed against the President, the Director of EDAAA will conduct an investigation and consult with SUNY Counsel for a resolution. If a formal complaint is filed against the President, the Director of EDAAA and SUNY Counsel will conduct an investigation and Chairperson of UB Council will be notified.

*Caution:* Complaints will ordinarily be investigated only when the complaining party so elects. In extraordinary circumstances, however, the Director of EDAAA may determine to investigate serious allegations brought to his/her attention, even when the affected party is reluctant to pursue such charges. Pending completion of the investigation, the Director of EDAAA may also recommend to the appropriate University official such interim steps as deemed necessary to protect the safety, well being, and the privacy of the complainant, the accused and any other member of the University community that may be directly or indirectly involved in the investigation.

If the alleged harassment is deemed to be criminal behavior, the Director or Associates of EDAAA will notify the Director of Public Safety of the situation and request Public Safety's assistance and involvement. Jurisdiction of the case may then fall under the auspices of Public Safety and not the EDAAA Office. The role of the Director or Associates of EDAAA will be one of collaboration and support if warranted.

#### Time Period for Filing a Complaint

Prompt reporting of a complaint, before the behavior becomes severe or pervasive, is strongly encouraged. This will allow for a rapid response to and resolution of the objectionable behavior. Ordinarily, complaints should be filed with the Director of EDAAA within one year after the last act occurred. In instances involving a student complaint against a faculty member charging harassing behavior that occurred in the context of a subordinate-supervisor academic relationship (e.g., teaching, advising, thesis or dissertation supervision, coaching, or clinical medical supervision), the time period may be extended until one (1) year after the student is no longer under the faculty member's academic or clinical medical supervision or three (3) years from the date the most recent alleged harassing behavior occurred, whichever is earlier.

*Caution:* Absent exceptional circumstances, the complaining party's failure to file a complaint within the relevant limitation period will lead to dismissal of the complaint.

#### Election to File Internally Versus Externally

The Director of EDAAA is the University official responsible for accepting and handling complaints of discrimination, including sexual harassment. The complaining party is encouraged to have the complaint investigated and mediated internally in accordance with these procedures. Once notified, the University will take immediate and appropriate corrective action when it determines that harassment has occurred. The complaining party is free at any time (before or after the filing of a complaint with the Director of EDAAA) to file a charge or institute formal proceedings before a Federal or State agency authorized by law to investigate such claims. If a formal proceeding before a Federal or State agency is instituted or a lawsuit is filed, the Director of EDAAA will proceed in the manner most appropriate under the circumstances, understanding that the University's role may be altered from independent investigator to a respondent or defendant.

### **B. Informal Complaint Resolution**

Sexual harassment complainants have the option of pursuing informal complaint resolution through the Office of EDAAA. The Sexual Harassment Information Advisor or the University official who received the sexual harassment complaint

must refer all complaints to the Director of EDAAA for disposition. The informal sexual harassment complaint resolution process is limited to voluntary resolution of complaints agreed to by both parties.

The procedures for informal complaint resolution are as follows:

1. Ideally the informal review should be completed within 15 days. The Director of EDAAA may extend that period due to extenuating circumstances or if the Director believes that given additional time, a resolution can be achieved.
2. The EDAAA staff investigator will interview parties relevant to the complaint (complainant, accused, witnesses if any, other third party persons who can provide information pertinent to the complaint); collect and review information; record results of their preliminary review; offer information and advice, and attempt to achieve voluntary resolution of complaints. Voluntary resolution may include, but is not limited to:
  - a. Counseling and training of the accused and/or complainant if appropriate;
  - b. Apology by the accused, if appropriate;
  - c. Academic or non-academic reassignment to minimize contact between the parties (assignment to another section, course, academic advisor, work supervisor, dormitory, work area, supervisor, etc.);
  - d. In the event that inappropriate behavior has been deemed to exist, solicitation of assurances that the inappropriate behavior will cease.
3. The review is completed when the Director of EDAAA or the designated EDAAA Associate sends written confirmation to the complainant and the accused that informal efforts to resolve the complaint have been concluded.

This will occur when:

- a. The complainant determines that the issue has been resolved satisfactorily; or
- b. Either the complainant or the EDAAA Investigator feels that efforts to resolve the complaint by informal means are no longer desirable or productive; or

- c. The EDAAA Investigator determines that the complaint involves conduct that does not meet the definition of sexual harassment (e.g., involves conduct of a completely non-sexual nature) and thus is not appropriate for resolution under these procedures; or
  - d. The EDAAA Investigator's decision results in a factual determination that sexual harassment has not occurred (a "no cause" finding). The decision will include, if appropriate, reasonable steps to restore the reputation of the accused party, such as expungement of records, and unless the charged party otherwise requests, notification to persons who participated in the investigation of the complaint.
4. If the investigation reveals that the complaint is malicious, or knowingly false, or fundamentally frivolous, the EDAAA Director or designated EDAAA Investigator shall dismiss such charges and the investigation will be promptly terminated (see page 5, D: Protection from Bad Faith Complaints).

**C. Formal Complaint Resolution**

If either party is dissatisfied with the outcome of the informal complaint resolution process, or if either party elects to proceed directly to the formal complaint investigation process, then the Director of EDAAA initiates that process. Electing this process does not preclude resorting at this stage or later to other remedies external to this procedure.

All parties to a complaint will be assured of their right to due process.

This formal complaint process differs from the informal process in several respects: The investigation reports, documentation and written records summarizing the statements of the complaining party, charged party, and any witnesses may be used as documentation for the formal investigation and for any corrective actions recommended to the appropriate University official. Involuntary disciplinary sanctions may result.

Final adjudication for a "cause" finding in a formal complaint of sexually harassing or threatening behavior by an undergraduate student or graduate student that is non-employment related will be processed in accordance with the student conduct rules and procedures. However, student complaints related to the conduct of their particular graduate or undergraduate teaching or research assistants, arising in the performance of assigned academic duties, will be processed in accordance with the employee procedures set forth in this document.

1. Purpose and Scope of Investigation

The formal complaint resolution process begins with an investigation into the facts. A three-person panel selected in accordance with procedures described below will conduct the fact-finding process. This formal complaint process should be conducted and completed as expeditiously as possible, preferably within 30 calendar days from the initiation of the formal complaint. The co-investigators will preside over and determine the scope of an investigation. The purpose of the investigation is to make a reasonable determination as to the merits of the sexual harassment allegations. In making their determination, the co-investigators will apply the conventional "preponderance of the evidence" standard - proof which leads the finder of fact to find that the existence of the contested fact is more probable than its nonexistence.

The investigation process will not be open to the public. During the proceedings the charged party will have the right to confront and cross-examine adverse witnesses. The complaining and charged parties will be provided records of the informal investigation upon request. The complaining and charged parties are free to seek the advice of advisors (including attorneys, union representatives and/or student advocates) throughout the investigative process. Such representatives may accompany their clients or advisees during the investigation process; however, they may not address the investigation panel. If required by the relevant union contracts[s] and desired by the persons involved, the complaining and charged parties' union representatives, if any, will be notified of the initiation of proceedings under this subsection.

In addition to interviewing the parties, the co-investigators may interview witnesses and gather whatever additional information, such as records and documents, they deem necessary to present their findings and recommendations in the investigative report.

2. Investigators

In the event the parties to the complaint are from different segments of the University community, e.g. faculty/staff v. students or student v. faculty/staff, the investigative panel will be selected from the standing committee of the accused party's peer group (e.g., if the accused is a faculty/staff member, the panel will be drawn from the faculty/staff standing committee).

3. Employees including Graduate and Teaching Assistants.

In accordance with SUNY policy: Revised Grievance Procedure for Review of Allegation of Discrimination, The President's Equal Opportunity and Affirmative Action Committee is responsible for forming and maintaining a pre-selected standing committee of faculty, staff, and

graduate students to serve as the pool from which a three-person panel is selected to conduct investigations of discrimination. The committee will receive extensive training regarding sexual harassment laws, investigations and resolution processes. Training will be conducted by the Director of the Office of EDAAA or a consultant.

#### Student Investigators

Student Investigators will be selected from ten members of the Student Wide Judiciary who have completed the sexual harassment training program conducted by the Director of EDAAA. Membership will include representation from both Graduate and Undergraduate students.

The Director or an Associate from the Office of EDAAA will sit as a liaison to the three-member student investigation panel. The liaison will not have voting privileges.

#### 4. Selection of Co-Investigators

The three-person panel that conducts the investigation and prepares the investigation report will be comprised of a staff member from the Office of EDAAA and two members of the standing committee.

Each party to the complaint may select three (3) nominees from the list of persons serving on the standing committee. The Provost (if the charged party is a member of the faculty or a GA/TA) or Senior Vice President (if the charged party is a staff employee) shall select one person from each party's list to serve as investigators.

#### Student Co-Investigators

Three student investigators will be selected from ten members of the Student Wide Judiciary who have completed the sexual harassment training program conducted by the Director of EDAAA. Membership will include representation from both Graduate and Undergraduate students.

Each party to the complaint may select three (3) nominees from the list of persons serving on the standing committee. The Vice President for Student Affairs shall select one person from each party's list to serve as investigators and appoint the third member from the SWJ members who were not nominated by either party.

Both complainant and accused may challenge a nominee for cause.

#### 5. Challenge for Cause

The complainant and the accused may challenge a nominee for cause. In the event either party has a justifiable reason for opposing the selection of a particular investigator, they may submit a rationale for the opposition to the selecting party (Provost or Sr. Vice President) for review and

reconsideration. In consultation with the Director of EDAAA, a decision will be rendered as to whether the reason provided justifies a change.

Example of a justifiable reason to challenge a selection:

The complainant or the accused and the selected investigator are known to be closely associated; thus a fair and impartial investigation may not be rendered.

6. Consultation

Whenever an investigation is conducted, the Provost, Senior Vice President, Vice President for Student Affairs and the University Counsel may be consulted, as necessary.

7. Investigation Report

At the conclusion of the investigation, the co-investigators will prepare a written report explaining the scope of the investigation and render a determination as to the merits of the sexual harassment allegations. In the event of split decisions, a majority vote of two (2) shall constitute the official determination. The co-investigators' determination must be based on preponderance of the evidence – proof, which leads the finder of fact to find that the existence of the contested fact is more probable than its nonexistence.

The Director of EDAAA will forward the investigation report in confidence to the Provost (if a faculty member is the charged party), Senior Vice President (if a staff employee is the charged party), or Vice President for Student Affairs (if a student is the charged party). The Provost, Sr. Vice President or Vice President for Student Affairs may also have access to the entire record on which the investigation report is based.

If the investigation results in a factual determination that the sexual harassment allegations have merit (a “cause” finding), then the report will include recommendations concerning corrective actions or disciplinary sanctions to be taken against the charged party and specific make-whole provisions for the benefit of the complaining party where appropriate.

8. Disposition of Complaint

After receiving the report of the investigation, the Provost, Senior Vice President, or Vice President for Student Affairs may accept the findings as reported, or may request further investigation into the allegation.

Prior to making a decision with respect to findings or recommendations in the report, the Provost, Senior Vice President or Vice President for Student Affairs must first forward the report to the complaining party and the charged party, and provide both parties a reasonable opportunity to submit written comments (within ten calendar days). The Provost, Senior

Vice President or Vice President for Student Affairs should complete their review and determination within ten (10) calendar days of receiving any such written comments.

The Provost, Senior Vice President or Vice President for Student Affairs may also confidentially consult with the University Counsel concerning the sufficiency of the investigation, the factual findings, and the related recommendations (if any); and with the charged party's supervisor or department head if disciplinary actions are recommended. The final disposition will depend upon the nature of the findings in the investigation report and the employment status of the charged party, as explained below.

9. "No Cause" Finding

If the decision of the Provost, Senior Vice President or Vice President for Student Affairs affirms a factual determination that sexual harassment has not occurred, the University's internal complaint resolution process is concluded. The charged party and the complainant will be informed of the determination. The complaining party will be informed of his or her rights with regard to other external avenues of complaint processing.

10. "Cause" Finding – Uncontested

If the charged party does not contest a "cause" finding and the recommended corrective action(s), the Provost, Senior Vice President, or Vice President for Student Affairs may determine to accept the report and notify the parties that the complaint resolution is concluded (subject to implementation of and compliance with the corrective actions).

The Provost, Senior Vice President or Vice President for Student Affairs may accept an uncontested "cause" finding, but may suggest modifications to the recommended sanction(s) to the Panel.

11. "Cause" Finding – Contested

A formal investigation procedure may result in disciplinary or corrective action that may entitle the accused party to invoke personnel or student grievance policies and procedures or collective bargaining agreement grievance procedures. Additional information is available from designated staff in the Human Resources Services offices on campus, Office of the Provost, Office of Faculty and Professional Staff Senate, the Office of the Vice President for Student Affairs, and the Union Offices.

**D. Disciplinary Action**

Following appropriate procedures as provided by University policies, and pursuant to the appropriate administrator's authority for disciplinary actions, the

responsible administrative authority may initiate disciplinary action against the accused.

Disciplinary and/or corrective action taken against University employees will be in accordance with the applicable personnel policies and procedures or collective bargaining agreement. If discipline/corrective action is taken, the person disciplined has the right to file a grievance under the procedure appropriate to his/her status alleging that the discipline/corrective action was unreasonable under the circumstances or that applicable policies or contractual provisions were violated.

Disciplinary and/or corrective action taken against University students will be in accord with the applicable UB Student Conduct Rules University Standards and Administrative Regulations.

## **V. RECORDS**

1. A file, containing investigative reports and other documents relevant to complaints, both informal and formal, will be maintained by the Director of the Office of EDAAA. These files will be maintained separately from other employee personnel files.
2. When the complainant chooses not to identify herself/himself or others, or not to request the assistance of the University in resolving the issue, the only document maintained will be the information/situation report, which will be retained for three years.
3. Records of investigated complaints in which sexual harassment is factually determined not to have occurred (i.e., “no cause” findings) will be confidentially maintained for a period of three years, or until the conclusion of any external agency investigation or legal action.
4. Records of complaints which, following investigation, resulted in a factual determination that sexual harassment had occurred (i.e., “cause” findings) will be maintained permanently.

Access to such records is strictly limited to University officials directly involved in the investigation, adjudication or implementation of the complaint resolution process.

## **VI. RESOURCES AND REFERENCES**

Education and training programs for faculty, staff, students, medical residents, department heads, supervisors and managers can be arranged by contacting the EDAAA office or the appropriate Sexual Harassment Advisors. Information regarding the policy and a list of Sexual Harassment Information Advisors are

available in departments or through the EDAAA office. Questions may be directed to the Office of EDAAA (645-2266).

### **Federal and State Regulations**

Sexual harassment is prohibited by law and by governmental agency regulations. These regulations are rigorous and subject the University to substantial liability if it fails to take positive action to prevent and resolve such behavior.

1. ***EEOC Title VII*** regulations state that an employer is responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or even forbidden by the employer, and regardless of whether the employer knew or should have known of their occurrence. They also state that "an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate administrative action." The EEOC will examine the circumstances of the particular employment relationship and the job functions performed by the individual in determining whether an individual acts in either a supervisory or agency capacity. Supervisors and other University officials are responsible for knowing these regulations and being informed of the procedures to be used when acts of sex discrimination or sexual harassment are alleged.
2. These standards are also applied as they relate to ***Title IX regulations of the Education Amendment of 1972***, which prohibit discrimination in any Federally funded higher education program.
3. ***The New York Human Rights Law, NY Exec. Law 290-301 (1982 & Supp. 1991)*** prohibits discrimination in employment based on sex. The law also prohibits any employer, labor organization, employment agency or person from discriminating or retaliating against an individual because that individual has opposed any practice forbidden under the law or because the individual has filed a complaint, testified or assisted in any proceeding concerning an unlawful practice under the law.
4. ***New York Executive Order No. 19 (May 31, 1983)*** directs the heads of each department, agency, commission, board, or other state entity to take preventive affirmative action against sexual harassment, which is defined as unwelcome sexual advances, request for sexual favors, and sexually motivated physical conduct or other verbal or physical conduct of a sexual nature.

5. *New York CLS Penal Law 240.25* prohibits harassment on the basis of sex, race, national origin, color, creed, marital status or disability.

## **VII. RELATED POLICIES**

1. SUNY Grievance Procedures for Review of Allegations of Discrimination
2. UB Faculty/Staff Handbook
3. Research Foundation Procedures for Resolving Allegations of Discrimination
4. Research Foundation Sexual Harassment Policy
5. Graduate Medical and Dental Education Consortium of Buffalo, Policy Against Sexual Harassment and Internal Complaint and Resolution Process
6. UB Student Handbook
7. EEOC Guidelines on Discrimination Because of Sex, U.S. Code of Federal Regulations 29, Part 1604.11 Sexual Harassment, 1989