

Binghamton University, in its continuing effort to seek equity in education and employment and consistent with Federal and State anti-discrimination legislation, has adopted a complaint procedure for the prompt and equitable investigation and resolution of allegations of unlawful discrimination on the basis of race, color, national origin, religion, age, sex, sexual orientation, disability, veteran status or marital status. Harassment on the basis of any of the above-protected categories is one form of unlawful discrimination. Conduct that may constitute harassment is described in *Appendix A*. For more detailed information contact the Office of Diversity, Equity & Inclusion.

This *Complaint Procedure for the Review of Allegations of Unlawful Discrimination* provides a mechanism through which the University may identify, respond to, prevent and eliminate incidents of illegal discrimination. The University recognizes and accepts its responsibility in this regard and believes that the establishment of this internal, non-adversarial grievance process will benefit student, faculty, staff and administration, permitting investigation and resolution of problems without resorting to the frequently expensive and time-consuming procedures of State and Federal enforcement agencies or courts.

This process has been developed in accordance with guidelines and recommendations provided by the Chancellor's Office of Diversity, Equity & Inclusion and are administered by the Binghamton University's Office of Diversity, Equity & Inclusion. The Office of Diversity, Equity & Inclusion directs that office and reports directly to the University President. These procedures have been approved by the State University of New York, Office of the University Counsel. These procedures are intended to balance the rights of those bringing complaints of discrimination, harassment, and retaliation (the "Complainant") with those against whom such claims are brought (the "Respondent".) Throughout these procedures the "parties" shall refer to the Complainant, Respondent, and witnesses involved in the complaint.

This procedure may be used if the Complainant or Respondent is a Binghamton student or a State or Research Foundation employee. Employee grievance procedures established through negotiated contracts, academic grievance review committees, student disciplinary grievance boards and any other procedures defined by contract will continue to operate as before. Nor does this procedure in any way deprive a Complainant of the right to file with outside enforcement agencies, such as the New York State Division of Human Rights, the Equal Employment Opportunity Commission, the Office for Civil Rights of the United States Department of Education and the Office of Federal Contract Compliance of the United States Department of Labor. Contact information for these agencies is listed in *Appendix B*. More detailed information may be obtained from the Office of Diversity, Equity & Inclusion.

Complainant is not required to pursue the Binghamton internal procedure before filing a complaint with a State or Federal agency. In addition, if the Complainant chooses to pursue the Binghamton internal procedure, the Complainant is free to file a complaint with the appropriate State or Federal agency at any point during the process. ***Upon filing with an external agency, however, the Binghamton internal complaint may be referred to the Office of the University Counsel for review, defense or, if deemed appropriate by Counsel, involvement in mediation, conciliation or settlement with the external agency where the complaint was filed, or such other actions as may be in the interests of the University, including the termination of this internal process.***

During any portion of the procedures detailed hereafter, the parties shall not employ audio or video taping devices.

To the extent practicable, all aspects of the investigation conducted in accordance with these procedures will be confidential. All affected parties shall cooperate fully in the investigation and shall maintain and preserve the confidentiality of the investigation. All parties are required to refrain from engaging in any retaliatory action in relation to the complaint(s) and/or by responses to such complaint(s).

### ***Jurisdiction of the Office of Diversity, Equity & Inclusion***

Binghamton University is responsible for providing a learning and working environment free from discrimination. The University reserves the right to pursue any complaint of discrimination about which it becomes aware. Based on information received by the University's Office of Diversity, Equity & Inclusion (ODEI), the Chief Diversity Officer or designee may exercise his/her own discretion and initiate a complaint on behalf of the University community.

In addition, the Chief Diversity Officer may determine that a specific complaint of unlawful discrimination or harassment is of such a serious or potentially criminal nature that the investigative steps outlined in this process should be accelerated or eliminated. This determination, if made, shall be communicated to the President or his designee and to Human Resource for appropriate action, which may include the initiation of disciplinary and/or other action.

If, at any time during the course of resolving or investigating a complaint of discrimination, the Chief Diversity Officer or designee determines that a complaint is not within the jurisdiction of the office, the complaint and the Complainant shall be referred to the appropriate office and the matter shall be considered concluded for purposes of the ODEI.

### ***Role of the Staff of the Office of Diversity, Equity & Inclusion***

The Chief Diversity Officer of the Office of Diversity, Equity & Inclusion (ODEI) and/or designee is trained in investigating and resolving complaints. The staff is available for assistance in filing the complaint with the University and will remain impartial during an investigation. ODEI does not represent any individual or department, but does advocate on behalf of the University's goals of equal opportunity and nondiscrimination.

The ODEI staff may receive initial inquiries, reports and requests for consultation and counseling. Assistance will be available whether or not a formal complaint is contemplated or even possible. It is the responsibility of the ODEI to respond to all such inquiries, reports and requests as promptly as possible and in a manner appropriate to the particular circumstances. An individual may refuse to reduce a complaint to writing. However, notwithstanding that refusal, there may be a continuing obligation on the part of the campus to investigate the verbal complaint to the best of its ability and proceed with any action that is warranted. Although in certain instances verbal complaints may be acted upon, the procedures set forth here rest upon the submission of a written complaint that will enable the ODEI to conduct a full and fair investigation of the facts.

The Office of Diversity, Equity & Inclusion shall solicit information concerning any factors that might prejudice an objective evaluation of the evidence and shall reassign an investigation if a conflict or potential conflict emerges.

### ***Supervisory Responsibility***

Complaints or concerns that are reported to an administrator, manager or supervisor concerning an act of

discrimination or harassment shall be immediately referred to the Office of Diversity, Equity & Inclusion. Complaints may also be made directly to the Chief Diversity Officer.

### ***Retaliation***

An employee or student who participates in the procedure has the right to do so without fear of or actual retaliation. It will be made clear that retaliation against an employee, a student or a witness who has filed a discrimination complaint will result in appropriate sanctions or other disciplinary action as covered by collective bargaining agreements, and/or applicable University policies.

### ***Confidentiality***

The ODEI staff will conduct the investigation in a confidential manner to the extent practicable. The ODEI staff will instruct the parties and all other affected persons that the complaint investigation procedure is best able to achieve a mutually acceptable agreement for resolution of the complaint when confidentiality is not breached. Once breached, it will make it difficult for the ODEI staff to conclude successfully the complaint investigation process to the satisfaction of the Complainant.

### ***Who can file a complaint?***

Employees may file a written complaint with the Chief Diversity Officer within 90 calendar days following the alleged discriminatory act or the date on which the Complainant first knew or reasonably should have known of such act. Complainants may complete an intake form to initiate an investigation (see *Appendix C*). Students must file a complaint within 90 calendar days following the alleged discriminatory act or 90 calendar days after a final grade is received, for the semester during which the discriminatory acts occurred, if that date is later.

It is the Complainant's responsibility to be certain that any complaint is filed within the applicable 90 day period. In the event that the Complainant would be barred under these procedures, the Complainant may contact ODEI with regard to other avenues of recourse that may be available.

If a Complainant elects to withdraw a complaint, this decision must be communicated in writing to the ODEI staff indicating the reason for withdrawal. The University may nevertheless pursue its review of the allegations.

### ***Against whom may complaints be brought?***

A complaint of unlawful discrimination may be brought against any student or employee.

If your complaint concerns behavior by a vendor or contractor or some other individual who may not be a member of the University community, but who may have an affiliation or a recognized connection to Binghamton, you may bring your concerns to the attention of the ODEI staff and they will assist you, wherever practicable.

If the President is the Respondent, the Chief Diversity Officer reserves the right to refer the complaint to the Office of University Counsel. The findings and recommendation shall be submitted to the Chancellor or her designee. If the Chief Diversity Officer is the Respondent, the matter shall be referred to the President or his designee.

## *Procedures for resolving complaints*

### *Complaint Consultation & Review<sup>1</sup>*

Any member of the University community may consult with the ODEI staff regarding potential discrimination or harassment. The length of time for the consultation varies depending on factors such as the complexity of the situation, office workload, or whether the situation involves actual or imminent loss of employment or academic standing, potential physical harm, or an ongoing relationship between the involved individuals. In a telephone conversation or in person appointment, a staff member will:

- receive complaints of alleged discrimination or harassment;
- discuss the facts of a situation and help the individual identify the problem(s);
- assist the Complainant in the use of the complaint form to define the charge;
- determine if the Office of Diversity, Equity & Inclusion is the appropriate University resource to address the concern;
- inform the individual of the ways in which the Office of Diversity, Equity & Inclusion approaches problem solving;
- explore methods of resolving the situation on one's own, if that is the individual's preference;
- advise an individual of alternate available University resources and external options for resolution;
- provide the Complainant with information about the various internal and external mechanisms through which the complaint may be filed, including applicable time limits for filing with each agency.

### *Each Party's Rights and Responsibilities*

The University's formal review procedures are not designed to replicate an external judicial process. Consequently:

- Complainants and Respondents are expected to meet with representatives of ODEI as needed and as requested.
- Legal counsel retained by a Complainant or a Respondent may not participate or be present at any meeting convened by ODEI.
- Respondents and Complainants are expected to communicate with ODEI directly, not through legal counsel, other intermediaries or persons accompanying the parties.
- Complainants and Respondents have the right to receive notice of all actions, recommendations, determinations and findings made by the Office of Diversity, Equity & Inclusion.

### *Intake Interview*

The ODEI staff will ask a Complainant to participate in an initial interview. During this initial contact known as the Intake Interview, the Complainant will be:

- asked to complete an Intake and Information Sheet. (The Complainant may be asked to have this completed prior to the Intake Interview.)
- interviewed about the allegations so that the charge may be clearly stated.
- asked to provide information about witnesses and other possibly aggrieved persons.
- advised of the office's intake procedures to enhance the Complainant(s) understanding and to facilitate realistic expectations as to the role of the office.

- referred to a proper University department/agency if the complaint does not fall within the jurisdiction of the Office of Diversity, Equity & Inclusion.
- advised of the protection against retaliation.
- advised of the university policy on confidentiality.
- advised of the option to file a complaint with one of the external Federal/State investigative agencies at any time.

Should the ODEI staff determine that a complaint of unlawful discrimination merits further review, they will immediately commence an investigation. The complaint shall contain:

- The name, local and permanent address (es), and telephone number(s) of the Complainant.
- A statement of facts explaining what happened and what the Complainant believes constituted the unlawful discriminatory acts in sufficient detail to give each Respondent reasonable notice of what is claimed against him/her. The statement should include the date, approximate time and place where the alleged acts of unlawful discrimination or harassment occurred. If the acts occurred on more than one date, the statement should also include the last date on which the acts occurred as well as detailed information about the prior acts. The names of any potential witnesses should be provided, if appropriate.
- The name(s), address (es) and telephone number(s) of the Respondent(s), i.e., the person(s) claimed to have committed the act(s) of unlawful discrimination.
- Identification of the status of the persons charged, whether faculty, staff, student or affiliated individual.
- A statement indicating whether or not the Complainant has filed or reported information concerning the incidents referred to in the complaint with a non-University official or agency, under any other complaint or complaint procedure. If an external complaint has been filed, the statement should indicate the name of the person or department or agency with which the information was filed and its address or to which it was reported.
- Other supplemental information as may be requested.

If the Complainant brings a complaint beyond the period in which the complaint may be addressed under these procedures, the Chief Diversity Officer may terminate any further processing of the complaint, refer the complaint to University Counsel or direct the Complainant to the appropriate alternative forum (see *Appendix B* for a list of alternative forums).

### ***Investigative Procedures***

If a Complainant elects to have the matter dealt with in an informal manner, the Chief Diversity Officer will attempt to reasonably resolve the problem to the mutual satisfaction of the parties. The ODEI staff will attempt to resolve the complaint at the earliest intervention point. If these efforts are not successful, and the ODEI staff has determined that the complaint merits further investigation, the Complainant and Respondent shall be advised in writing of the initiation of an investigation. During this investigation the ODEI staff will:

- Provide an initialed, signed, date-stamped copy of the complaint to the Complainant;
- Review all University records that concern the complaint;
- Interview witnesses;
- Review statements provided by both the Complainant and the Respondent(s);
- Review other relevant and material evidence;
- Will take all reasonable steps necessary to complete the investigation within ninety (90) calendar days after receipt of the complaint. If such is not possible, the Chief Diversity Officer may extend

this deadline for a reasonable period of time. The Complainant will receive notification from the Office of Diversity, Equity & Inclusion regarding the basis for extension.

### ***Failure to Cooperate***

If the Respondent refuses to cooperate and/or respond in a timely manner, the Office of Diversity, Equity & Inclusion may forego completion of an investigation and refer the matter to Human Resources, or the office may take any other action it deems necessary and appropriate to address the situation. Failure to cooperate meaningfully in a review of a complaint of discrimination may be grounds for discipline.

### ***Inaction by Complainant***

If at any time during an investigation, a Complainant declines to cooperate with the Office of Diversity, Equity & Inclusion, or if the office determines that the Complainant no longer wishes to pursue his/her complaint, ODEI may consider the matter closed and take no further action, with appropriate notification.

### ***Evaluating the Evidence and Resolution***

In reaching its findings, the ODEI staff shall evaluate the conduct alleged to have been discriminatory by considering the totality of the circumstances, including the nature, frequency, intensity, context and duration of the conduct. Although repeated incidents would create a strong claim of discrimination, a serious isolated incident can present sufficient grounds for corrective action.

The ODEI staff shall make every reasonable effort to resolve the matter. Resolution may take any form that is acceptable to the parties and to the University. It may, for example, take the form of:

- Separate meetings with the Complainant and Respondent
- Joint meetings between the Complainant and Respondent with the Chief Diversity Officer serving as a facilitator
- A meeting with the supervisor of the Complainant and/or Respondent
- A written agreement or memorandum of understanding signed by one or both of the parties
- Mandated trainings in the areas of discrimination for the Respondent or the departmental unit
- A verbal warning to Respondent
- A written warning to Respondent
- No further action at the request of Complainant

This list is not exhaustive and another form of resolution may be appropriate although it is not listed here.

### ***Determination***

The ODEI staff issues a written statement to the Complainant and Respondent, indicating the finding at the conclusion of the investigation. If a resolution satisfactory to both the Complainant and the Respondent is reached through the efforts of the ODEI staff, the ODEI shall close the case, sending a written notice to that effect to the Complainant and Respondent.

The actions proposed in this finding may consist of:

- a) A determination that the complaint was not substantiated.
  - (i) If the Office of Diversity, Equity & Inclusion determines that there is insufficient credible evidence to support the allegation(s) of discrimination, the complaint shall

be dismissed, the matter shall be concluded and the University shall take no further action.

- b) A determination that the complaint was substantiated.
- (i) For Employees (including student employees) not in a Collective Bargaining Unit – In consultation with Human Resource and the Office of University Counsel, the President may take such administrative action as he deems appropriate under his authority as the chief administrative officer of the University, including but not limited to termination, demotion, reassignment, suspension, reprimand, or training.
  - (ii) For Students – the ODEI may determine that sufficient information exists to refer the matter to the student judiciary or other appropriate disciplinary panel for review and appropriate action under the appropriate student conduct code.
  - (iii) For Employees in Collective Bargaining Units – the ODEI may determine that sufficient information exists to refer the matter to Human Resource for investigation and disciplinary action or other action as may be appropriate under the applicable collective bargaining agreement. Corrective action may include, but is not limited to: reprimand, mandatory counseling, written counseling, probation, suspension, termination of employment, non-renewal of contract or involuntary withdrawal from a program of study.

If the President is the Respondent, the Chancellor or his designee shall issue a written statement indicating what action the Chancellor proposes to take. The Chancellor's decision shall be final for purposes of this discrimination procedure.

The Office of Diversity, Equity & Inclusion may:

- place a confidential written report in its file, subject to applicable law and policy, and disclosure, if required by law.
- prepare and distribute a written report to the Complainant, Respondent and any other person who may have need to know how the complaint was resolved;
- refer the matter to another department or administrator in the University for further review.

If the ODEI staff is unable to resolve the complaint to the mutual satisfaction of the Complainant and Respondent, the ODEI staff shall so notify the Complainant. The Chief Diversity Officer shall again advise the Complainant of his or her right to separately file with appropriate external enforcement agencies.

There is no right of appeal when the Office of Diversity, Equity & Inclusion determines that there is insufficient reasonable, credible evidence to support the allegation(s) of discrimination.

## ***Appendix A***

### ***Definitions and Prohibited Acts and Behaviors***

#### ***Sexual Harassment in the Employment or Educational Setting is defined as:***

Unwelcome sexual advances, requests for sexual favors, or verbal/nonverbal or physical conduct of a sexual nature when:

- Submission to such conduct is made either an explicit or implicit term, condition, status of an individual's employment, or admission to, or continued participation in, an academic program.
- Submission to or rejection of such conduct is used as a basis for decisions affecting an individual's employment status, conditions of terms of employment, or academic standing.
- Such conduct has the purpose or effect of substantially interfering with an individual's performance on the job or in the classroom or creates an intimidating, hostile, or offensive work or study environment.

#### ***Sexual Harassment in the Educational Setting is defined as:***

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

#### ***Harassment on the Basis of Other Protected Characteristic(s)***

Harassment based on race, color, age, religion, or national origin (including an individual's ancestry, country of origin, or country of origin of the student's parents, family members, or ancestors), disability, sexual orientation or other protected characteristics may be oral, written, graphic or physical conduct relating to an individual's race, color, or national origin that is sufficiently severe, pervasive, or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the educational institution's programs or activities, or terms, conditions or status of employment.

#### ***Retaliation***

An employee or student who participates in the procedure has the right to do so without fear of retaliation. It will be made clear that retaliation against an employee, a student or a witness who has filed a discrimination complaint will result in appropriate sanctions or other disciplinary action as covered by collective bargaining agreements, and/or applicable University policies.



***Appendix B***  
***External Enforcement Agencies***

New York State Division of Human Rights  
44 Hawley Street  
Room 603  
Binghamton, New York 13901  
Tel: (607) 721-8467  
Fax: (607) 721-8470

**Office of Sexual Harassment**

New York State Division of Human Rights  
Office of Sexual Harassment  
55 Hanson Place, Suite 347  
Brooklyn, New York 11217  
Tel: (718) 722-2060 or 1-800-427-2773  
Fax: (718) 722-4525

**Office of AIDS Discrimination**

New York State Division of Human Rights  
20 Exchange Place, 2nd Floor  
New York, New York 10005  
Tel: (212) 480-2522 or 1-800-522-436

**Office for Civil Rights**

New York Office  
U. S. Department of Education  
32 Old Slip, 26th Floor  
New York, NY 10005-2500  
Tel: (646) 428-3800  
Fax: (646) 428-3843

*Appendix C*  
**Complaint Intake Form**

CASE # \_\_\_\_\_

**BINGHAMTON UNIVERSITY, OFFICE of DIVERSITY, EQUITY & INCLUSION**

**Complaint Intake & Information Sheet**

Name: \_\_\_\_\_ Date: \_\_\_\_\_

Address: \_\_\_\_\_

Day Telephone #: \_\_\_\_\_ Evening Telephone #: \_\_\_\_\_ Cell #: \_\_\_\_\_

May we contact you at work?  Yes  No

State Employee  RF Employee  Student (undergraduate)  Student (graduate)

**1. Please indicate your:**

Date of Birth: \_\_\_\_\_ Sex: \_\_\_\_\_

Religious Affiliation: \_\_\_\_\_

Race/Ethnicity: \_\_\_\_\_ Marital Status: \_\_\_\_\_

Job title: \_\_\_\_\_ Date of Hire: \_\_\_\_\_

Highest level of education completed: \_\_\_\_\_

Department in which you work: \_\_\_\_\_

Supervisor's name and Job title: \_\_\_\_\_

**2. Name and title of the person that allegedly discriminated against you:**

\_\_\_\_\_

Their status:  Student  GA/TA  Faculty  Staff

**3. What was done to you that you feel was unfair? (check all that apply):**

Denied Fair Grade  Denied Access to Program  Denied Accommodation

Denied Equal Pay  Denied Equal Treatment  Failed to Hire

Denied Training  Denied Promotion  Laid You Off

Terminated You  Forced Your Retirement/Resignation

Subjected you to a hostile work environment

Other: \_\_\_\_\_

4. Were you given a reason(s) for what was done to you? If so, what reason(s)?

---

---

---

---

5. What do you think is the real reason(s)? Discrimination\* because of .....

Creed/Religious Belief  Gender  Age

National Origin/Ancestry  Race/Color  Physical/Mental Condition/Disability

Pregnancy  Marital Status  Sexual Orientation

Opposed Discrimination  Sexual Harassment

Other (explain): \_\_\_\_\_

**\*Note:** If you don't believe the reason was discrimination, please inform the Office of Diversity, Equity & Inclusion /ODEI Specialist.

6. Disability cases: What is the nature of your disability? \_\_\_\_\_

7. Did you ask for an accommodation?  Yes  No If so, to whom? \_\_\_\_\_

What was the accommodation sought? \_\_\_\_\_

8. **Original (first) date of discrimination:** \_\_\_\_\_

9. **Most recent date of discrimination:** \_\_\_\_\_

10. Have you filed a complaint with any other agency, court, or dept. regarding this matter?  Yes  No If so, where? \_\_\_\_\_

11. Describe everything that happened to you that you feel was discriminatory. Include each event, the date(s), names and titles of everyone involved. Attach additional pages if necessary.

---

---

---

---

---

12. Did you complain?  Yes  No If so, to whom? \_\_\_\_\_

13. When did you complain? \_\_\_\_\_

14. Was anyone else treated the same way that you were?

Name Job Title Race/Ethnicity Age Gender

---

---

15. Did anyone witness the treatment that you were subjected to?

Name Job Title Telephone No. What did they witness?

---

---

---

16. Are you a union member?  Yes  No If so, did you file a grievance with your union? \_\_\_\_\_

CSEA  PEF  UUP  Council #82  GSEU  NYSCOBA

17. What is your current salary? \_\_\_\_\_

18. Are there any documents that can support your case? If so, what are they, and do you have them?

---

---

19. What have you lost as a result of what happened to you? (salary, benefits, etc.) \_\_\_\_\_

---

20. What reasonable remedy are you looking for? \_\_\_\_\_

---

**I affirm that I have read the above allegation(s) and that it is (they are) true to the best of my knowledge.** The Office of Diversity, Equity & Inclusion and the Complainant shall agree to keep all information gathered relative to allegations of discrimination in confidence to the extent practicable or allowable by law. However, with the consent of the Complainant, the Office of Diversity, Equity & Inclusion may provide relevant information to the appropriate University staff when necessary.

I have been advised that it is a violation of State and Federal statutes to retaliate against an individual because they have filed a discrimination complaint. If I am subjected to any adverse action that I feel may be retaliatory, I will promptly report such to the Office of Diversity, Equity & Inclusion.

I have been further advised that the filing of an internal complaint with the Office of Diversity, Equity & Inclusion is not a waiver of my right to file a formal complaint of unlawful discrimination with the New York State Division of Human Rights, the Equal Employment Opportunity Commission (EEOC), the Federal courts, or the State courts.

In addition, I am advised that the filing of an internal complaint does not stop the statute of limitations for filing external complaints with EEOC, the NYS Division of Human Rights, litigation, or any other agency hearing such

complaints. I am aware that should I choose to file a verified complaint with an outside agency, such a complaint must be filed with EEOC within 180 days of the alleged incident, and with the State Division of Human Rights within 365 days of the alleged incident.<sup>2</sup>

---

**Date**

---

**Complainant's Signature**

---

2. Please note that this policy and the information contained in it does not constitute legal advice. If you require legal advice, consult an attorney