

TO: OGC Attorneys and Professional Staff

FROM: Beth C. Garvey, Vice Chancellor for Legal Affairs & General Counsel

SUBJECT: New SUNY Consensual Relationship Policy & Uniform Sexual Harassment Policy Statement, and Amendments to Sexual Harassment Policy & Discrimination Complaint Procedures.

DATE: October 16, 2018

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## I. Overview

On October 9, 2018, the SUNY Board of Trustees (“BOT”) approved a new policy establishing a uniform policy statement for sexual harassment and directing all campuses to create a consensual sexual and romantic relationship policy. (See attached BOT Resolution entitled “Sexual Harassment and Consensual Relationship Policy”). The BOT also approved amendments to the existing sexual harassment policy and the harassment complaint procedure; these amendments were created in response to a new state law requiring all employers in New York State to adopt a sexual harassment policy and provide training regarding sexual harassment. (See attached BOT Resolution entitled “Amendments to Existing Policies Regarding Sexual Harassment”).

## II. New Consensual Relationship Policy

In response to the power imbalance that may occur in consensual relationships between SUNY faculty, staff and students 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, the BOT adopted a resolution and accompanying policy, which requires all SUNY campuses (System Administration, state-operated campuses, community colleges, and statutory colleges) to adopt by March 1, 2019 a sexual and romantic relationship policy, which are set forth in the Resolved Clauses of the “Sexual Harassment and Consensual Relationship Policy” and are summarized below. (Referred to as the “Sexual and Romantic Relationship Policy”).

By January 2, 2019, each SUNY campus should consider a prohibition against any sexual or romantic relationships between faculty or staff and undergraduate students, and report its opinions on such prohibition to the Chancellor.

As stated above, by March 1, 2019, each SUNY campus must develop its own Sexual and Romantic Relationship Policy that applies to all faculty, students, and staff. It must also 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 the supervision, evaluation, or instruction is terminated. With regard to the faculty, staff, and student power imbalance, each campus shall define whether students who are also employees are categorized for purposes of this policy as a student or staff. (For example, campuses must

determine if a student Resident Assistant is considered an employee for whom a relationship with another student would be prohibited).

Under the campus-adopted Sexual and Romantic Relationship Policy, for relationships between faculty and staff where there is a supervisory or reporting relationship, each employee must inform an appropriate campus entity of the relationship, and alternative supervisory roles must be created to ensure that supervisors in a relationship with an employee be removed from evaluating the employee and from any activity or decision that appears to reward, penalize, or otherwise affect the employment status of the employee. Pre-existing relationships and marriages must be reported and there must be alternative supervisory roles established.

Also, by March 1, 2019, all SUNY campus presidents must report to the Chancellor on the actions they have taken regarding adoption and implementation of its consensual relationship policy.

All SUNY employees must participate in mandatory annual training on sexual harassment, proof of such annual training must be available by October 9, 2019.

Additionally, all SUNY campuses must adopt the SUNY Sexual Harassment Response and Prevention Policy Statement to notify community members of SUNY's no tolerance policy for behavior that violates the sexual harassment policy. The Policy Statement must be widely publicized to the campus community after its adoption.

The uniform campus climate assessment required by N.Y. Education Law 129-B is expanded to include the Sexual Harassment Prevention Policy and the Sexual and Romantic Relationship Policy in the scope of the survey.

### III. Amendments to Existing Sexual Harassment Policy and Complaint Reporting Procedure.

In April 2018, a new state law was enacted that requires every employer in New York State to create a sexual harassment prevention policy that meets or exceeds a set of minimum standards.

Currently, SUNY Policy 6502, entitled "Equal Opportunity: Access, Employment and Fair Treatment in the State University of New York" (the "Policy"), states that no discrimination against, or harassment of, individuals will occur on any SUNY campuses, programs, or activities. SUNY Policy 6501, entitled "Discrimination Complaint Procedure" (the "Procedure"), sets forth the procedure for the prompt and equitable investigation and resolution of allegations of unlawful discrimination.

The BOT passed a resolution amending the existing versions of Policy 6502 and Policy 6501 to ensure compliance with the standards in the new law. These amendments became effective on October 9, 2018.

Specifically, the proposed amendments to Policy 6502, the Policy on harassment and discrimination, add plain statements that sexual harassment is offensive, in violation of SUNY

policies, is not to be tolerated on SUNY campuses, is a form of workplace discrimination and employee misconduct, and will subject the actor to remedial and disciplinary action. The amendments also repeal existing definitions of sexual harassment in specific settings and replace them with a more robust, detailed definition of sexual harassment, which includes specific examples of what constitutes sexual harassment.

The proposed amendments to Policy 6501, the Discrimination Complaint Procedure, add detailed descriptions of additional legal remedies available at the federal and state levels for individuals subjected to sexual harassment. The amendments also plainly state that retaliation against those who report sexual harassment is unlawful, and defines “adverse action” in the retaliation context. Similar to the amendments to Policy 6502, the amendments to Policy 6501 provide more expansive definitions of sexual harassment.

#### IV. Policy and Procedure Website

In accordance with the above-referenced BOT resolutions, there will be changes to the SUNY-wide Policy and Procedure website. First, there will be two new policies added to such website—one entitled “Uniform Sexual Harassment Policy Statement” and the other entitled “Sexual and Romantic Relationship Policy.” Then we will amend the existing Policies 6501 and 6502 to reflect the new definitional language and procedure.