

# **The State University of New York College of Environmental Science and Forestry**

## **COMPLAINT PROCEDURE FOR REVIEW OF ALLEGATIONS OF UNLAWFUL DISCRIMINATION**

### **I. OVERVIEW – COMPLAINT PROCEDURE**

The State University of New York College of Environmental Science and Forestry (SUNY ESF), 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 age, race, ethnicity, creed, religion, color, national origin, sexual orientation, military status, sex, gender identity, disability, veteran status, marital status, familial status, pregnancy, pre-disposing genetic characteristics, domestic violence victim status, criminal conviction or any other protected groups and classes under Federal and State Laws and executive orders. Harassment, on the basis of the above-protected categories, is a form of unlawful discrimination. Sex discrimination includes sexual harassment and sexual violence. Conduct that may constitute harassment is described in Appendix A. Retaliation against a person who files a complaint, serves as a witness, or assists or participates in any manner in this procedure is strictly prohibited and may result in disciplinary actions.

This procedure may be used by any student or employee of SUNY ESF, as well as third-parties who are participating in a college sponsored program or affiliated activity. The complaint procedure provides a mechanism through which the college may identify, respond to, prevent, and eliminate incidents of illegal discrimination, and to remedy the discriminatory effects on the victim(s) and others, if appropriate. The college recognizes and accepts its responsibility in this regard and believes that the establishment of this internal, non-adversarial complaint procedure will benefit student faculty, staff and administration by permitting prompt investigation and resolution of problems.

This procedure has been developed in accordance with guidelines and recommendations provided by the SUNY Chancellor's Office of Diversity Equity and Inclusion. The policy is administered by the Title IX Coordinator and Affirmative Action Officer (or designee). Here forward the Title IX Coordinator and Affirmative Action Officer or designee will be referred in this document as Discrimination Complaint Administrator (DCA).

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 term "parties" shall refer to the Complainant, Respondent, and witnesses involved in the complaint.

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. This procedure does not 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 of Civil Rights of the Department of Education and the Office of Federal Contract Compliance of the Department of Labor. Contact information for these agencies is listed in Appendix B. More detailed information may be obtained from SUNY ESF's DCA. Upon filing with one of these outside enforcement agencies, or upon the initiation of litigation, the SUNY ESF internal complaint procedure may be terminated and the matter will be referred to the Office of the

General Counsel for review and supervision. The DCA receives all complaints of alleged discrimination, shall assist the Complainant in the procedure and use of the complaint form and shall provide the Complainant with information about various internal and external mechanisms through which the complaint may be filed, including applicable time limits for filing with each agency.

## **II. GENERAL PRINCIPLES**

### **A. Jurisdiction of the DCA**

SUNY ESF is responsible for providing a learning and working environment free from discrimination. The College reserves the right to pursue any complaint of discrimination about which it becomes aware. Based on information received by the DCA, he/she may exercise his/her own discretion and initiate a complaint on behalf of the College community, regardless of Complainant cooperation or involvement.

Complaints of illegal discrimination should be made to the DCA. Complaints or concerns that are reported to an administrator, manager, or supervisor concerning an act of discrimination or harassment or acts of discrimination or harassment that administrators, managers or supervisors observe or become aware of shall be immediately referred to the DCA. Employees with Title IX compliance responsibilities and/or employees who have the authority to take action to redress the harassment must report any complaints to the DCA. Employees who observe or become aware of sex discrimination, including sexual harassment and sexual violence, should report this information to the DCA. Complaints may also be made directly to the DCA by anyone who experiences, observes or becomes aware of discrimination or harassment. The DCA will also receive initial inquiries, reports and requests for consultation. DCA will respond as appropriate in a timely manner.

In addition, the DCA 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/her designee for appropriate action, which may include the initiation of disciplinary and/or other action.

The DCA is available to assist in preparing the complaint. The DCA will ensure that complainants are aware of the Title IX rights and available resources on and off campus, and the right if any to file a complaint with local law enforcement. SUNY ESF will comply with law enforcement's request for cooperation and such cooperation may require the campus to temporarily suspend fact-finding aspect of the investigation while the law enforcement agency is in the process of gathering evidence. SUNY ESF will implement appropriate, reasonable, and available interim steps during the law enforcement agency's investigation period to provide for the safety of the complainant and the campus community.

If, at any time during the course of resolving or investigating a complaint of discrimination, the DCA determines that a complaint is not within the jurisdiction of the office, the complaint shall be referred to the appropriate office and the matter shall be considered concluded for purposes of the Office of the Discrimination Complaint Procedure.

### **B. Election of Venue for filing complaint**

The Complainant is not required to pursue the SUNY ESF internal complaint procedure before filing a complaint with a State or Federal agency. In addition, if the Complainant chooses to

pursue the SUNY ESF 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 SUNY ESF internal complaint procedure may be terminated and the matter referred to the Office of the General Counsel for review and involvement as may be in the interests of the College.

#### C. Confidentiality

In accordance with existing policies and laws, including (III)(B) of this policy, every effort will be made to protect the privacy of all individuals throughout all phases of the complaint and resolution process. Information about complaints or inquiries will be maintained in confidence to the fullest extent possible. However, an investigation will generally include interviewing necessary parties and coordination when necessary with offices such as the relevant Department or Unit, Human Resources and/or Student Affairs.

All affected parties shall cooperate fully in the investigation and shall maintain and preserve the confidentiality of the investigation.

#### D. 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 DCA.

#### E. Retaliation

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

#### F. Role of the DCA

The DCA (or designee) 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 DCA to respond to all such inquiries, reports and requests as promptly as possible and in a manner appropriate to the particular circumstances. This response may include interim measures to protect the parties during the investigation process. Interim measures will not disproportionately impact the Complainant.

Interim measures for students may include but is not limited to information about how to obtain counseling and academic assistance in the event of sexual assault, and steps to take if the accused individual attends class with the complainant. Appendix D provides a list of Title IX Resources, including counseling services. Interim measures involving employees in collective bargaining units should be determined in consultation with the Office of Human Resources.

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 DCA to conduct a full and fair investigation of the facts. It is the responsibility of the DCA to respond to all such inquiries, reports and requests as promptly as possible in a manner appropriate to the parties' circumstances. The DCA 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.

#### G. Each Party's Rights and Responsibilities

ESF's formal review procedures are not designed to replicate an external judicial process. Therefore:

- (a) Complainants and Respondents are expected to meet with the DCA as needed and as requested.
- (b) Legal counsel retained by a Complainant or a Respondent other than SUNY Counsel may not participate or be present at any meeting convened by the DCA.
- (c) Respondents and Complainants are expected to communicate with the DCA directly, not through legal counsel, other intermediaries or persons accompanying the parties.
- (d) Both the Complainant and the Respondent(s) shall be entitled to submit written statements or other relevant and material evidence and witnesses.

### III. INFORMAL COMPLAINT PROCESS (INQUIRIES)

- A. The DCA may receive initial inquiries, reports and requests for information, consultation and counseling. Assistance will be available whether or not a formal complaint is contemplated or even possible. It is the responsibility of the DCA to respond to all such inquiries, reports and requests as promptly as possible and in a manner appropriate to the particular circumstances. Informal inquiries generally will not necessitate a full investigation. If a full investigation appears to the DCA to be warranted, a formal complaint process will be initiated. 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 DCA to conduct a full and fair investigation of the facts. It is the responsibility of the DCA to respond to all such inquiries, reports and requests as promptly as possible in a manner appropriate to the parties' circumstances.
- B. If there is reasonable cause to believe that illegal discrimination may be occurring, the DCA will conduct a full and fair investigation of the facts related to the inquiry to the best of its ability and will proceed with any action that is warranted, even without the consent of the Complainant.
- C. Informal complaints or inquiries should be made within 90 days from the date which the Complainant first knew or reasonably should have known of such act. Complaints of discrimination brought beyond the 90-day period will be tracked and investigated to the extent possible consistent with the campus Title IX obligations, including the DCA duties to spot patterns and address systemic issues. Additionally, the DCA will ensure that Complainants in sex discrimination cases are made aware of their Title IX rights, available remedies and resources on and off-campus, interim remedies, and the right, if any, to file a complaint with local law enforcement.
- D. The Complainant will be notified of his or her right to elect to proceed to the formal resolution procedure at any time.

#### IV. FORMAL COMPLAINT PROCESS

- A. Although in rare instances verbal complaints/inquiries may be acted upon, the procedure set forth here rests upon the submission of a written complaint that will enable there to be a full and fair investigation of the facts. The Allegation of Discrimination Complaint Form can be found in Appendix.
- B. Failure to cooperate in filing the complaint or providing information may result in the case being dismissed.
- C. Employees may file a written complaint with the DCA 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. 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. Complaints of discrimination brought beyond the 90- day period will be tracked and investigated to the extent possible consistent with the campus Title IX obligations, including the DCA duties to spot patterns and address systemic issues.
- D. 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 the DCA with regard to other avenues of recourse that may be available. See Appendix C for a list of alternative forums.

Additionally, the DCA will ensure that Complainants in sex discrimination cases are made aware of their Title IX rights, available remedies and resources on and off-campus, interim remedies, and the right, if any, to file a complaint with local law enforcement. See Appendix D for a list of Title IX Resources.

- E. If a Complainant elects to withdraw a complaint, this decision must be communicated in writing to the DCA indicating the reason for withdrawal. The College may nevertheless pursue its review of the allegations. However, if at any time during an investigation a Complainant declines to cooperate with the DCA, or if the office determines that the Complainant no longer wishes to pursue his/her complaint; the DCA may consider the matter closed and take no further action, with appropriate notification to the Complainant.
- F. In filing a formal complaint, the Complainant shall contact the DCA to complete the authorized complaint form, which includes the following information:
  - (a) The name, address, and telephone number(s) of the Complainant.
  - (b) A statement of facts explaining what happened and what the Complainant believes constituted the unlawful discriminatory acts in sufficient detail to conduct an investigation and 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.
  - (c) The name(s) of the person(s) claimed to have committed the act(s) of unlawful discrimination.

(d) Identification of the status of the persons charged whether faculty, staff, student, or other if known.

(e) A statement indicating whether or not the Complainant has filed or reported information concerning the incident(s) referred to in the complaint with an external 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 department or agency with which the information was filed and its address.

(f) Such other or supplemental information as may be requested.

G. If a Complainant elects to file a written complaint, the DCA will investigate and make a determination, which will be communicated to the Complainant in writing.

## V. PROCEDURES FOR PROCESSING A FORMAL COMPLAINT

A. The SUNY ESF DCA shall receive any complaint of alleged discrimination, shall assist the Complainant in the use of the complaint form and will promptly investigate and resolve each complaint within 90 days. The DCA will have the discretion to reasonably extend the deadline if an investigation is deemed complex. The DCA shall provide the Complainant with information about various internal and external mechanisms through which the complaint may be filed, including applicable time limits for filing with each agency.

B. In investigating the complaint, the SUNY ESF DCA shall have the right to all relevant information and to interview pertinent witnesses. The Complainant will not be required to resolve the problem directly with the Respondent in cases of sex discrimination. When SUNY ESF DCA deems it warranted, the Vice Presidents, the College Attorney or other College officials may be contacted for information, assistance and/or consultation.

C. The investigation shall consist of:

- Reviewing statements of and interviewing both Complainant and Respondent (unless prohibited under the terms and conditions of the applicable collective bargaining agreement)
- Reviewing all College records that concern the complainant
- Interviewing witnesses
- Reviewing other relevant material and evidence

D. In reaching findings, the DCA will 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 burden of proof in cases of discrimination is preponderance of the evidence.

E. Failure to Cooperate:

- If the respondent refuses to cooperate and/or respond in a timely manner, the DCA may terminate any further processing of the complaint and refer the matter to the Director of Human Resources. Failure to cooperate meaningfully in a review of a complaint of discrimination may be grounds for discipline.
- If the complainant refuses to cooperate with the DCA, or if the DCA determines the complainant no longer wishes to pursue his/her complaint, the matter may be closed, with appropriate notification.

- F. Upon completion of the investigation, the DCA shall send a letter to the Complainant acknowledging the completion of the investigation. A copy of the response shall be attached to the original complaint form in the Officer's file. The witnesses interviewed, the results of the investigation, the basis for the determination, and corrective action imposed, if any, shall remain confidential except as required by law.
- G. Within 20 days of the date the response was issued, the Complainant may request, in writing, that the matter be impartially reviewed by the President or designee. The President shall either uphold the determination, refer it to a designee for review or remand it to the DCA for further investigation or action. The Complainant will be advised of his or her right to proceed to the appropriate external enforcement agencies.
- H. There is no right of appeal when the DCA determines that there is insufficient reasonable, credible evidence to support the allegation(s) of discrimination and that finding is upheld by the President.

**Contact Information**

Rebecca Hoda-Kearse

Title IX Coordinator and Affirmative Action Officer 315-565-3012, [rahodake@esf.edu](mailto:rahodake@esf.edu)

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## **Appendix A**

### **DEFINITIONS AND PROHIBITED ACTS AND BEHAVIORS**

**Harassment on the Basis of Other Protected Characteristic(s):** is defined as 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 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.

**Sex Discrimination:** is defined as behaviors and actions that deny or limit a person's ability to benefit from and/or fully participate in educational programs, activities or employment opportunities because of a person's sex. This includes but is not limited to sexual harassment, sexual assault, sexual violence by employees, students, or third parties.

**Sexual Assault:** is defined as physical acts of assault or acts committed against a person's will and consent or when a person is incapable of giving active consent, incapable of appraising the nature of the conduct or incapable of declining participation in, or communicating unwillingness to engage in, a sexual act or acts. Sexual assault, what is commonly known as "rape," whether forcible or non-forcible, "date rape" and "acquaintance rape". Nothing in this definition should be construed to limit or, conflict with sexual offenses enumerated in Article 130 of the New York State Penal Law, which shall be the guiding reference in determining if alleged conduct is consistent with the definition of sexual assault.

**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.

**Sexual Harassment in the Employment Setting:** is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's continued employment, performance or other condition of employment. Submission to or rejection of such conduct is used as a basis for employment decisions affecting an individual's employment status. Such conduct has the purpose or effect of substantially interfering with an individual's work performance or creates an intimidating, hostile, or offensive work environment.

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

**Preponderance of the Evidence:** The standard of proof in a sexual harassment and sexual assault cases, which asks whether it is "more likely than not" that sexual violence or sexual harassment occurred. If the evidence presented meets the standard, then the accused should be found responsible.

**Retaliation:** is defined as adverse action against any individual who files a complaint, assists or participates in any manner in an investigation, proceeding or hearing.

**Appendix B**  
**SUNY ESF**  
**Allegation of Discrimination Complaint Form**

Name: I.D. No:

Campus Address:

Campus Phone:

Home Address:

Home Phone:

Status: State Employee RF Employee Student Other

Name of Department: \_\_\_\_\_

May we contact you at work?                      Yes                      No

Alleged discrimination is based on (circle as many as you believe apply)

Age                      Disability                      Marital Status                      National Origin Race/Color Religion

Sex                      Sexual Harassment                      Sexual Orientation                      Veteran Status                      Other

1. The date the alleged discrimination first took place:

2. Is the alleged discrimination continuing?                      Yes                      No

If yes, most recent date: \_\_\_\_\_

3. Name of person who allegedly discriminated against you \_\_\_\_\_

4. Are you aware of any witnesses to this occurrence?                      Yes                      No

If yes, to whom:

5. Did you report this charge to anyone within this institution?                      Yes                      No

If yes, to whom:

6. Do you have documents you wish to include with this statement?                      Yes                      No

If yes, please describe and/or attach additional documents:

7. Have you filed this charge with a federal or state agency?      Yes                      No

If yes, with which agency: \_\_\_\_\_

8. Briefly describe the act(s) that occurred and your reason for concluding that it was discriminatory. Include each event, the dates, and the names of everyone involved. Attach additional pages if necessary.

I affirm that I have read the above charge and that it is true to the best of my knowledge, information, and belief. 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 appropriate Discrimination Complaint Administrator (DCA). I have been further advised that the filing of an internal complaint with the DCA 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 Office of Federal Contract Compliance Programs (OFCCP), the Office of Civil Rights (OCR), or the State or Federal courts.

Complainant's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Complaint Received By: \_\_\_\_\_ Date: \_\_\_\_\_

Confidentiality Statement: In accordance with existing policies and laws, every effort will be made to protect the privacy of all individuals throughout all phases of the complaint investigation and resolution process. Information about complaints will be maintained in confidence to the fullest extent possible.

**Appendix C**

**EXTERNAL ENFORCEMENT AGENCIES**

**NEW YORK STATE DIVISION OF HUMAN RIGHTS**

Syracuse Local Office

New York State Division of Human Rights 333 E. Washington Street, Room 401 Syracuse, New York  
13202

Telephone No. (315) 428-4633

**UNITED STATES DEPARTMENT OF LABOR**

**OFFICE OF FEDERAL CONTRACT COMPLIANCE**

Buffalo District Office

6 Fountain Plaza, Suite 300

Buffalo, NY 14202-2199

Telephone No. (716) 551-5065

Fax: (518) 551-4035

**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

EEOC Field Office 6 Fountain Plaza

Suite 350

Buffalo, New York 14202 Telephone No. (716) 551-4441

TTY (716) 551-5923

**OFFICE OF CIVIL RIGHTS**

Office of Civil Rights New York Office

32 Old Slip, 26th Floor

New York, New York 10005-2500 Tel: (646) 428-3800

Fax: (646) 428-3843

**Vera House**

723 James St.

Syracuse, New York 13203

General Assistance - 315-425-0818, 24 hour crisis hotline 315-468-3260

## **Appendix D**

### **TITLE IX RESOURCES**

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

Rebecca Hoda-Kearse

450 Baker Laboratory

315-565-3012

[rahodake@esf.edu](mailto:rahodake@esf.edu) or [titleix@esf.edu](mailto:titleix@esf.edu)

#### **Deputy Title IX Coordinators**

Dr. Anne Lombard

315-470-6660

[studenthelp@esf.edu](mailto:studenthelp@esf.edu)

Amy McLaughlin

315-470-6611

[aimclaug@esf.edu](mailto:aimclaug@esf.edu)

#### **Employee Assistance Program (EAP) [www.worklife.ny.gov/eap](http://www.worklife.ny.gov/eap)**

Your EAP Coordinator: 315-470-6847 or 315-470-6726 Regional Office for Syracuse Area: 315-428-4963

#### **Student Affairs Office**

110 Bray Hall

315-470-6660

**Student Counseling Center 110A Bray Hall**, call **315-470-4716**, or email [studenthelp@esf.edu](mailto:studenthelp@esf.edu)

If you are experiencing a mental health emergency outside of normal business hours, please contact Crisis Services After-Hours/Weekends on-call counselor, 24 hours/day, 7 days/week at:  
(315) 470-4716

#### **University Police**

SUNY College of Environmental Science and Forestry University Police Department, 19 Bray Hall

1 Forestry Drive

Syracuse, NY 13210-2778

#### **Phone**

315-470-6666/6667

315-470-6962 (fax)