



REVISED

MEMORANDUM

October 9, 2018

TO: Members of the Board of Trustees
FROM: Kristina M. Johnson, Chancellor
SUBJECT: Sexual Harassment and Consensual Relationship Policy

Action Requested

The proposed resolution establishes a uniform policy statement with respect to sexual harassment and directs all campuses and System Administration to create a consensual sexual and romantic relationship policy.

Resolution

I recommend that the Board of Trustees adopt the following resolution:

Whereas New York State and the State University of New York are committed to protecting the safety and well-being of its students and staff and maintaining educational and working environments that are free from discrimination and harassment; and

Whereas SUNY recognizes the need to take all possible precautionary steps to prevent harassment from occurring, and believes that college officials can play a crucial role in combatting sexual harassment and discrimination on its campuses; and

Whereas SUNY also recognizes the importance of assisting the victims of discrimination and harassment, and putting appropriate processes in place to hold offenders accountable for their discriminatory and harassing conduct, in accordance with due process requirements; and

Whereas when sexual harassment occurs on campus it hampers students' ability to succeed in their academic

program and employees' ability to succeed in their working environments, is prohibited by law, including by Title VII of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972 and the New York State Human Rights Law, and such conduct cannot and will not be tolerated; and

Whereas Governor Andrew M. Cuomo has taken an active leadership role in addressing sexual harassment in both the government and private sectors; and

Whereas SUNY has reviewed its existing policies and procedures aimed at preventing sexual harassment, and has found that while all its campuses have long maintained programs which apply evidence-based approaches to preventing and responding to sexual harassment and other forms of sex-based discrimination, such best practices should be uniformly applied at all SUNY campuses; and

Whereas when SUNY faculty, staff and students exercise power and authority over other SUNY faculty, staff and students whether due to current supervisory, instructional, or other professional responsibility, or perceived influence or control over an educational or work experience, a power imbalance is created, which may impede the real or perceived freedom of the faculty, student or employee not to enter into a sexual or romantic relationship or to terminate or alter that sexual or romantic relationship; and

Whereas a sexual or romantic relationship under the conditions set forth above may result in a loss of objectivity and create a conflict of interest in any evaluative, supervisory, instructional, or other professional role;

Whereas SUNY must, at a minimum, prohibit any sexual or romantic relationships between faculty or staff (which terms shall be defined by the campuses) and students where there is an existing supervisory, evaluative, or instructional relationship between the individuals; and

Whereas SUNY stakeholders must consider the power dynamic that exists in the relationships with students in any capacity, and should evaluate the need for a prohibition against any sexual or romantic relationships between faculty or staff and undergraduate students; now, therefore, be it

Resolved that System Administration, all State-operated campuses and community colleges shall adopt the uniform Sexual Harassment Policy Statement attached to this Resolution to notify their respective community members of SUNY's no tolerance policy for behavior that violates the sexual harassment policy; and, be it further

Resolved that campuses and System Administration must ensure that appropriate investigation is made into complaints of sexual harassment and that discipline is imposed for such behavior in accordance with each entity's policies and processes; and, be it further

Resolved that SUNY's Sexual Harassment Policy Statement shall be widely publicized to the campus community subsequent to its adoption; and, be it further

Resolved that on or before March 1, 2019, each SUNY campus and System Administration shall individually develop, with input from appropriate members of their workplace and campus communities, including local governance, a sexual or romantic relationship policy which shall be widely disseminated to their respective communities, and which will, at a minimum:

- Apply to all faculty, students and staff (campuses shall further define whether students who are also employees are categorized for purposes of the policy as a student or staff);
- Prohibit any sexual or romantic relationships between faculty or staff members and students if there is an existing supervisory, evaluative or instructional relationship, unless the relationship is disclosed and supervision, evaluation or instruction is terminated in accordance with the policy;
- Require for sexual or romantic relationships between faculty or staff where there is a supervisory or reporting relationship between the participants that each employee inform an appropriate campus entity (which may be a supervisor, or the Director of Human Resources or equivalent, or, at the campuses' option, the Title IX Officer or Coordinator) of such relationship;

- Require that for sexual or romantic relationships in the workforce (including for student-teaching assistants or graduate student teachers) alternative supervisory roles be created to ensure that supervisors in a consensual romantic or sexual relationship with an employee be removed from any evaluation of the employee, and from any activity or decision that may appear to reward, penalize, or otherwise affect the employment status of the employee;
- Make allowances for pre-existing relationships or marriages provided that the relationship is reported as required herein and that alternative supervisory relationships be established; and
- Require that discipline be imposed for any individual failing to follow the terms of the policy, up to and including termination; and, be it further

Resolved that each SUNY campus and System Administration should consider a prohibition against any sexual or romantic relationships between faculty or staff and undergraduate students with input from appropriate members of their workforce and communities, including local governance, and report its opinions on such prohibition to the Chancellor or designee by January 2, 2019; and be it further

Resolved that SUNY will coordinate with the State to present annual, mandatory training to System Administration and all campuses for employees, and annual training for students, on preventing and addressing sexual harassment and sex discrimination, including knowledge of whom to contact with questions regarding this policy and how to report violations of this policy; and, be it further

Resolved that all SUNY campuses shall maintain records to ensure compliance with annual training, reporting and alternative supervision requirements; and, be it further

Resolved that the uniform campus climate assessment required by N.Y. Education Law 129-B shall be expanded to include the Sexual Harassment Prevention Policy and the Sexual and Romantic Relationship Policy required by this Resolution; and, be it further

Resolved that all SUNY campus presidents and the System Administration Vice Chancellor for Human Resources must report to the Chancellor, or designee, by March 1, 2019, on the actions they have taken to address the measures set forth above; and, be it further

Resolved that the Chancellor shall report to the Board and the Governor on the actions taken by the campuses and System Administration to comply with the directives set forth in this Resolution.

Background

Although all SUNY campuses have strong statements prohibiting sexual harassment, it is imperative for SUNY to leverage its power as the most comprehensive system of higher education in the country to speak with one voice in combating all forms of sexual harassment.

The measures outlined in this resolution address critical issues that affect learning and employee environments and must be addressed through clear and transparent policy and policy statements.

Attachment

SUNY Sexual Harassment Response and Prevention Policy Statement

Sexual harassment is a form of sex discrimination which is unlawful in the workplace under Title VII of the Civil Rights Act of 1964, as amended, and the New York State Human Rights Law. Under Title IX of the Educational Amendments of 1972, sexual harassment also is prohibited in the provision of educational services and protects students and employees from sexual harassment.

Sexual harassment is prohibited and will not be tolerated at SUNY. The University has implemented measures to address and prevent sexual harassment and is taking additional affirmative steps to increase awareness of, and sensitivity to, all forms of sexual harassment in order to maintain a workplace and learning environment free of its harmful effects.

Sexual harassment is a form of workplace discrimination and employee misconduct, as well as a form of discrimination in the academic setting, and all employees and students are entitled to work and learn in a campus environment that prevents sexual harassment. All employees and students have a legal right to a workplace and a campus free from sexual harassment, and employees and students can enforce this right by filing a complaint internally with the University, or with a government agency, or in court under federal or state anti-discrimination laws, as detailed in the University's Discrimination and Sexual Harassment Complaint Procedure.

In accordance with applicable law, sexual harassment is generally described as unwelcome sexual advances, requests for sexual favors or 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 employment or academic benefit; or
- Submission to or rejection of the conduct is used as the basis for an employment or academic decision affecting the person rejecting or submitting to the conduct; or
- The conduct has the purpose or effect of unreasonably interfering with an affected person's work or academic performance, or creating an intimidating, hostile or offensive work or learning environment.

Sexual harassment can include physical touching, verbal comments, non-verbal conduct such as leering or inappropriate written or electronic communications, or a combination of these things. Examples of sexual harassment may include, but are not limited to:

- Seeking sexual favors or a sexual relationship in return for the promise of a favorable grade or academic opportunity;
- Conditioning an employment-related action (such as hiring, promotion, salary increase, or performance appraisal) on a sexual favor or relationship; or
- Intentional and undesired physical contact, sexually explicit language or writing, lewd pictures or notes, and other forms of sexually offensive conduct by

individuals in positions of authority, co-workers or student peers, that unreasonably interferes with the ability of a person to perform their employment or academic responsibilities.

- Physical acts of a sexual nature, such as:
 - Touching, pinching, patting, kissing, hugging, grabbing, brushing against, or poking another person's body;
 - Rape, sexual battery, molestation or attempts to commit these assaults.
- Unwanted sexual advances or propositions, such as:
 - Requests for sexual favors accompanied by implied or overt threats concerning a target's job performance evaluation, a promotion or other job benefits or detriments, or an educational benefit or detriment;
 - Subtle or obvious pressure for unwelcome sexual activities.
- Sexually oriented gestures, noises, remarks, jokes or comments about a person's sexuality or sexual experience, which create a hostile environment.
- Sex stereotyping occurs when conduct or personality traits are considered inappropriate simply because they may not conform to other people's ideas or perceptions about how individuals of a particular sex should act or look.
- Sexual or discriminatory displays or publications, such as:
 - Displaying pictures, posters, calendars, graffiti, objects, promotional material, reading materials or other materials that are sexually demeaning or pornographic. This includes such sexual displays on computers or cell phones and sharing such displays while in the workplace or classroom.
- Hostile actions taken against an individual because of that individual's sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity, and the status of being transgender, such as:
 - Interfering with, destroying or damaging a person's workstation, tools or equipment, or otherwise interfering with the individual's ability to perform his or her employment or academic duties;
 - Sabotaging an individual's work;
 - Bullying, yelling, name-calling.

Such behavior can constitute sexual harassment regardless of the sex, gender, sexual orientation, self-identified or perceived sex, gender expression, status of being transgender, or gender identity of any of the persons involved. Sexual harassment is considered a form of employee and student misconduct which may lead to disciplinary action. Further, supervisors and managers will be subject to discipline for failing to report suspected sexual harassment or otherwise knowingly allowing sexual harassment to continue. Employees and students who believe they have been subjected to sexual harassment may use the University's Discrimination and Sexual Harassment Complaint Procedure for more details on how to have their allegations reviewed, including a link to a complaint form.

Retaliation against a person who files a complaint, serves as a witness, or assists or participates in any manner in this procedure, is unlawful, is strictly prohibited and may result

in disciplinary action. Retaliation is an adverse action taken against an individual as a result of complaining about or provides information regarding unlawful discrimination or harassment, exercising a legal right, and/or participating in a complaint investigation as a third-party witness. Adverse action includes being discharged, disciplined, discriminated against, or otherwise subject to adverse action because the individual reports an incident of sexual harassment, provides information, or otherwise assists in any investigation of a sexual harassment complaint. Participants who experience retaliation should contact the campus AAO, and may file a complaint pursuant to these procedures.

SUNY campuses and System Administration shall take the necessary steps to ensure that this Sexual Harassment Response and Prevention Policy Statement is distributed, implemented, and enforced in accordance with their respective policies.