

**ANTI-DISCRIMINATION POLICY
AND GRIEVANCE PROCEDURE
FOR EMPLOYEE¹ CLAIMS OF DISCRIMINATION
BY ANOTHER EMPLOYEE,
GUEST OR CONTRACTOR**

**I
INTRODUCTION**

As an institution of higher learning, Suffolk County Community College is dedicated to providing an environment conducive to intellectual and personal growth. Members of the college community are encouraged to participate in all aspects of academic life. For the college, this means a firm institutional commitment to academic freedom as well as a commitment to the highest standards of professional and interpersonal behavior and respect among members of the community.

**II
ANTI-DISCRIMINATION POLICY**

The College will not tolerate discrimination on the basis of race, national origin, color, religion, sex, age, sexual orientation, disability, marital status, military status, domestic violence victim status or any other status that is prohibited by law. Whenever an alleged violation of this policy is brought to the college's attention, an investigation will be undertaken and, if a violation is found, prompt and effective corrective action will be taken. All members of the college community should contact the appropriate college office, as set forth below, if they believe a violation of this policy has occurred.

Discrimination complaint of a faculty member, administrator, employee or trustee by a contractor, guest, faculty member, administrator, employee or trustee:

Complaints should be submitted to the Office of the Compliance Officer (currently the Executive Assistant to the President) or the Office of Human Resources.

Discrimination complaint of a student, visitor, faculty member, administrator or an employee by a student:

Complaints should be submitted to the Office of the Dean of Student Services for the campus at which the alleged discrimination occurred.

Discrimination complaint of a student by a faculty member, administrator or employee:

Complaints should be submitted to the Office of the Dean of Student Services for the campus at which the alleged discrimination occurred.

¹ "Employee" includes all full-time and part-time college employees, faculty members, administrators and trustees.

A. Discrimination Prohibited

The college abides by the principle that its students, faculty, staff, administrators and trustees have a right to be free from discrimination by any member of the college community. The highest standards of professional conduct pertain to all members of the college community in their dealings with one another; the relationships between and among students, faculty, administrators, trustees and members of the staff at all levels should be governed by these standards. No member of the college community should tolerate discrimination from an administrator, faculty member, employee, colleague, supervisor, student or other member of the college community.

Behavior on the part of any member of the college community that inappropriately introduces any form of discrimination, as defined below, into a teaching, learning or working relationship, or into any other relationship arising from college activities will not be tolerated. The college also will not tolerate conduct by a non-employee who discriminates against any member of the college community on college premises or at any other location where the member of the college community is present because of assigned or college-sanctioned activities.

Individuals who believe they are victims of discrimination are required to seek redress through the appropriate discrimination complaint procedure. This policy and procedure applies to any employee who alleges that he or she has been discriminated against by another employee, guest or contractor. Alleged discrimination of a student by another student or alleged discrimination against a college faculty member, guest, administrator or employee by a student is governed by the Student Code of Conduct. Alleged discrimination against a student by a faculty member, an administrator or any other employee of the college is governed by the Anti-Discrimination Policy and Grievance Procedure for Student Claims of Discrimination by a Faculty Member, Administrator or Employee.

Complaints about discrimination will be responded to promptly and equitably in accordance with the procedures set out under the applicable policy. The confidentiality of all members of the college community will be respected in each step of the complaint procedure, insofar as that is reasonably practicable. In addition, each policy explicitly prohibits retaliation against individuals for bringing complaints of discrimination or for participating or refusing to participate in investigations of discrimination. Similarly, each policy prohibits retaliatory conduct against an individual simply because he or she has been accused of discrimination. An individual found to have engaged in discrimination or retaliation in violation of this policy may be subject to disciplinary action up to and including termination. If the individual is a bargaining unit member, such disciplinary action will be pursuant to the appropriate collective bargaining agreement. Conversely, if a complaint of discrimination is made in bad faith, then the complainant may be subject to disciplinary action.

B. Definition of Discrimination

Generally, discrimination is a person's use of power or authority to deny employment opportunities to another individual or class of individuals based upon their race, national origin, sex, age, religion, color, sexual orientation or disability. Repeated suggestions or comments may constitute discrimination if these create an intimidating, hostile or offensive working or learning

environment. The definition of discrimination, discussed more fully below, will be interpreted and applied consistent with applicable legal standards.

Under federal and state law it is illegal to discriminate in any aspect of employment, including the following: hiring and firing, compensation, assignment or classification of employees, transfer, promotion, layoff or recall, job advertisements, recruitment, testing, use of company facilities, training and apprenticeship programs, fringe benefits, pay, retirement plans, and disability leave, or other terms and conditions of employment.

Discriminatory practices also include the following:

1. harassment on the basis of race, color, religion, sex, national origin, disability, sexual orientation or age;
2. retaliation against an individual for filing a charge of discrimination, participating in an investigation, or opposing discriminatory practices;
3. employment decisions based on stereotypes or assumptions about the abilities, traits, or performance of individuals of a certain sex, race, age, religion, sexual orientation, ethnic group or those with disabilities; and
4. denying employment opportunities to a person because of marriage to, or association with, an individual of a particular race, religion, national origin, or an individual with a disability.

Title VII prohibits not only intentional discrimination, but also practices that have the effect of discriminating against individuals because of their race, color, national origin, religion or sex.

The ADA prohibits discrimination on the basis of disability in all employment practices.

1. An individual with a disability under the ADA is a person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such and impairment, or is regarded as having such an impairment. Major life activities are activities that an average person can perform with little or no difficulty such as walking, breathing, seeing, hearing, speaking, learning and working.
2. A qualified employee or applicant with a disability is someone who satisfies skill, experience, education and other job-related requirements of the position held or desired, and who, with or without reasonable accommodation, can perform the essential functions of that position.
3. Reasonable accommodation may include, but is not limited to, making existing facilities used by employees readily accessible to and usable by persons with disabilities, job restructuring, modification of work schedules, providing additional unpaid leave, reassignment to a vacant position, acquiring or modifying equipment or devices, adjusting or modifying examinations, training materials or policies, and providing qualified readers or interpreters. Reasonable accommodation may be necessary to apply for a job, to perform job functions, or to enjoy the benefits and privileges of employment that are enjoyed by people without disabilities.

An employer is required to make a reasonable accommodation unless doing so would impose an undue hardship, i.e., one that requires significant difficulty or expense.

In determining whether harassment based on race, national origin, color, religion, sex, age, sexual orientation or disability has created an intimidating, hostile or offensive environment or substantially interferes with an individual's academic or work performance, the college recognizes that unless the conduct is egregious, a single incident or isolated incidents of offensive conduct or remarks may not create an intimidating, hostile or offensive environment.

C. Confidentiality

1. Generally: It is the policy of the college to protect the confidentiality of members of the college community who may be involved in discrimination complaint procedures, insofar as that is reasonably practicable. Specifically, the identity of the individual making the complaint (complainant), the identity of the accused (respondent) and information relating to the discrimination complaint will be disseminated only to those individuals who have a legitimate need to know, or as reasonably necessary for the purpose of investigating or resolving the complaint. Any person who is the custodian of confidential information shall maintain a log of the dissemination and review of such information.

Complainants should understand that upon their advising the Office of the Compliance Officer or the Office of Human Resources of a discrimination complaint, the college is legally required to investigate that complaint. Therefore, complainants should understand that the complaint may be disclosed, as necessary, to persons on a "need to know" basis.

Although the college will endeavor to maintain the confidentiality of discrimination complaints and proceedings in accordance with this policy, it cannot absolutely guarantee against the further dissemination of information by individuals to whom such information was reasonably disclosed in the course of a discrimination investigation. All complaints will be fully investigated and the appropriate remedial action will be taken against individuals found to have violated the college's anti-discrimination policy.

Any information acquired during the investigation will be kept in a confidential file in the Office of the Compliance Officer and retained by the college for at least the statutorily required period.

2. Waiver of Confidentiality: A complainant or a respondent may be deemed to have waived, directly or indirectly, the confidentiality provisions of this policy by voluntarily disclosing information about the complaint or the complaint proceedings to parties within or outside the college community who are not directly involved in the investigation or complaint process. For instance, if a complainant or a respondent makes any public statement tending to impute negligence, misconduct, unfairness or incompetence to the college in conducting a discrimination investigation or complaint proceeding, the college shall have the right to disclose information that is reasonably required to rebut or refute the allegations.

D. Retaliation

No individual shall be retaliated against in any way by a member of the college community for his or her participation in this complaint procedure. No complainant or witness shall be retaliated against in any way by a member of the college community for his or her nonparticipation in this complaint procedure. Every effort should be made to protect members of the college community so that they may use or participate in the discrimination complaint procedure without fear of reprisal or retaliatory action. Threats, other forms of intimidation, and retaliation against the complainant or any other individual implementing or using the college's discrimination complaint procedure are violations of this policy and, thus, may be grounds for disciplinary action.

If an employee is found to have made a malicious or false statement, he or she may be subject to disciplinary action under the applicable collective bargaining agreement. If a student is found to have made a malicious or false statement, he or she may be referred to the Student Disciplinary Committee Board for appropriate action. No punishment will occur if a complaint is made in good faith. Individuals who believe they have been retaliated against in violation of this policy must follow the complaint procedures outlined herein and such complaints will be processed in accordance with these procedures.

III

DISCRIMINATION COMPLAINT PROCEDURE

A. Informal Stage: Reasonable Cause Determination

1. Whom to Contact

Employees who believe that they have been subjected to discrimination should contact the Office of the Compliance Officer or the Office of Human Resources. The Compliance Officer and the Administrative Director of Human Resources (Administrative Director) are the designated officials responsible for the investigation of discrimination complaints made by employees, for determining if an informal resolution is possible and if it is not possible, for determining if there is sufficient cause for an investigatory hearing to be held to determine whether discrimination has taken place.²

The Compliance Officer and the Administrative Director shall notify each other that a complaint has been made. In addition, as documents are received or created by the Compliance Officer during the course of the investigation, copies shall be kept in the Office of the Compliance Officer, where they shall be maintained in a confidential file.

² If the President, a vice president, a trustee, the Compliance Officer or the Administrative Director is accused of discrimination, the Anti-Discrimination Committee shall select an individual who is unaffiliated with the College to conduct an investigation. The investigation will be conducted in the manner set forth in this policy.

2. Timing of Complaint

A complaint of discrimination must be made within one year of the most recent occurrence of alleged discrimination. The Compliance Officer and the Administrative Director are authorized to waive this timeliness requirement in extenuating circumstances including but not limited to circumstances wherein the complainant was subject to duress, or otherwise coerced or threatened by the respondent from filing the complaint. Both the Compliance Officer and the Administrative Director must agree to the waiver.

3. Initial Discussion; Preparation of Written Complaint; Respondent's Answer

The initial discussion between the complainant and the Compliance Officer or Administrative Director should be kept confidential to the extent possible. The Compliance Officer or Administrative Director shall attempt to informally resolve the matter through discussions with the complainant and the respondent within five (5) days³ of receiving the complaint. The complainant will prepare and sign a written complaint when he or she first meets with the Compliance Officer or Administrative Director. Within his or her discretion, the Compliance Officer or Administrative Director shall deliver to the respondent by hand delivery or by certified mail, return receipt requested, either a copy of the written complaint or a summary prepared by him or her of the allegations contained in the complaint. The respondent shall also be given a copy of this Anti-Discrimination Policy and Grievance Procedure.

The respondent shall have the right to submit a written response to the allegations made against him or her, accompanied by any relevant documents or other materials he or she may wish to include (including a witness list) within five (5) days of receiving a copy of the allegations. The answer shall be either hand delivered to the Compliance Officer or Administrative Director or sent certified mail, return receipt requested. Within the discretion of the Compliance Officer or Administrative Director, the complainant will receive a copy of the respondent's answer or a summary prepared by the Compliance Officer or Administrative Director of the contents of the answer.

If the complainant fails or refuses to submit a written complaint or if the college learns of alleged discrimination from a person other than the alleged victim, the Compliance Officer or Administrative Director shall create a written statement or summary noting the complainant's refusal to sign. They shall then conduct an investigation based on the information available to him or her. Despite the absence of a signed complaint, the respondent is still expected to cooperate in the investigation.

If the respondent refuses to participate in an investigation, the Compliance Officer or Administrative Director will have to come to a determination based on available information. In such a case, absent any contradictory evidence, the Compliance Officer or Administrative Director will assume that the complaint is truthful.

³ Unless otherwise noted, "days" means calendar days. Any deadline falling on a Saturday, Sunday or holiday shall be due on the next business day.

4. Investigation and Sufficient Cause Determination

If the complaint is not informally resolved, the Compliance Officer or Administrative Director will have fourteen (14) days after the conclusion of the five day informal resolution period to complete an investigation of the allegations. If not previously provided, the complainant and the respondent shall receive copies of the written answer and written complaint, respectively. The investigation shall include but not be limited to, review of the complaint and the answer, interviews of witnesses, examination of all pertinent personnel files and employment records and review of any other written statements, documents or other evidence. The complainant, the respondent and all potential witnesses are encouraged to cooperate with the discrimination investigation. If the complainant or the respondent refuses to do so, the Compliance Officer or Administrative Director will have to come to a determination on the basis of available information.

Once the Compliance Officer or Administrative Director completes the investigation, he or she will determine whether, based on a preponderance of the evidence, there is sufficient cause for an investigatory hearing to be held to determine whether discrimination has taken place. The complainant and the respondent shall be promptly notified in writing (either personally delivered or sent certified mail, return receipt requested) of the determination. If some other form of misconduct is uncovered, the complainant will be notified that the complaint has been forwarded to the proper forum.

If sufficient cause is found, then the Compliance Officer or Administrative Director will forward the file to the Anti-Discrimination Committee for an investigatory hearing. If the respondent admits to the allegations made against him or her, no investigatory hearing shall be held. Instead, the file will be forwarded to the Anti-Discrimination Committee, which will make a recommendation to the Executive Dean of the campus where the respondent is employed as to appropriate sanctions.⁴ If no sufficient cause is found, then the complainant shall have five (5) days from receipt of such notice in which to submit a written appeal of the finding to the Vice President for Academic and Campus Affairs.⁵

5. Appeal of a No Sufficient Cause Determination

Upon receipt of a written appeal of a determination of no sufficient cause, the Vice President for Academic and Campus Affairs shall review the file and, within five (5) days, render a decision on the appeal. If the Vice President for Academic and Campus Affairs affirms the no sufficient cause determination, the complaint is dismissed. If the Vice President for Academic and Campus Affairs overturns the no sufficient cause determination, then he or she will forward the file to the Anti-Discrimination Committee for an investigatory hearing.

⁴ If the respondent is an executive dean or is employed in central administration, the Anti-Discrimination Committee shall make its recommendation to the vice president it deems appropriate. If the respondent is a vice president, the Committee shall make its recommendation to the President. If the respondent is the President or a trustee, the Committee shall make its recommendation to the Board of Trustees.

⁵ If the respondent is employed in central administration or is a trustee, the Anti-Discrimination Committee shall determine the appropriate person to whom the complainant may submit an appeal.

B. Formal Stage: Investigatory Hearing

1. Anti-Discrimination Committee Membership

The Anti-Discrimination Committee is comprised of seven members: one (1) member each of the tenured faculty elected for three (3) years by governing bodies of the Eastern, Grant and Ammerman campuses; two (2) members selected by the A.M.E. unit at the College for three (3) years, one (1) from the white collar unit and one (1) from the blue collar unit; one (1) individual selected by the President for one (1) year who will be the Chair, either the Compliance Officer or the Administrative Director of Human Resources (whoever did *not* conduct the investigation). College legal counsel shall be a non-voting advisory member of the Committee.

a. Recusal

Any Anti-Discrimination Committee member shall be recused if he or she is a party in the complaint, an immediate supervisor of the complainant or the respondent or a witness to the allegations in the complaint. Committee members may also be recused for other reasons, including but not limited to, personal, business or financial conflicts of interest between the committee member and either the complainant or the respondent. The Compliance Officer will determine whether a conflict of interest exists. If the Compliance Officer is directly involved in the complaint, the Administrative Director of Human Resources will determine whether a conflict exists.

b. Quorum and Voting

A quorum shall consist of four (4) or more voting members. Any member not present for the entire investigatory hearing may not vote at that hearing. All best efforts will be made to convene a quorum. However, if a quorum cannot be convened within the time limits allowed in this policy, then the available committee members will proceed with the investigatory hearing. Findings of the committee shall be based on a majority vote. In the event of a tie vote, the case will proceed.

2. Investigatory Hearing

Within fourteen (14) days of receipt of the file, the Anti-Discrimination Committee shall review the file, conduct a hearing and make a written finding as to whether the committee believes that discrimination has occurred or, if applicable, whether it believes some other type of misconduct has occurred. Under extenuating circumstances, the committee may extend this time period for up to an additional fourteen (14) days.

The hearing serves both an investigatory and an adjudicative function. Both parties shall be notified of their right to seek advice from counsel or a union representative and of their right to have an advisor present at the hearing. The power of examination and cross-examination is reserved exclusively to the committee. However, before the hearing, the parties or their advisor may submit suggested questions or propose that particular witnesses be called. The committee will make every effort to ask questions so submitted that go to the issue and to call proposed witnesses that have testimony relevant to the issue. The hearing shall be recorded by stenographic or other means and a

transcript of the proceedings shall be held in the Office of Compliance Officer. The complainant and the respondent may review the transcript in that office.

The hearing shall include, to the extent possible, the following:

- Examination of the complainant, the respondent and any witnesses who may be of assistance in resolving the complaint; and
- Review of any documents and other information submitted by the parties or witnesses; and
- Review of any other documents or information the committee deems relevant.

The hearing shall be closed and may only be attended by the complainant (and his or her advisor), the respondent (and his or her advisor), the committee members, College legal counsel, testifying witnesses and personnel necessary for the administration of the hearing. The parties and their advisors have the right to be present throughout the hearing. Testifying witnesses may only be present for their own testimony. A testifying witness may have one advisor present during their testimony. This advisor must follow the same policies as the advisors for the complainant and the respondent noted above.

The committee shall not be bound by technical rules of evidence, but may consider any relevant material and reliable evidence that it finds probative. The committee shall determine the admissibility, relevance and weight of the evidence before it.

The committee is to investigate discrimination complaints and is expressly authorized to investigate, consider and report findings regarding other misconduct related to the alleged discrimination that may be revealed during the course of the discrimination investigation. If the committee finds misconduct that does not constitute discrimination, the committee shall notify the complainant that the committee has forwarded the complaint to the proper forum.

3. Review by the Executive Dean or Designee⁶

Within five (5) days after the conclusion of the investigatory hearing, the committee will forward a copy of its written findings to the Executive Dean of the campus where the respondent is employed or designee and to the Office of Compliance Officer, where it shall be maintained in a confidential file. If applicable, the findings should include any recommended remedial action (which could include disciplinary action) to be taken. The Executive Dean or designee shall review the record as a whole and make a decision based on the totality of the circumstances. The review shall be completed within seven (7) days of receipt of the committee's findings.

Where the charge is sustained, the Executive Dean or designee shall make a final determination as to the action to be taken and give to the complainant, the respondent and the committee written notice of it. If the charge is not sustained, the Executive Dean or designee shall render a written decision detailing the compelling reasons for the

⁶ If the respondent is an executive dean or is employed in central administration, the Anti-Discrimination Committee shall make its recommendation to the vice president it deems appropriate. If the respondent is a vice president, the Committee shall make its recommendation to the President. If the respondent is the President or a trustee, the Committee shall make its recommendation to the Board of Trustees.

determination and send it to the complainant, the respondent and the committee. If the Executive Dean or designee decides that there is need for further investigation, then the committee shall be so notified, in writing, that it must continue its investigation, in a timely manner, until a final decision can be rendered by the Executive Dean or designee. A copy of the Executive Dean or designee's determination shall be forwarded to the Office of the Compliance Officer, where it shall be maintained in a confidential file.

If either the complainant or the respondent chooses to appeal the Executive Dean or designee's determination, he or she shall have five (5) days from receipt of the determination in which to submit a written appeal of the determination to the President.⁷ A copy of the written appeal shall be forwarded to the Office of the Compliance Officer, where it shall be maintained in a confidential file.

4. Appeal to the President

Upon receipt of a written appeal of the Executive Dean or designee's determination, the President shall review the investigatory file, the written findings of the Anti-Discrimination Committee and the written decision of the Executive Dean or designee and, within ten (10) days, render a written decision on appeal. A copy of the written decision shall be forwarded to the Office of the Compliance Officer, where it shall be maintained in a confidential file. If the President agrees with the Executive Dean or designee's decision, then the Executive Dean or designee's determination as to the action to be taken shall be followed. If the President disagrees with the Executive Dean or designee's decision, then the President shall determine the appropriate action to be taken. Such determination shall be based solely on the President's review of the investigatory file, the written findings of the Anti-Discrimination Committee and the written decision of the Executive Dean; the President shall make no independent findings of fact. The President's decision is final. If the final decision is to discipline the respondent, the applicable contractual provisions shall be followed. In all cases where the respondent has been found in violation of the College's policy, by the Anti-Discrimination Committee, and appeals have upheld that decision, written notification of such determination shall be placed in his or her personnel file.

Upon completion of all stages of the Anti-Discrimination Policy and Grievance Procedure, the original file and all copies will be maintained in the Office of the Compliance Officer for at least the statutorily required time. No copies of the file will be maintained in any other office or department.

Board of Trustees
April 10, 2003

⁷ If the respondent is a vice president or the president, any appeal shall be made to the College's Board of Trustees. If the respondent is a trustee, any appeal shall be made to the SUNY Chancellor.