

## SUNY Ulster Board Policy Manual

| Policy Section |                                                |
|----------------|------------------------------------------------|
| <b>4.13</b>    | <b>SEXUAL HARASSMENT POLICY AND PROCEDURES</b> |

Approval Date: April 20, 2004

### 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 SUNY Ulster on sexual harassment and describes the options and resources available to all persons who participate in college programs and activities for resolution of sexual harassment problems. It includes procedures for officials to follow in receiving, reporting, and referring complaints and identifies existing policies for college discipline/corrective action that apply in matters of sexual harassment. This policy reflects SUNY Ulster'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

It is a violation of College policy for any member of the College community to engage in sexual harassment or to retaliate against any member of the College community for raising an allegation of sexual harassment, for filing a complaint alleging sexual harassment, or for participating in any proceeding to determine if sexual harassment has occurred.

Sexual harassment of employees and students, as defined below, is contrary to SUNY Ulster policy and is a violation of Federal and State laws and regulations. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- 1). Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or academic standing;
- 2). Submission to or rejection of such conduct by an individual is used as a basis for employment or education decisions affecting such individual; or
- 3). Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working or educational environment.

Sexual harassment can occur between individuals of different sexes or of the same sex. Although sexual harassment most often exploits a relationship between individuals of unequal power (such as between faculty/staff member and student, supervisor and supervisee, or tenured and untenured faculty members), it may also occur between individuals of equal power (such as between fellow students or co-workers), or in some circumstances even where it appears that the harasser has less power than the individual harassed (for example, a student sexually harassing a faculty member). It may also occur between the college's faculty, staff or students and third party vendors. A lack of intent to harass may be relevant to, but will not be determinative of, whether sexual harassment has occurred.

### Examples of Sexual Harassment

Sexual harassment may take different forms. Using a person's response to a request for sexual favors as a basis for an academic or employment decision is one form of sexual harassment. Examples of this type of sexual harassment (known as *quid pro quo* harassment) include, but are not limited to, the following:

- Requesting or demanding sexual favors in exchange for employment or academic opportunities (such as hiring, promotions, grades, or recommendations);
- Submitting unfair or inaccurate job or academic evaluations or grades, or denying training, promotion, or access to any other employment or academic opportunity, because sexual advances have been rejected.

Other types of unwelcome conduct of a sexual nature can also constitute sexual harassment, if sufficiently severe or pervasive that the recipient does find, and a reasonable person would find, that an intimidating, hostile, or abusive work or academic environment has been created. Examples of this kind of sexual harassment (known as *hostile environment* harassment) include, but are not limited to, the following:

- Sexual comments, teasing, or jokes;
- Sexual slurs, demeaning epithets, derogatory statements, or other verbal abuse;
- Graphic or sexually suggestive comments about an individual's attire or body;
- Inquiries or discussions about sexual activities;
- Pressure to accept social invitations, to meet privately, to date, or to have sexual relations;
- Sexually suggestive letters or other written materials;
- Sexual touching, brushing up against another in a sexual manner, graphic or sexually suggestive gestures, cornering, pinching, grabbing, kissing, or fondling;
- Sexual violence, which refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent due to the victim's age, disability, use of drugs or alcohol. A number of different acts

fall into the category of sexual violence, including rape, sexual assault, sexual battery, and sexual coercion, and

- Gender-based harassment, which may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature.

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 by the Policies of the Board of Trustees. Academic freedom speaks of and protects 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.

## **B. Consensual Relationships**

Amorous, dating or sexual relationships that might be appropriate in other circumstances have inherent dangers when they occur between a faculty member, supervisor or other member of the college community and any person for whom they have a professional responsibility. These dangers can include: that students or employees may feel coerced into an unwanted relationship because they fear that refusal to enter into the relationship will adversely affect their education or employment; that conflicts of interest may arise when a faculty member, supervisor or other member of the college community is required to evaluate the work or make personnel or academic decisions with respect to an individual with whom they are having a romantic relationship; that students or employees may perceive that a fellow student or co-worker who is involved in a romantic relationship will receive an unfair advantage and that if the relationship ends in a way that is not amicable, either or both of the parties may wish to take action to injure the other party.

Faculty members, supervisors and other members of the college community who have professional responsibility for other individuals, accordingly, should be aware that any romantic or sexual involvement with a student or employee for whom they have such a responsibility may raise questions as to the mutuality of the relationship and may lead to charges of sexual harassment. For the reasons stated above, such relationships are strongly discouraged.

For purposes of this section, individuals have “professional responsibility” for other individuals at the college if they perform functions including, but not limited to, teaching, counseling, grading, advising, evaluating, hiring, supervising or making decisions or recommendations that confer benefits such as promotion, financial aid or awards or other remuneration, or that may impact upon other academic or employment opportunities.

### **C. Sexual Harassment Complaint**

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

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

A college official is any person charged with the responsibility for preventing, investigating, resolving or reporting sexual harassment complaints (e.g., Affirmative Action Officer, Supervisor, Department Head, Dean, Vice President, or President).

Nothing in the policy should be construed as in any way limiting students’ or employees’ rights to file a complaint with the New York State Division of Human Rights, the U.S. Department of Education Office for Civil Rights or the U.S. Equal Employment Opportunity Commission, or to take any legal action which they may deem advisable.

## **III. GENERAL POLICY STATEMENT**

It is the policy of SUNY Ulster to promote a cooperative work and academic environment in which there exists mutual respect for all College students, faculty, and staff. Harassment of employees or students based upon sex is inconsistent with this objective and contrary to the College policy of equal employment and academic opportunity without regard to age, sex, sexual orientation, alienage or citizenship, religion, race, color, national or ethnic origin, handicap, and veteran or marital status. Sexual harassment is illegal under federal, state, and local laws, and will not be tolerated within the College.

SUNY Ulster will disseminate this policy and take other steps to educate the College community about sexual harassment. The College will establish procedures to ensure that investigations of allegations of sexual harassment are

conducted in a manner that is prompt, fair, thorough, and as confidential as possible under the circumstances, and that appropriate corrective and/or disciplinary action is taken as warranted by the circumstances when sexual harassment is determined to have occurred.

Members of the College community who believe themselves to be aggrieved under this policy are strongly encouraged to report the allegations of sexual harassment as promptly as possible. Delay in making a complaint of sexual harassment may make it more difficult for the College to investigate the allegations. All members of the College community are required to cooperate in any investigation of a sexual harassment complaint.

**A. Assignment of Responsibility**

1. President, Vice President, Deans, Directors, Department Heads, Supervisors and Managers.
2. 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.
3. 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 Affirmative Action Officer. When issues relating to sexual harassment are brought to their attention, college officials should refer to this policy and call the Affirmative Action Officer for assistance.

The Affirmative Action Officer has overall responsibility for the investigation of allegations of sexual harassment, and for the conduct of formal sexual harassment resolution proceedings. Employees, students and others who believe they are being sexually harassed, or retaliated against, and college officials who receive reports of sexual harassment or retaliation should contact the Affirmative Action Officer, who is the Vice President and Dean of Enrollment Management, located in Vanderlyn Hall Room 119, 845-687-5070.

**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 SUNY Ulster 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 college 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.

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

Federal and State law and college policy prohibits any form of retaliation against a person who files a discrimination complaint, including a charge of sexual harassment. A faculty member, administrator, staff member, student, member of the public, or applicant for employment may not be subject to restraint, interference, coercion, intimidation or reprisal for action taken in good faith to seek advice concerning a sexual harassment matter, to file a sexual harassment complaint or to serve as a witness in the investigation of a sexual harassment complaint. Complainants or others involved in filing or investigating a complaint who believe they are a target of retaliation or intimidation should report this immediately to the Affirmative Action Officer.

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

Members of the College community who make false and malicious complaints of sexual harassment, as opposed to complaints which, even if erroneous, are made in good faith, will be subject to disciplinary action.

**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 they wish 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 college 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 college. The confidentiality of the information received, the privacy of the individuals involved, and the wishes of the complainant regarding action by SUNY Ulster 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 college 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 Affirmative Action Officer. 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.

#### **IV. COMPLAINT PROCEDURES**

Employees and students are encouraged to seek information regarding complaint resolution from any of their Supervisors, Department Chairs, Affirmative Action Officer or other college officials. Employees and students also retain the right to seek resolution through external alternatives such as agencies of the federal or state government.

##### **A. Complaint Reporting**

Any faculty member, staff employee, or student who believes they have been victimized by sexual harassment is encouraged to promptly contact the Affirmative Action Officer, who is the Vice President and Dean for Enrollment Management, Vanderlyn 119B. In the event a situation occurs that warrants immediate action during non-business hours (weekends, evenings and at night) the complainant should contact Campus Public Safety for assistance at 845-687-5036 or 845-687-5221.

The Affirmative Action Officer reports to the President and is charged with the implementation of the college's non-discrimination obligations. The Affirmative Action Officer 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 college officers or personnel must be reported by the official or personnel to the Affirmative Action Officer. 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.

If, in the opinion of the Affirmative Action Officer, the assistance of an advocate for the complainant would be likely to assist the Affirmation Action Officer in the taking of the complaint and the investigation thereof the Affirmation Action Officer shall so advise the complainant and the complainant, if they choose, may propose an advocate. The use of an advocate, or any particular advocate, shall be at the discretion of the Affirmative Action Officer. The use of an advocate is intended to facilitate communication between the complainant and the

Affirmative Action Officer but the Affirmative Action Officer shall always have direct access to the complainant.

In the event an informal or formal complaint is filed against the Vice President, the complainant will report the complaint to the President, who shall appoint an Executive Staff Member who will conduct an investigation in consultation with the college attorney. In the event an informal or formal complaint is filed against the President, the Affirmative Action Officer will conduct an investigation and consult with the college attorney for a resolution.

If the alleged harassment is deemed to be criminal behavior, the Affirmative Action Officer will notify Public Safety of the situation and request Public Safety's assistance and involvement. The Affirmative Action Officer will receive access to Public Safety's investigation notes and findings as necessary for the Affirmative Action Officer's investigation, so long as it does not compromise the criminal investigation.

#### 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 Affirmative Action Officer within sixty (60) days after the last act alleged to constitute sexual harassment has occurred, or receipt of the final grade which is alleged to be the product of sexual harassment.

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

#### Election to File Internally Versus Externally

The Affirmative Action Officer is the SUNY Ulster 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 College 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 AA officer) 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 Affirmative Action Officer will proceed in the manner most appropriate under the circumstances, understanding that the College's role may be altered from independent investigator to a respondent or defendant.



**Note:** The complainant must elect a single on-campus procedure (informal or formal) in an attempt to resolve the complaint.

**B. Informal Complaint Resolution**

Sexual harassment complainants have the option of pursuing informal complaint resolution through the Affirmative Action Officer. The College official who received the sexual harassment complaint must refer all complaints to the Affirmative Action Officer for disposition. The informal sexual harassment complaint resolution process is limited to voluntary resolution of complaints agreed to by both parties. The informal complaint resolution process will not be used to resolve sexual assault complaints.

The procedures for informal complaint resolution are as follows:

1. Ideally the informal review should be completed within 15 days. The Affirmative Action Officer may extend that period due to extenuating circumstances or if he/she believes that given additional time, a resolution can be achieved.
2. The Affirmative Action Officer 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, 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 Affirmative Action Officer 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 Affirmative Action Officer feels that efforts to resolve the complaint by informal means are no longer desirable or productive; or
  - c. The Affirmative Action Officer 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 Affirmative Action Officer'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 Affirmative Action Officer shall dismiss such charges and the investigation will be promptly terminated.

**C. Formal Complaint Resolution**

If either party elects the formal complaint investigation process, or if the complaint alleges sexual assault, then the Affirmative Action Officer 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 college 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 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 employment, arising in the performance of assigned job 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 (co-investigators) comprised of Executive Staff reporting directly to the President 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 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 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. Consultation

Whenever an investigation is conducted, the President, Vice President, Dean of Administration and the College Attorney may be consulted, as necessary.

3. 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. 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 Affirmative Action Officer will forward the investigation report in confidence to the President.

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.

4. Disposition of Complaint

After receiving the report of the investigation, the President 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 President 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 President should complete his/her review and determination within ten (10) calendar days of receiving any such written comments.

The President may also confidentially consult with the College Attorney 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. The President’s findings shall be based on a preponderance of the evidence.

5. “No Cause” Finding

If the decision of the President affirms a factual determination that sexual harassment has not occurred, the College’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.

6. “Cause” Finding – Uncontested

If the charged party does not contest a “cause” finding and the recommended corrective action(s), the President 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 President may accept an uncontested “cause” finding, but may suggest modifications to the recommended sanction(s) to the co-investigators.

7. “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 office on campus.

8. Appeals

Either party (the complaining party or the charged party) may appeal the finding and decision by the President. The appeal shall be made to the Chairperson of the Board of Trustees, shall be in writing and shall be received by the Secretary to the Board of Trustees within fifteen (15) calendar days of the date of the written decision appealed from. All such appeals will receive a written response within 30 calendar days of receipt. The decision of the Chairperson of the Board of Trustees will be final. There is no provision for an in-person appeal.

**D. Disciplinary Action**

Following appropriate procedures as provided by College 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 College 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 SUNY Ulster students will be in accord with the applicable student conduct rules.

**E. Notice to Parties**

Both parties shall be notified contemporaneously in writing of the outcome of both the complaint and any appeal. Notice shall be by mail to a party's address as contained in the college records. Sanctions imposed upon a student shall be disclosed in said notice to the extent sanctions bear a relationship to the complainant.

## V. RECORDS

1. A file, containing investigative reports and other documents relevant to complaints, both informal and formal, will be maintained by the Affirmative Action Officer. These files will be maintained separately from other employee personnel files.
2. When the complainant chooses not to identify themselves or others, or not to request the assistance of the College 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 College 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, department heads, supervisors and managers can be arranged by contacting the Office of Human Resources. Information regarding the policy is available in departments, through the Office of Human Resources or through the Affirmative Action Officer.

### **Federal and State Regulations**

Sexual harassment is prohibited by law and by governmental agency regulations. These regulations are rigorous and subject the College 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 College 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.
6. 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) and/or the New York State Division for Human Rights by calling 1-888-392-3644 or at <http://www.dhr.ny.gov/how-file-complaint>.

## **VII. RELATED POLICIES**

1. SUNY Grievance Procedures for Review of Allegations of Discrimination
2. SUNY Ulster Faculty/Staff Handbook
3. SUNY Ulster Student Handbook

4. EEOC Guidelines on Discrimination Because of Sex, U.S. Code of Federal Regulations 29, Part 1604.11 Sexual Harassment, 1989

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