

Legal and Contractual Issues

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Topics

- “Hot” Contractual Issues
- Title VII and Title IX – Discrimination and Harassment
- Disciplinary Processes
- Child Protection
- Students of Concern
- FERPA





Death by PowerPoint

Renewal/Non-Renewal – 31.1

- Any written recommendations made by someone in the supervisory chain must be provided to the faculty member at the time they are written.
- Verbal exchanges need not be memorialized
- Solicited recommendations written or verbal from outside the supervisory chain need not be provided to the candidate.

Renewal/Non-Renewal – 31.6

- At any time that continuing appointment is being considered (renewal, non-renewal, tenure, permanency), if a written evaluative file is developed, the candidate should have five (5) days to examine the file.
- Gives candidate the opportunity to see what the decision maker is going to see and to respond.
- Outside recommendations are *not* included in the file.
- There will *not always* be an evaluative file.

Renewal/Non-Renewal Questions ??



Call Employee Relations
645-7777

Chris Putrino, Director
Kathie Frier, Assistant Director
Michele Reno, Assistant Director

Legal Obligations of the Institution

Under **Title VII and Title IX**, University is **REQUIRED** to:

- Ensure that faculty, staff and students are aware that unlawful discrimination, including sexual harassment, is prohibited;
- Provide a procedure through which alleged victims may complain;
- Provide prompt, effective remedial action for any alleged conduct of which the institution is aware

Discrimination and Harassment Policy

- Prohibits discrimination on basis of race, color, national origin, sex, religion, age, disability, gender, pregnancy, gender identity, gender expression, sexual orientation, predisposing genetic characteristics, marital status, veteran status, military status, domestic violence victim status, ex-offender status
- Requires accommodation for disability, religion, pregnancy, maternity or breast-feeding status

Discrimination and Harassment Policy

- Office of Equity, Diversity and Inclusion (EDI) handles reports and complaints – 645-2266
- Conducts investigations
- Recommends action
- Individuals can also complain to outside agencies

Confidentiality/Protection Against Retaliation

- Report of discrimination or harassment is confidential, except as needed to investigate and resolve claim
- Generally will not proceed without knowledge and consent
- In cases of severe or ongoing conduct, might have obligation to move forward regardless of complainant's willingness to proceed
- Complainant is legally protected against retaliation for making a complaint. Retaliation is action that can affect employment or academic standing, e.g., negative evaluations or grades, harassment, isolation or other treatment that impacts the work or academic environment.

Identifying Sexual Harassment and Violence

- Any observed, experienced, or known sex discrimination, including sexual harassment and sexual violence
- Sexual harassment: unwelcome conduct of a sexual nature that is sufficiently severe, persistent or pervasive that it unreasonably interferes with, denies, or limits someone's ability to participate in or benefit from a program or activity.
- Sexual violence: physical sexual acts perpetrated against a person's will or where person is incapable of giving consent
- Can be carried out by employees, students, or third parties

Title IX - Responsible Employees

Includes:

- Any employee who has authority to take action to redress sexual violence, or
- Has been given the duty of reporting incidents to the Title IX Coordinator, or
- Whom a student could reasonably believe has this authority or duty

Responsible Employees

- Must know their obligation to report and to whom
- Must be identified to the campus
- Train to inform students about their reporting obligation, confidentiality, rights, remedies and services
 - Right to file complaint
 - Right to report a crime to campus or local law enforcement
- Do not need to determine whether harassment occurred or whether a hostile environment was created
- Report all relevant information

Responsible Employees

- If a responsible employee knows or reasonably should know of possible sexual violence, the school is deemed to have notice
- Must take immediate and appropriate steps to investigate and take appropriate action if substantiated
- Obligation to investigate exists whether or not formal complaint filed

Other Employees

- Likely to witness or receive reports of sexual violence
- Coaches, residence life staff, law enforcement, health center staff, administrators, faculty, staff
- People with first-line access to the campus community, interaction with students
- Should know what to do if they receive a report and who to report to

Who is the Title IX Coordinator?



Faculty Code of Conduct

- Faculty members will not enter into non-professional relationships, particularly sexual ones, with any student for whom they have, or should reasonably expect to have in the future, academic responsibility (instructional, evaluative, or supervisory)
- Pre-existing non-professional relationships with students must be disclosed to the Chair or other appropriate administrator, who will make alternate arrangements for evaluation and, if possible, for instruction and supervision

Disciplinary Process

Progressive in Nature

- Coaching
- Informal Counseling
- Formal Counseling
- Formal Discipline



You cannot discipline someone for something they have already been counseled about

Discipline for Serious Allegation

YOUR ROLE



- Call the Dean, your HR representative, Employee Relations, Equity Diversity and Inclusion, University Police
- Do NOT keep it quiet, try to hide it
- Do NOT do your own investigation (talk to the alleged victim or perpetrator)
- Confidentiality and discretion are of *utmost* importance
- Provide accurate information, document conversations or interactions

Discipline for Serious Allegation

OUR ROLE

- Investigate – take witness statements
- Advise as to further contact
- Speak with employee's representative
- Interrogate
- Levy Charges
- Recommend Action
- Suspension?
- Persona Non Grata Status?
- Charges to Arbitration to Settlement?



Working Together

- General Counsel
- University Police
- UB Employee Relations
- Equity, Diversity, Affirmative Action
- Judicial Affairs
- Dean or VPs Office
- Provost and President's Office
- SUNY Employee Relations
- Governors Office of Employee Relations (GOER)
- The Union



Have an Employee Problem?



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645-7777

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Public Officers Law Section 17

- Current and former state employees defended and indemnified
- Within the “scope of employment”
- Must request representation
- Must fully cooperate with Attorney General



UB's Child Protection Policy



- Geared toward meeting duty of care toward children on campus, or in UB programs off-campus
- Sets standards of appropriate conduct
- Requires the reporting of inappropriate conduct and abuse by UB faculty/staff

Child Protection - Prohibited Acts

- Physical, sexual or emotional abuse
- Sexually inappropriate behavior
- Neglecting a duty of care
- Alcohol and drugs – using or enabling
- Participating in a sleepover without appropriate supervision
- Picking up/dropping off children if not guardian

Child Protection Policy: Duty to Report

- All University employees must report suspected child abuse/inappropriate conduct
- Students working with children as part of work obligations or an academic program must also report this
- Visitors using University property must report

How to Report

Suspected Child Abuse

- On-campus conduct: Report to UPD (645-2222) and EDI (645-2266), in addition to other mandated reporting.
- Off-campus conduct: Report to local law enforcement and EDI, in addition to other mandated reporting.

Inappropriate Conduct

- Report to the Responsible UB Official.
- *The 'Responsible UB Official' is the individual who approved a program or activity, or who authorized the use of UB facilities to visitors.*

SUNY Child Protection Policy

- Individuals must:
 - conduct themselves appropriately with children who participate in University-related programs
 - report instances or suspicion of physical or sexual abuse of children
- “Responsible university official” must communicate policy to “covered persons,” confirm Sex Offender Registry checks and required training
- “Covered persons” are those responsible for custody, control or supervision of children in University-related activities

Students of Concern Group (SOC)

- Meet weekly
- UPD, Res Halls, Judicial Affairs/Student Advocacy, Health and Counseling Services
- Support and Provide Resources
- Threat Assessment
- Use mandated psychological assessment, temporary suspension, and parent notification
- “Minding the Gap”-periodic check-ins

SOC Referral Sources, Contacts

Referral Source	%
Campus Police	44%
Faculty/Staff	42%
Student	5%
Family	4%
Student Affairs	4%
No affiliation	2%

Discussed at SOC	%
Discussed once	55%
Discussed > once	44%
> 1 distinct incident	7%

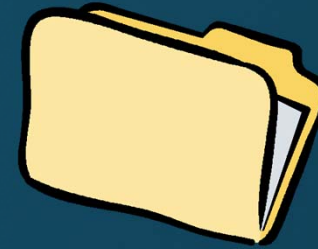
Students of Concern Interventions

- Student support coordinator 66%
- Counselor notified 38%
- Referred to counseling 17%
- Judicial hearing 14%
- Police follow-up 13%
- Counseling Services outreach 8%
- Mandated evaluation 6%
- Referred off-campus 3%
- Referred to Health Services 2%

How You Can Help

- Silent Witness Form.
- Call for assistance (Student Affairs Vice President's Office, Counseling Center, Judicial Affairs).
- Do not hesitate to file a police report with UPD.
- Make referrals to Students of Concern.
- Request welfare checks.
- Support us in balancing individual rights vs. the needs of the greater community.

FERPA



- Records are "'education records' subject to FERPA [when] they are 1) directly related to a student; 2) maintained by an educational agency or institution, or a party acting for the agency or institution; and 3) not excluded from the definition [under one of five specific and limited exceptions]"
- "Education records" may be disclosed only if there is an applicable exception or the relevant student's consent.

FERPA - "Education Records"

- "Education records" certainly includes transcripts, exams, papers, and the like
- But it also includes:
 - Financial aid and account records
 - Disability accommodation records
 - Disciplinary records, including complaints
 - SSNs and campus ID numbers
 - E-mail
 - Photographs
 - "Unofficial" files
 - Records that are publicly available elsewhere
 - Information that the student has publicly revealed
 - *Pretty much everything!*

FERPA - Exceptions

- "Law enforcement" records
- "Treatment" records
- "Employment" records
- "Alumni" records
- Health or safety emergencies

FERPA - Personal Knowledge

- Derived from sources other than education records
- Obtained through “personal knowledge or observation”
- Doesn't apply when person has official role in determination that generates an education record, e.g., course grade

Legal and Contractual Issues

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CASE STUDY



thank
thank
you!