COMPLAINT PROCEDURE FOR REVIEW OF ALLEGATIONS OF UNLAWFUL DISCRIMINATION/HARASSMENT

(Approved by Executive Council 10/24/06)

Office of Affirmative Action State University of New York College at Plattsburgh

Overview: The State University of New York, College at Plattsburgh ("Plattsburgh State” or "the College"), in its continuing effort to seek equity in education and employment and consistent with Federal and State anti-discrimination legislation, has adopted a complaint procedure for the prompt and equitable investigation and resolution of allegations of unlawful discrimination on the basis of race, color, national origin, religion, age, sex, sexual orientation, disability, veteran status or marital status. Harassment on the basis of the above categories is one form of unlawful discrimination. Conduct that may constitute harassment is described in Appendix A. More detailed information may be obtained from the Office of Affirmative Action.

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

These measures are intended to balance the rights of those bringing complaints of discrimination, harassment, and retaliation (the "Complainant") with those against whom claims are brought (the "Respondent"). This procedure is administered by the Affirmative Action Officer (AAO), who reports to the College President. The State University of New York, Office of the University Counsel has approved this procedure.

This procedure may be used by any Plattsburgh State student or employee. Employee grievance procedures established through negotiated contracts, academic grievance review committees, student disciplinary grievance boards, and any other procedures defined by contract will continue to operate as before. 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 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.

A complainant is not required to pursue the Plattsburgh State procedure before filing a complaint with the appropriate State or Federal agency, and the Complainant may file such a complaint at any time during the process. However, after filing with one of these outside enforcement agencies, or upon the initiation of litigation, the complaint shall be referred to the Office of University Counsel for review and defense or, if deemed appropriate by Counsel, involvement in mediation, conciliation or settlement with the external agency or such other actions as may be in the interests of the College, including termination of the internal procedure.

Time Limits: Employees of Plattsburgh State must file a written complaint with the Affirmative Action Officer within 90 calendar days following the alleged discriminatory act or
the date on which the Complainant first knew or reasonably should have known of such act. All such complaints must be submitted on the forms provided by the College. (See Appendix C.)

Students must file a complaint within 90 calendar days following the alleged discriminatory act, or 90 calendar days after a final grade is received for the semester during which the discriminatory acts occurred, if that date is later.

It is the Complainant’s responsibility to be certain that any complaint is filed within the 90-day period.

If the Complainant brings a complaint beyond the period in which the complaint may be addressed under these procedures, the Affirmative Action Officer shall, after consultation with the Office of University Counsel, terminate any further processing of the complaint, refer the complaint to University Counsel, or direct the Complainant to an alternative forum (see Appendix B for a list of alternative forums).

**Jurisdiction of the Affirmative Action Officer**

Complaints of illegal discrimination should be made to the Affirmative Action Officer (AAO). Complaints or concerns that are reported to a College administrator, manager, or supervisor concerning an act of discrimination or harassment shall be immediately referred to the Affirmative Action Officer. The AAO will also receive initial inquiries, reports, and requests for consultation. The AAO will respond as appropriate in a timely manner.

Plattsburgh State is committed to providing a learning and working environment free from discrimination. The College, through the Office of Affirmative Action, reserves the right to pursue any complaint of discrimination about which it becomes aware. Based on information received, the Affirmative Action Officer may exercise her/his discretion and initiate a complaint on behalf of the College community.

In addition, the Affirmative Action Officer may determine that a specific complaint of unlawful discrimination or harassment is of such a serious or potentially criminal nature that the investigative steps outlined in the process should be accelerated or eliminated. Such a circumstance will be communicated to the President (or his/her designee) and to the Director of Human Resource Services for appropriate action, including the initiation of disciplinary action.

**Retaliation**

An employee or student who participates in the procedure has the right to do so without fear of or actual retaliation. It will be made clear to Respondent that retaliation against an employee or a student who has filed a discrimination complaint, or against any witness, will result in appropriate sanctions or disciplinary action as covered by College policies or applicable collective bargaining agreements. These sanctions will be invoked for retaliation regardless of the merits of the original complaint.
Confidentiality

To the extent practicable or allowable by law, 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.

No party shall employ audio or video taping devices during any portion of the procedures detailed hereafter.

Procedures for Resolving Complaints

Complaint Consultation and Review

Any student or employee of Plattsburgh State may consult with the Affirmative Action Officer regarding potential discrimination or harassment. This initial contact may occur by telephone, e-mail, or in person—the latter being preferred. The AAO will assist the individual in understanding the nature of the incident, the complaint process, resources available to the individual, and other options to resolve the issue. The individual need not take any further action.

The individual may elect to have the matter resolved informally. In seeking an informal resolution, the Affirmative Action Officer shall review all relevant information and interview Complainant, Respondent, and pertinent witnesses. The AAO will take all reasonable steps to complete the inquiry in a timely manner. If the AAO can find a resolution satisfactory to both the Complainant and the Respondent, the AAO will send a written notice to that effect to both parties. The matter will be closed.

At any time in this process, the Complainant may elect to sign a formal complaint, as long as it is within the 90-day time limit.

If the individual decides to do so, a complaint form should be signed. The complaint form contained in Appendix C must be used. The Complainant will receive a copy of the complaint form signed and dated by the AAO (or designee), as will the Respondent.

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 some instances verbal complaints may be acted upon, the procedures set forth here rest upon the submission of a written complaint that will enable a full and fair investigation of the facts.

Investigation

If there is a formal complaint filed, or if the AAO determines that the matter deserves further examination, s/he will immediately begin an investigation. The AAO 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. Both the Complainant and the Respondent will receive notification from the AAO regarding the basis for this extension.
The investigation shall consist of:

- Reviewing statements of and interviewing both Complainant and Respondent;
- Reviewing all College records that concern the complaint;
- Interviewing witnesses;
- Reviewing other relevant material and evidence.

In reaching findings, the AAO 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.

**Failure to Cooperate:** If the Respondent refuses to cooperate and/or respond in a timely manner, the AAO may terminate any further processing of the complaint and refer the matter to Human Resource Services. Failure to cooperate meaningfully in a review of a complaint of discrimination may be grounds for discipline.

**Inaction by Complainant:** If at any time during an investigation, a Complainant declines to cooperate with the AAO, or if the AAO determines that the Complainant no longer wishes to pursue her/his complaint, the matter may be considered closed, with appropriate notification.

**Legal Counsel:** If legal counsel is retained by a Complainant or Respondent, that counsel may not participate or be present at any meeting convened by the AAO. Respondents and Complainants are expected to communicate with the AAO directly, not through legal counsel or other intermediaries.

**Resolution**

The AAO shall make every reasonable effort to resolve the matter informally in any form that is acceptable to the parties and to the College. Resolution may take the form of:

- Letters exchanged between the parties through the AAO, including any apology from the Respondent;
- A meeting with the supervisor of the Complainant or Respondent;
- Mandated trainings in the areas of discrimination for the Respondent or the departmental unit;
- A verbal warning to the Respondent issued after consultation with Human Resource Services and in accordance with any applicable collective bargaining agreements;
- A written warning to the Respondent issued after consultation with Human Resource Services and in accordance with any applicable collective bargaining agreements.

This list is not exhaustive and other forms of resolution may be appropriate.

When there is a signed, formal complaint, and after a full investigation, if the AAO cannot negotiate a resolution agreeable to both the Respondent and Complainant, the AAO will issue a report to all parties and to the President.
The AAO’s determination may be that:

1) The complaint was not substantiated.

   If the AAO determines that there is insufficient credible evidence to support the allegation of discrimination, the complaint shall be dismissed and the College shall take no further action.

2) The complaint was substantiated.

   a) For Respondents who are students, the AAO may determine that sufficient information exists to refer the matter to Judicial Affairs for review and appropriate action under the student conduct code.

   b) For Respondents who are employees (including student employees) not in a collective bargaining unit, in consultation with HRS, the AAO may recommend to the President that s/he take such administrative action as deemed appropriate under authority as the chief administrative officer of the College, including but not limited to termination, demotion, reassignment, suspension, reprimand, or training.

   c) For Respondents who are employees in collective bargaining units, the AAO may determine that sufficient information exists to recommend disciplinary action to the President. The President may then refer the matter to the Director of HRS for investigation and action appropriate under the applicable bargaining agreement. Corrective action may include, but is not limited to: reprimand, mandatory counseling, written counseling, probation, suspension, termination of employment, or non-renewal of contract.

Within ten working days from the AAO’s recommendation, the President will issue a written statement indicating what action will be taken. The statement will be sent to the Complainant, the Respondent, and the AAO. The President’s decision will be final for the purposes of this discrimination procedure.

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

If the AAO is the Respondent, the President’s designee will investigate the allegation.

If the Complainant is dissatisfied with the President’s or Chancellor’s decision, the Complainant may elect to file a complaint with one or more State and Federal agencies. The Affirmative Action Officer will provide general information on State and Federal guidelines and laws, as well as names and addresses of various enforcement agencies. (See Appendix B.).
Appendix A: Definitions and Prohibited Acts and Behaviors

Sexual Harassment in the Employment Setting is defined as:
Unwelcome sexual advances, requests for sexual favors, or verbal or physical conduct of a sexual nature when any of the following occurs:

- Submission to such conduct is made a term or condition of an individual’s continued employment, promotion, or other condition of employment.
- Submission to or rejection of such conduct is used as a basis for employment decisions affecting an employee or job applicant.
- Such conduct is intended to interfere, or results in interference, with an employee’s work performance, or creates an intimidating, hostile, or offensive work 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 sex, the student's ability to participate in or to receive benefits, services, or opportunities in the educational institution's program.

Harassment on the Basis of Protected Characteristic(s) other than Sex/Gender
Harassment based on race, color, age, religion, national origin, disability, sexual orientation or other protected characteristics is oral, written, graphic or physical conduct relating to an individual's protected characteristics 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.
Appendix B: External Enforcement Agencies
Appendix C
Charge of Discrimination  
State University of New York  
College at Plattsburgh

This form is to be used by students and employees to file a complaint of discrimination based on race, color, religion, sex, national origin, sexual orientation, veteran’s status, age, disability, marital status, or sexual harassment.

Received by: ___________________________ Date: ___________________________

(print)

(signature)

Name: ___________________________ Daytime Phone: ___________________________

Address: ___________________________ Evening Phone: ___________________________

Cell Phone: ___________________________

Status: Employee (Faculty, Staff)  Student

1. Name and Title of the person who allegedly discriminated against you:

________________________________________

(name)  (title)

2. What discriminatory treatment are you claiming? (Check all that apply.)

Denied Fair Grade  Denied Equal Employment Opportunity  Denied Equal Pay
Denied Access to Class  Denied Promotion  Failed to Hire
Denied Training  Terminated  Denial
Accommodation

Forced Retirement/Resignation  Subjected to Hostile Environment

Other: __________________________________________

3. The discrimination you claim was based upon:

Creed/Religious Belief  Sex/Gender  Age
National Origin/Ancestry  Race/Color  Disability
Marital Status  Sexual Orientation  Veteran’s Status
Sexual Harassment  Other: __________________________________________
4. When did this **first** happen to you? _____________ (date)
When did this most recently happen? _____________ (date)

5. Have you filed this charge with a federal, state, or local government agency?
   No
   Yes
   What agency: ________________________ Date: __________

6. Have you filed a suit or court action on this charge?
   No
   Yes
   What court?: ________________________ Date: __________

7. Describe what occurred and your reasons for concluding that this was discriminatory. Include specific events, dates, and details. Attach additional pages if necessary.

8. Was anyone else treated the same way you were? Describe those persons.

9. Did anyone witness the treatment you were subjected to:

   Name: __________________________ Phone number: ___ __________________________
   What did they witness?
   __________________________________________________
   __________________________________________________
   __________________________________________________
   __________________________________________________

10. Did you complain (other than now to the AAO)?
   No
   Yes
   To whom? ___________________________ when?
   __________________
   What happened?

11. Are you a union member?
   No
   Yes
   Did you file a grievance?
   No
   Yes
   Date: __________
12. What documents are there that would support your case? Do you have copies of them?

13. What have you lost as a result of what happened to you?

14. What reasonable remedy are you seeking?

I affirm that I have read the above allegation(s) and that it is (they are) true to the best of my knowledge.

I understand that the AAO will keep all information gathered relative to this complaint in confidence to the extent practicable or allowable by law. However, the Respondent will receive information about this complaint, including my name. The AAO may provide relevant information to the appropriate College staff when necessary.

I have been advised that the filing of an internal complaint with the Affirmative Action Officer is not a waiver of my right to file a formal complaint of unlawful discrimination with the New York Division of Human Rights, the Equal Employment Opportunity Commission, or other federal or state agencies or courts.

__________________________________________________________
Complainant’s Signature                                       Date