

Complaint Procedure for the Review of Allegations of Unlawful Discrimination

Introduction

Binghamton University, in its continuing effort to seek equity in education and employment and consistent with Federal and State antidiscrimination legislation, has adopted a complaint procedure for the prompt and equitable investigation and resolution of allegations of unlawful discrimination based on race, color, national origin, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, or criminal conviction. Harassment based on 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 Affirmative Action Officer (AAO).

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 students, faculty, staff and administration by 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 Affirmative Action and is administered by Binghamton University's Office of Equity and Access (OEA). The Affirmative Action Officer (AAO) directs that office and reports directly to the University President and the Associate Vice President for Human Resources. 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.

Applicability of Complaint Procedure

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 conduct 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 AAO.

The Complainant is not required to follow 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 concerning the complaint(s) and/or responding to such complaint(s).

Jurisdiction of the Office of Equity and Access

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 OEA, the AAO or designee may exercise their discretion and initiate a complaint on behalf of the University community.

In addition, the AAO 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 Human Resources 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 AAO or designee determines that the complaint is not within the office's jurisdiction, the complaint and the Complainant shall be referred to the appropriate office, and the matter shall

Complaint Procedure for the Review of Allegations of Unlawful Discrimination

be considered concluded for purposes of the OEA.

Role of the Affirmative Action Officer

The AAO and/or designee are 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. OEA does not represent any individual or department but advocates on behalf of the University's goals of equal opportunity and nondiscrimination.

The OEA 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 OEA 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 University 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 submitting a written complaint that will enable the OEA to conduct a full and fair investigation of the facts.

The OEA 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 reported to an administrator, manager or supervisor concerning an act of discrimination or harassment shall immediately be referred to the OEA. Complaints may also be made directly to the AAO.

Retaliation

An employee or student who participates in the procedure has the right to do so without fear of, or actual, retaliation. Any 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 OEA staff will conduct the investigation confidentially to the extent practicable. They will instruct the parties and all other affected persons that the complaint investigation procedure is best able to achieve a mutually acceptable agreement for the resolution when confidentiality is maintained. Once breached, it will be difficult for the OEA staff to conclude the complaint investigation process successfully to the satisfaction of the Complainant.

Complaint Procedure for the Review of Allegations of Unlawful Discrimination

Who can file a complaint?

Employees may file a written complaint with the OEA within 90 calendar days following the alleged discriminatory act or the date 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 ensure 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 OEA about other avenues of recourse that may be available.

If a Complainant withdraws a complaint, this decision must be communicated in writing to the OEA 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, 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 AA staff, and they will assist you, wherever practicable.

If the President is the Respondent, the AAO reserves the right to refer the complaint to the Office of University Counsel. The findings and recommendations shall be submitted to the Chancellor or their designee. If the AAO is the Respondent, the matter shall be referred to the President or their designee.

Procedures for resolving complaints

Complaint Consultation and Review One

Any member of the University community may consult with the OEA 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.

Complaint Procedure for the Review of Allegations of Unlawful Discrimination

- Determine if the AA is the appropriate University resource to address the concern;
- Inform the individual of how the AA 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 OEA 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 AAO unless otherwise required by law;
- Respondents and Complainants are expected to communicate with AAO 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 AAO.

Intake Interview

The OEA 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 OEA/AAO;
- 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 OEA 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 claims against him/her. The statement should

Complaint Procedure for the Review of Allegations of Unlawful Discrimination

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 AAO may terminate any further processing of the complaint, refer it to the 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 informally, the AAO will attempt to reasonably resolve the problem to the mutual satisfaction of the parties. The AA staff will attempt to resolve the complaint at the earliest intervention point. If these efforts are not successful, and the AA 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 OEA 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 AAO may extend this deadline for a reasonable period of time. The Complainant will receive notification from the OEA regarding the basis for extension.

Failure to Cooperate

If the Respondent refuses to cooperate and/or respond in a timely manner, the OEA 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.

Complaint Procedure for the Review of Allegations of Unlawful Discrimination

Inaction by Complainant

If a complainant declines to cooperate with the OEA during an investigation or the office determines that the Complainant no longer wishes to pursue his/her complaint, the OEA may consider the matter closed and take no further action, with appropriate notification.

Evaluating the Evidence and Resolution

In reaching its findings, the OEA 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 substantial claim of discrimination, a serious isolated incident can present sufficient grounds for corrective action.

The OEA staff shall make every reasonable effort to resolve the matter. Resolution may take any form that is acceptable to the parties and 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 AAO 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 training in the areas of discrimination for the Respondent or the departmental unit;
- A verbal warning to the Respondent;
- A written warning to the Respondent;
- No further action at the request of the Complainant.

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

Determination

The OEA staff issues a written statement to the Complainant and Respondent indicating the findings at the conclusion of the investigation. If the OEA staff efforts reach a resolution satisfactory to both the Complainant and the Respondent, the OEA 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 OEA determines that there is insufficient credible evidence to support the allegation(s) of discrimination, the complaint shall be dismissed, the matter 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 OEA 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 OEA may determine that sufficient information exists to refer the matter to Human Resources 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. The Chancellor's decision shall be final for purposes of this discrimination procedure.

The OEA 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 need to know how the complaint was resolved;
- Refer the matter to another department or administrator in the University for further review.

If the OEA staff cannot resolve the complaint to the mutual satisfaction of the Complainant and Respondent, the OEA staff shall notify the Complainant. The AAO shall again advise the Complainant of his or her right to file with appropriate external enforcement agencies separately. There is no right of appeal when the OEA 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:

Complaint Procedure for the Review of Allegations of Unlawful Discrimination

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 job or classroom performance 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 based on 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 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. 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.

Revised: April 2025

Appendix B

External Enforcement Agencies

New York State Division of Human Rights

State Headquarters

One Fordham Plaza, 4th Floor

Complaint Procedure for the Review of Allegations of Unlawful Discrimination

Bronx, NY 10458
Tel: 718-741-8400
Fax: 718-741-3214

Binghamton Office

Hawley Street, Room 603
Binghamton, NY 13901
InfoBinghamton@dhr.ny.gov
Tel: 607-721-8467
Fax: 518-473-2955

Office of Sexual Harassment

55 Hanson Place, Room 900
Brooklyn, NY 11217
InfoOSHIQns@dhr.ny.gov
Tel: 718-722-2060, or 1-800-427-2773
Fax: 718-722-2039

Office of AIDS Discrimination

Exchange Place, 2nd Floor
New York, NY 10005
Tel: 212-480-2522
Fax: 212-480-0143

United States Department of Labor

Office for Federal Contract Compliance Programs

201 Varick Street, Room 705
New York, NY 10014
Tel: 212-337-2006
Fax: 212-620 7705

Buffalo District Office

6 Fountain Plaza
Suite 300
Buffalo, NY 14202-2199
Tel: 716-551-5065
Fax: 716-551- 4035

New York District Office

26 Federal Plaza, Room 36-116
New York, New York 10278
Tel: 212-264-7742

[Complaint Procedure for the Review of Allegations of Unlawful Discrimination](#)

Fax: 212-264-8166

New York State Department of Labor

State Campus

Building 12, Room 500
Albany, NY 12240
Tel: (518) 457-2746
Fax: (518) 457-6908

United States Equal Employment Opportunity Commission

EEOC National Headquarters

1801 L Street, N. W.
Washington, D. C. 20507
Tel: (202) 663-4900
Fax: (202) 663-4912

EEOC Field Office

6 Fountain Plaza, Suite 350
Buffalo, New York 14202
Tel: (716) 551-4441
Fax: (716) 551-4387

U. S. Department of Education, Office of Civil Rights

OCR National Headquarter

Customer Service Team
Mary E. Switzer Building
330 C Street, S.W.
Washington, D.C. 20202
Tel: 800-421-3481
Fax: 202-205-9862

New York Office

Old Slip, 26th Floor
New York, NY 10005-2500
OCR.NewYork@ed.gov
Tel: (646) 428-3800
Fax: (646) 428-3843

Complaint Procedure for the Review of Allegations of Unlawful Discrimination