



## **The National LGBT Bar Association Law School Climate Survey**

The National LGBT Bar Association has developed an annual law school climate survey for the purpose of gathering information about the level of inclusivity of and protections for LGBTQ+ stakeholders at law schools across the country.

This assessment takes several factors into consideration, including LGBTQ+ student recruitment, LGBTQ+ faculty and staff visibility, and availability and accessibility of gender inclusive bathroom facilities on law school campuses.

This information will give prospective law students - whether LGBTQ+ or ally - important information to consider when choosing a law school. The LGBT Bar's report will publish the comments provided by your school verbatim, and may also seek and publish input from current and recent students as to their personal experiences.

Please either confirm that our understanding of your law school's nondiscrimination statement (as outlined in the letter attached to the email you received from the LGBT Bar) is correct or provide us with a corrected version of the statement and the URL where it can be found:

The University at Buffalo Law School's (UB Law or the Law School) nondiscrimination statement can be found here: <http://www.law.buffalo.edu/admissions/nonDiscrimination.html>. The statement provides as follows:

Pursuant to University policy, the University at Buffalo is committed to ensuring equal employment, educational opportunity, and equal access to services, programs, and activities without regard to an individual's race, color, national origin, sex, religion, age, disability, gender, pregnancy, gender identity, gender expression, sexual orientation, predisposing genetic characteristics, marital status, familial status, veteran status, military status, domestic violence victim status, or ex-offender status. Employees, students, applicants or other members of the University community (including but not limited to vendors, visitors, and guests) may not be subjected to harassment that is prohibited by law or treated adversely based upon a protected characteristic.



The University's policy is in accordance with federal and state laws and regulations prohibiting discrimination and harassment. These laws include the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, Title VII of the Civil Rights Act of 1964 as Amended by the Equal Employment Opportunity Act of 1972, and the New York State Human Rights Law. These laws prohibit discrimination and harassment, including sexual harassment and sexual violence.

Inquiries regarding the application of Title IX and other laws, regulations and policies prohibiting discrimination may be directed to Sharon Nolan-Weiss, Director of the Office of Equity, Diversity and Inclusion and Title IX/ ADA Coordinator, 406 Capen Hall, Buffalo, New York 14260; Tel. 716-645-2266; email [diversity@buffalo.edu](mailto:diversity@buffalo.edu). Inquiries may also be directed to the United States Department of Education's Office for Civil Rights, 32 Old Slip 26th Floor, New York, NY 10005-2500; Tel. 646-428-3900; Email [OCR.NewYork@ed.gov](mailto:OCR.NewYork@ed.gov).

### **LGBT Bar Climate Survey Questions:**

#### **Recruitment/Admissions/Retention:**

1. Does your law school intentionally seek out LGBTQ+ prospective students?
  - a. If so, how and where are your efforts directed?

A marketing email to prospective applicants who have self-identified as LGBTQ+ in their LSAC.org accounts is part of the larger marketing plan.

2. Does your law school's welcome packet for admitted students include mention of identity group support for LGBTQ+ students, as well as for students of color or other minorities?

Each year, the Office of Admissions invites the president of OUTLaw, our LGBTQ+ student group, to write a welcome email to admitted students. The presidents of our Black Law Student Association and Latin American Association are also invited to write a welcome email to admitted students. The Office of Admissions also reserves two tables at the Annual Student of Color Dinner for staff and accepted students of color. In most cases, the Office of Admissions assists accepted students of color with travel and accommodations for the Student of Color Dinner. In addition, this year, all student clubs and journals will be included in our new Welcome Manual (along with the welcome letter from our Student Bar Association) to be mailed to all incoming students starting in June.





This will include OUTLaw, BLSA and LALSA as well as the other 30+ groups. Further, contact information for groups including email addresses, Facebook groups, and websites can be found on our current student website.

3. Does your law school offer LGBTQ+ students the option to self-identify as LGBTQ+ in admission applications or post-enrollment forms?

Yes. Applicants are able to self-identify on the application for admission and post-enrollment forms. We also ask for preferred pronouns and preferred names. For more information, see the answer below to Question #4.

4. Does your law school offer transgender students who have not legally changed their names the ability to have their name of choice on admission applications or post enrollment forms?

Yes. Students can select their own preferred names on the student "HUB", which allows for forms, class rosters, UB Learns (Blackboard system), and even campus identification cards to carry a student's preferred name. UB Law is governed by University at Buffalo's (the University) Student Preferred Name Policy, which may be found at: <http://www.buffalo.edu/administrative-services/policy1/ub-policy-lib/student-preferred-name.html>. This policy provides as follows:

The University at Buffalo (UB, university) recognizes that students may use a first or middle name other than their legal name to identify themselves. The university will use a student's preferred name, when possible, in the course of university education and business unless the student's birth name or legal name is required by law or the preferred name is used for purposes of misidentification, fraud, or misrepresentation. For identity verification purposes, students must use their legal last name.

The university is required to use the legal first name for many official records and reports, including, but not limited to:

- University and State University of New York (SUNY) reporting for compliance purposes
- Bills
- Financial aid documents



- Parking tickets
- 1098-T Tax Forms
- Diplomas
- Transcripts
- Immigration documents
- Medical records

Students who change their legal name may update their legal name of record through the Office of the Registrar. A legal name change will not impact students' ability to select a preferred name.

The University reserves the right to review all preferred name changes. The Student Code of Conduct prohibits individuals from using lewd, indecent, or discriminatory names. Students who change their name in violation of university policies or the Student Code of Conduct will be notified via their UB email address and the name(s) will be removed. Students who repeat this violation will be referred to Student Conduct and Advocacy.

Students who experience problems related to faculty or staff misuse of their preferred name, or who experience discrimination should contact Equity, Diversity and Inclusion.

The University also provides "Preferred Name Guidance" and "Faculty and Staff Guidance on Preferred Names" at:

<https://registrar.buffalo.edu/personalinfo/preferred-name-guidance.php>, and <http://www.buffalo.edu/equity/obtaining-assistance/lgbtq-information-and-support/Rightsandprotectionstransgendercommunity/PreferredName/PreferredNameFAQs.html>.

5. Does your law school provide any annual scholarships specifically for LGBTQ+ students?

The Law School does have annual scholarships for students from underrepresented communities, including LGBTQ+ students. However, scholarships cannot be parsed by protected status as the Law School is a part of a state university and is governed by the following policy: "any disbursements made to individuals must be made in accordance with federal and state law and the policies of the State University of New York, which prohibit discrimination on the basis of age, religion, color, disability, national origin, race,





sex, gender, sexual orientation, pregnancy, gender identity, predisposing genetic characteristics, marital status, veteran status, military status, domestic violence victim status, or ex-offender status.”

6. Does your law school provide funding, including travel support, for LGBTQ+ students to participate in LGBTQ+-focused learning and career services opportunities?
  - a. If so, please provide details and examples of when and how those opportunities have been utilized.

Funding requests for travel related to the aforementioned types of events would be made to the Student Bar Association (SBA), which is the governing organization for all student groups in the Law School. In turn, the SBA is part of and governed by a separate not-for-profit organization: Sub-Board I, Inc. (SBI). Unlike most colleges and universities, student groups are funded by this separate entity. In an unusual set of circumstances, SBI was created by U.B. students in 1970. Student fees are actually directed to SBI and through it to student organizations in both the University and the Law School. More information on this unique system can be found at: <https://subboard.com:8081/aboutus.html>. Our student organization, OUTlaw, however, is funded by SBA for programming throughout the academic year. OUTlaw holds an annual dinner and award ceremony in addition to new programming throughout the year. For example, last year, OUTlaw was a co-sponsor for a program about the Supreme Court’s decision in Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission. For additional information and on-campus programming, please refer to our answers to Question 18 and 20.

**Faculty/Staff/Administration:**

7. Does your law school actively seek to employ a diverse staff/faculty/administrators, including visible, out LGBTQ+ individuals?
  - a. If so, please detail how and where recruitment efforts are directed.

As a public law school within the State University of New York system (SUNY), our recruitment and hiring is governed by state law and University policy. Here is the policy that governs our recruitment: <http://www.buffalo.edu/administrative-services/policy1/ub-policy-lib/recruitment.html>.



8. Please identify, to your knowledge, how many out L, G, B, T, Q or other faculty your law school employs (if any).

- a. How many out LGBTQ+ faculty of color does your institution currently employ in total?

There are two out LGBTQ+ faculty members at our law school, one is a person of color.

9. Please identify, to your knowledge, how many out LGBTQ+ staff/administrators?

- a. How many out LGBTQ+ staff/administrators of color does your institution currently employ in total?

There are two out LGBTQ+ administrators at our law school.

10. Does your law school provide benefits such as health insurance, family medical leave, parental leave, and nontraditional family planning such as in vitro fertilization and/or adoptive benefits on equal terms to same-sex couples who are married or in registered domestic partnerships as are provided to different-sex married or registered domestic partner couples?

- a. If so, please summarize or reproduce your policy here (or you may email a copy of your policy to [rishell@lgbtbar.org](mailto:rishell@lgbtbar.org)).

Yes, although health insurance and other benefits flow from the University proper and the various unions at the University. Even broader than same-sex marriage, “domestic partners” of any gender are recognized by the University and are entitled to benefits under their partner’s plans. See the following references:

<http://www.buffalo.edu/administrative-services/for-faculty-staff/benefits/state/uup.html>; and <http://www.buffalo.edu/administrative-services/forms-catalog/hr/nyship-application-enrolling-domestic-partners-ps4251.html>. Also, attached as **Exhibit A**, is the New York application regarding this issue.

a. New York does require that certain infertility treatments be covered by insurers N.Y. Insurance Law § 3221(k). However, in vitro fertilization is not required to be covered at this juncture. Id. Under New York Law, with respect to infertility treatments, insurance companies cannot discriminate “between heterosexual individuals in a relationship or who are married, individuals in a same-sex relationship or who are married, single individuals, or based on gender identity.” **Exhibit B**, Governor Cuomo, N.Y.S Dep’t of Financial Services, Insurance Circular Letter No. 7 (April 19, 2017.) In other words, “every issuer must provide coverage for infertility treatment to any individual who meets ASRM’s definition of infertility when all of the other terms and conditions of the policy or





contract are satisfied, regardless of the individual's sexual orientation, marital status or gender identity." Id.

11. Does your law school offer the aforementioned health benefits to students and their same-sex spouses/partners?
  - a. If so, please summarize or reproduce your policy here (or you may email a copy of your policy to [rishell@lgbtbar.org](mailto:rishell@lgbtbar.org))

According to a SBI representative (see answer to Question #6 for an overview of this organization for students), health insurance benefits are extended to spouses only in the case of students. Here is the language from their administrative guidance: "A spouse is eligible whenever the couple is legally married in a state or country that recognizes the type of marriage. The definition of spouse includes opposite sex and same-sex spouses. A summary of the relevant benefits is attached here as **Exhibit C**.

12. Does your law school offer transition-related health benefits to transgender and/or transitioning employees?
  - a. If so, please summarize or reproduce your policy here (or you may email a copy of your policy to [rishell@lgbtbar.org](mailto:rishell@lgbtbar.org)).

Yes, insurers in New York are required to cover medically necessary services associated with gender dysphoria. **Exhibit D**, Governor Cuomo, N.Y.S Dep't of Financial Services, Insurance Circular Letter No. 7 (December 11, 2014.) Services may include office visits, laboratory, mental health services, drug therapy and gender reassignment surgery. Prior authorization may be needed for certain services.

13. Does your school offer the same transition-related healthcare benefits to students and their partners/spouses?
  - a. If so, please summarize or reproduce your policy here (or you may email a copy of your policy to [rishell@lgbtbar.org](mailto:rishell@lgbtbar.org))

Yes, transition-related health care is available to students and spouses. See **Exhibit D**, referenced in answer to Question 12.a. (As noted in our previous answer to Question 11.A, only spouses are covered under the student insurance provided by the SBI.)



14. Do all students at your law school have access to counseling and/or therapy services either through the law school or the larger University?

All law students have access to counseling and therapy services through our University counseling center. The University has a great variety of mental health and overall wellness offerings that are open to all students, including group counseling, support groups, and more general wellness activities. In addition, the Law School hosts a weekly support group open to all students, which run by the local bar association's Committee to Assist Lawyers with Depression and Lawyer's Helping Lawyers Committee.

15. Does your law school provide at least bi-annual mandatory diversity and inclusion training that incorporates robust LGBTQ+ curriculum, for all staff/faculty/administrators?

Not currently. The University is the body that mandates training. Although most law school staff and administrators have taken the following training: "Intersections: Preventing Harassment & Sexual Violence (Title IX/Campus SaVE Act)", New York State is mandating this training for all employees in 2019. This training does not have a separate LGBTQ+ curriculum at this juncture.

#### **Restroom Facilities:**

16. Does your law school provide a gender-inclusive restroom in any and/or all law school buildings?

- a. How is that restroom identified (i.e., what does the signage say, is it identified on building maps, is there a gender-inclusive restroom policy that applies to all restrooms and where is that statement published, etc.)?

All UB Law and University students are entitled to use restroom facilities that are consistent with their gender identity. As many people feel more comfortable using single-user bathrooms, the law school has seven single-user, gender-inclusive restrooms throughout its building. These bathrooms are marked with all-gender signage accompanied by the statement that: "This Restroom May Be Used by Any Person Regardless of Gender Identity or Expression." These single-user spaces are advertised on flat screen monitors in the law school, which are used to convey messages and reminders to our students. Further,





the University also posts its inclusive bathroom policy as well as single-user spaces, including in the law school building, on its website. This website currently being updated to include an interactive map, which will allow students to find the single-user bathroom closest to them: <http://www.buffalo.edu/equity/obtaining-assistance/lgbtq-information-and-support/Rightsandprotections-transgendercommunity/SingleUserRestrooms.html>.

**Curriculum:**

17. Does your law school have one or more annual LGBTQ+ course offerings (e.g., LGBT Law and Policy, Sexual Orientation and the Law, Gender and the Law (taught with trans-inclusive and focused materials), etc.)?
- a. If so, please list course names:

Yes, we do have courses taught with trans-inclusive and focused materials. For example, Law 822: Gender, Sexuality, & Law is taught on (at least) an annual basis.

18. Does your law school have an active, visible LGBTQ+ law student group that is supported by the institution?

Yes, we have a student organization, OUTlaw, that is an active, visible student group supported by our Law School, its faculty, and its administration. OutLaw supports LGBTQ+ students. Here is a brief overview of its history and activities: Outlaw was first formed in 1999, and it is still active today. From 2004-2006, the group changed its name to the Progressive Law Society, but eventually returned to its OUTlaw name. Here is a link to OUTLaw's website: <http://www.law.buffalo.edu/current/outlaw.html>.

19. Does your law school have a hate/bias incident policy that students are required to follow?
- a. If so, does that process specifically identify sexual orientation, gender identity, or both as protected categories?

Yes, and the policy includes sexual orientation and gender identity as protected categories. The University's Student Code of Conduct applies to all students at the University and prohibits discrimination by students "of a person or group based on race, color, national origin, gender, gender identity, marital status, pregnancy status, sexual orientation, age, religion, disability, predisposing genetic characteristics, military status, domestic violence victim status and ex-offender status." The Code of Conduct may be found here: <https://www.buffalo.edu/content/dam/www/studentlife/units/uls/student-conduct/ub-student-code-of-conduct.pdf>. Violations of this policy can be made (on a named or anonymous basis) to the Law School's Vice Dean of Student Affairs or the Law School's Director of Diversity, Equity, and Inclusion. Further, direct or anonymous



complaints may be made directly to the University's Office of Equity, Diversity, and Inclusion or the University Police Department.

20. Please describe all additional ways, not identified through your responses, that your law school works to be safe, inclusive, and welcoming to LGBTQ+ students, faculty, and administrators:

Our Law School and University are governed by New York State's Executive Law, Article 15, also known as New York Human Rights Law, which prohibits discrimination based on various protected classifications, including sexual orientation, gender, gender identity, and gender expression. See the State University of New York (SUNY) system's compliance policies: <https://system.suny.edu/compliance/topics/equity/nys-human-rights-law/>. There is also a regulation that explicitly address discrimination on the basis of gender identity, gender expression, and gender dysphoria. 9 NYCRR § 466.13, attached as **Exhibit E**.

The SUNY system also has a very specific Diversity, Equity, and Inclusion (DEI) Policy, located at: [https://www.suny.edu/sunypp/documents.cfm?doc\\_id=804](https://www.suny.edu/sunypp/documents.cfm?doc_id=804). The DEI Policy is also attached as **Exhibit F**.

Further, the University of Buffalo has also promulgated its own policy against Discrimination and Harassment, which includes sexual orientation, gender, gender identity and gender expression. This policy is located at <https://www.buffalo.edu/administrative-services/policy1/ub-policy-lib/discrimination-harassment.html>. The University policy provides that:

The University at Buffalo (UB, university) is committed to ensuring equal employment, educational opportunity, and equal access to services, programs, and activities without regard to an individual's race, color, national origin, sex, religion, age, disability, gender, pregnancy, gender identity, gender expression, sexual orientation, predisposing genetic characteristics, marital status, familial status, veteran status, military status, domestic violence victim status, or ex-offender status. This includes, but is not limited to, recruitment, the application process, examination and testing, hiring, training, grading, disciplinary actions, rates of pay or other compensation, advancement, classification, transfer and reassignment, discharge, and all other terms and conditions of employment, educational status, and access to university programs and activities. Employees, students, applicants or other members of the university community (including but not limited to





vendors, visitors, and guests) may not be subjected to harassment that is prohibited by law or treated adversely based upon a protected characteristic.

The university will provide accommodations to ensure the full participation of individuals in university programs, when such accommodations are reasonable and necessary due to an individual's disability, religion, pregnancy, maternity, or breastfeeding status. The university will provide accommodations to individuals with disabilities in accordance with its Reasonable Accommodation Policy. Religious accommodations will be provided in accordance with the university's Religious Accommodation and Expression Policy.

This policy prohibits retaliation against anyone who files a complaint, participates in an investigation, or opposes a discriminatory act, practice, or policy. Retaliation will not be tolerated and may result in a referral to the university's disciplinary process.

In addition to policy, the University and the Law School have taken particular steps on a practical level to support LGBTQ+ students and employees. The following resources are available:

- Working Group for Transgender Inclusion:  
<http://www.buffalo.edu/equity/obtaining-assistance/lgbtq-information-and-support/workinggroupfortransgenderinclusion.html>
- Information on LGBTQ+ Support at the University:  
<http://www.buffalo.edu/equity/obtaining-assistance/lgbtq-information-and-support.html>
- The LGBTQ Faculty and Staff Association: <http://www.buffalo.edu/lgbtqfsa.html>
- Information about Rights and Protections for the LGBTQ+ community:  
<http://www.buffalo.edu/equity/obtaining-assistance/lgbtq-information-and-support/Rightsandprotections-transgendercommunity.html>
- Gender-Inclusive Housing for both undergraduate and graduate students:  
<https://www.buffalo.edu/campusliving/find-your-home/special-living-accommodations/gender-inclusive.html>
- LGBTQ+ Collections: <http://digital.lib.buffalo.edu/collection/LIB-UA017/>
- SafeZone and Diversity Trainings through the Office of Intercultural and Diversity Center: <https://www.buffalo.edu/studentlife/who-we-are/departments/diversity/events-calendar.html>
- The Lavender (LGBTQ+) Commencement:  
<http://www.buffalo.edu/commencement/ceremonies/university-wide-recognition-ceremonies/lavender-reception.html>



- Reaffirmation of Rights for LGBTQ+ Rights and Protections after 2017 withdrawal of student protections: [http://www.buffalo.edu/pss/news-home/gen\\_news.host.html/content/shared/university/news/ub-reporter-articles/stories/2017/03/transgender-committment.detail.html](http://www.buffalo.edu/pss/news-home/gen_news.host.html/content/shared/university/news/ub-reporter-articles/stories/2017/03/transgender-committment.detail.html)



# EXHIBIT A



State of New York  
Department of Civil Service  
Alfred E. Smith State Office Bldg.  
Albany, NY 12239

## EMPLOYEE BENEFITS DIVISION

APPLICATION FOR ENROLLING DOMESTIC PARTNERS IN THE NEW  
YORK STATE HEALTH INSURANCE PROGRAM AND AFFIDAVIT OF  
DOMESTIC PARTNERSHIP  
(Excludes PAs) PS-425.1 (5/11)

Review Form PS-425 to determine whether you and your Domestic Partner may qualify for NYSHIP Domestic Partner Coverage. If you are currently a NYSHIP enrollee and determine that your partner may qualify for Domestic Partner coverage, complete this application and submit it with the required documentation as described on page 2 (reverse) of this form. You must be able to answer "YES" to all of the questions on this page and be able to provide the required documentation in order to qualify for Domestic Partner coverage under NYSHIP.

- |   | <u>Yes</u>               | <u>No</u>                |
|---|--------------------------|--------------------------|
| 1. We are each at least 18 years of age or older.   | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. We are not related by blood in a manner that would bar marriage under New York State law.  | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. Neither of us is legally married to anyone else. If either of us has been married before, we are submitting proof that the marriage(s) have been legally terminated (legal separation does not constitute a termination of marriage).  | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. I, the enrollee, have not had a Domestic Partner enrolled in NYSHIP as my dependent within the last year.  | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. We have shared the same residence for at least the last six months and have included Proof of Residence as described on page 2 of this form.   | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. We have had an exclusive mutual commitment to share responsibility for each other's welfare and financial obligations for at least the last six months and we expect that commitment to last indefinitely. We included proof of joint responsibility for basic financial obligations as described on page 2 of this form.  | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. I, the enrollee, understand that I am required to file a completed Form PS-425.4, Termination of Domestic Partnership, within 14 days of the date my domestic partnership ends or when I no longer can provide proof of one or more of the above requirements.   | <input type="checkbox"/> | <input type="checkbox"/> |
| 8. I, the enrollee, understand that any false or misleading statements made will subject me to financial responsibility for any benefits paid on behalf of my partner and/or my partner's children. I understand that false statements may result in disciplinary action by my employer and/or result in criminal and/or civil penalties and in other legal actions such as the prosecution of insurance fraud. | <input type="checkbox"/> | <input type="checkbox"/> |

**Enrollee Signature** (*sign in presence of Notary*) \_\_\_\_\_ **Date** \_\_\_\_\_

Sworn to before me \_\_\_\_\_ this day of \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

### Personal Privacy Protection Law Notification

The information you provide on this application is requested for the principal purpose of administering the New York State Health Insurance Program, Dental Program, Vision Program, and/or Employee Benefit Fund Program. This information will be used in accordance with Section 96 (1) of the Personal Privacy Protection Law. Failure to provide the information requested may prevent the Department from processing this application. This information will be maintained by the Employee Benefits Division, NYS Dept. of Civil Service, Alfred E. Smith State Office Building, Albany, NY 12239. For information related to the Personal Privacy Protection Law, call (518) 457-9375. For more information concerning the Domestic Partnership Program, please call (518) 457-5754 or 1-800-833-4344 between the hours of 9:00 a.m. and 3:00 p.m.





State of New York  
Department of Civil Service  
Alfred E. Smith State Office Bldg.  
Albany, NY 12239

## EMPLOYEE BENEFITS DIVISION

APPLICATION FOR ENROLLING DOMESTIC PARTNERS IN THE NEW  
YORK STATE HEALTH INSURANCE PROGRAM AND AFFIDAVIT OF  
DOMESTIC PARTNERSHIP  
(Excludes PAs) PS-425.1 (5/11)

You are required to submit documentation as outlined below. In addition to providing proof of your eligibility for Domestic Partner coverage at the time of application, you are required to maintain the ability to provide proof of eligibility for as long as you wish to continue to cover your Domestic Partner as your dependent in NYSHIP.

**1. Proof of Joint Responsibility for Basic Financial Obligations.** You must submit two forms of proof from the list below. Each form of proof must show that you and your Domestic Partner share joint responsibility for basic financial obligations and have done so for at least six (6) months immediately preceding the date of application, and be valid on the date of your application. If you submit proof that is older than six months you are also required to submit that same form of proof that is dated within 30 days of your application. Check the boxes below that show each form of proof you are submitting.

**At least one of your two documents submitted must be from List A.** You may submit either two documents from List A, or one document from List A and one document from List B.

### List A

- ☐ Joint mortgage or lease agreement / Joint ownership of residence
- ☐ Joint wills or designation of the Domestic Partner as executor and/or primary beneficiary
- ☐ Designation of the Domestic Partner as beneficiary for life insurance or retirement benefits
- ☐ Designation of the Domestic Partner as durable power of attorney
- ☐ Mutual grant of authority to make health care decisions (e.g., health care power of attorney)
- ☐ Joint obligation on a loan (may submit a creditor's affidavit for a personal loan)
- ☐ Joint ownership of a brokerage investment account
- ☐ Joint insurance policy (homeowners or renters policy, motor vehicle policy)
- ☐ Joint ownership or lease of a motor vehicle
- ☐ Joint financial responsibility for child care (e.g., school tuition, guardianship)
- ☐ Joint household budget for the purpose of receiving government benefits
- ☐ Status as an authorized signatory on the partner's bank account, credit card or charge card
- ☐ Designation of one partner as the representative payee for the other's government benefit

### List B

- ☐ Joint bank account
- ☐ Joint credit card or charge card
- ☐ Other evidence of joint financial responsibility or of economic interdependence

**2. Proof of Cohabitation** You must submit one form of proof from the list below to prove that you and your Domestic Partner have resided together for at least six months immediately preceding the date of application. If you submit proof that is older than six months, you are also required to submit that same form of proof that is dated within 30 days of your application. This proof may be one document on which both names appear or two separate documents that specify each partner's residential address.

- ☐ Bank statement mailed to residential address
- ☐ Pay check stub
- ☐ Driver's license or automobile registration showing residential address
- ☐ Insurance benefits statement mailed to residential address
- ☐ Joint membership statement mailed to residential address (e.g., church or other organization)
- ☐ Tax return listing residential address
- ☐ Telephone/Utility bill mailed to residential address
- ☐ Registration as a domestic partnership in a New York State municipality that has established such a procedure (e.g., Albany, New York City, Rochester, Ithaca)

# EXHIBIT B





NEW YORK STATE  
DEPARTMENT *of*  
FINANCIAL SERVICES

Andrew M. Cuomo  
Governor

Maria T. Vullo  
Superintendent

**Insurance Circular Letter No. 7 (2017)**

**April 19, 2017**

**TO: All Insurers Authorized to Write Accident and Health Insurance in New York State, Article 43 Corporations, Health Maintenance Organizations (“HMOs”), Student Health Plans Certified Pursuant to Insurance Law § 1124, and Municipal Cooperative Health Benefit Plans**

**RE: Health Insurance Coverage for Infertility Treatment Regardless of Sexual Orientation or Marital Status**

**STATUTORY AND REGULATORY REFERENCES: N.Y. Insurance Law §§ 3221(k)(6) and 4303(s); 11 NYCRR §§ 52.17(a)(35) and 52.18(a)(10)**

**I. Introduction**

The purpose of this circular letter is to provide guidance to insurers authorized to write accident and health insurance in this state, article 43 corporations, health maintenance organizations, student health plans certified pursuant to Insurance Law § 1124, and municipal cooperative health benefit plans (collectively, “issuers”) regarding health insurance coverage for infertility treatment pursuant to Insurance Law §§ 3221(k)(6) and 4303(s) regardless of sexual orientation or marital status.

**II. Discussion**

Insurance Law §§ 3221(k)(6)(C)(vi) and 4303(s)(3)(F) require the Superintendent of Financial Services (“Superintendent”), in consultation with the Commissioner of Health, to promulgate regulations that stipulate, among other things, the guidelines and standards for the determination of infertility in accordance with the standards and guidelines established and adopted by the American College of Obstetricians and Gynecologists and American Society for Reproductive Medicine (“ASRM”). The Superintendent added a new § 52.17(a)(35) and § 52.18(a)(10) to 11 NYCRR 52 (Insurance Regulation 62) to require issuers issuing policies and contracts subject to Insurance Law §§ 3221(k)(6) or 4303(s) to use standards and guidelines no less favorable than those established and adopted by ASRM in relation to the determination of infertility for the purposes of compliance with Insurance Law §§ 3221(k)(6)(C) and 4303(s)(3).

The current ASRM description of infertility provides that “[i]nfertility is a disease, defined by the failure to achieve a successful pregnancy after 12 months or more of

appropriate, timed unprotected intercourse or therapeutic donor insemination. Earlier evaluation and treatment may be justified based on medical history and physical findings and is warranted after 6 months for women over age 35 years.”<sup>1</sup> This definition of infertility does not distinguish between heterosexual individuals in a relationship or who are married, individuals in a same-sex relationship or who are married, single individuals, or based on gender identity. If an individual meets the definition of infertility and otherwise qualifies for coverage, then an issuer must provide coverage regardless of sexual orientation, marital status or gender identity. Moreover, since the definition of infertility expressly permits a provider to provide for treatment earlier than 12 months, issuers should be mindful that, with respect to individuals in a same-sex relationship or single individuals, earlier treatment may be justified.

### **III. Conclusion**

An issuer must provide coverage for infertility treatment using standards and guidelines no less favorable than those established and adopted by ASRM. ASRM’s definition of infertility does not distinguish between heterosexual individuals in a relationship or who are married, individuals in a same-sex relationship or who are married, single individuals, or based on gender identity. Therefore, every issuer must provide coverage for infertility treatment to any individual who meets ASRM’s definition of infertility when all of the other terms and conditions of the policy or contract are satisfied, regardless of the individual’s sexual orientation, marital status or gender identity.

Please direct any questions regarding this circular letter to Thomas Fusco, Supervising Insurance Attorney, Health Bureau, New York State Department of Financial Services, Walter J. Mahoney Office Building, 65 Court Street, Room 7, Buffalo, New York 14202 or by e-mail at [thomas.fusco@dfs.ny.gov](mailto:thomas.fusco@dfs.ny.gov).

Very truly yours,

Lisette Johnson  
Bureau Chief, Health Bureau

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<sup>1</sup> Definitions of infertility and recurrent pregnancy loss: a committee opinion, Practice Committee of the American Society for Reproductive Medicine, Fertil Steril 2013;99:63, at [https://www.asrm.org/uploadedFiles/ASRM\\_Content/News\\_and\\_Publications/Practice\\_Guidelines/Committee\\_Opinions/Definitions\\_of\\_infertility.pdf](https://www.asrm.org/uploadedFiles/ASRM_Content/News_and_Publications/Practice_Guidelines/Committee_Opinions/Definitions_of_infertility.pdf).



# EXHIBIT C

Group-06261963  
Sub-Board I, Inc./University at Buffalo  
341 Student Union  
SUNY at Buffalo  
Amherst, NY 14260

January 14, 2019

Patient Name: N/A  
Identification #: N/A  
Subject: Infertility Coverage  
Reference #: 1901403545

Dear To Whom It May Concern :

At BlueCross BlueShield of Western New York, we want to keep you informed.

Why you're receiving this letter	We received your request for information about your infertility benefits.
What you need to know	Your benefits cover the services allowed under the New York State Infertility Mandate. Included with this letter is a list that outlines the procedures, treatments, and medications that are or are not covered.
What you need to do	<p>Please review the enclosed list.</p> <p>It is our goal to provide the highest quality of customer service. If you have any questions, please contact our Customer Service Department at (716) 887-8840 or toll-free at 1-877-576-6440. Service hours are Monday through Friday from 8 a.m. to 7 p.m. We look forward to assisting you in the future.</p>

Thank you for being a BlueCross BlueShield member. We hope you enjoy your experience with us.

Sincerely,

Customer Service Team

AF/5903 (LRG)  
Enc.



## New York State Infertility Coverage

<p style="text-align: center;"><b>Covered medical procedures</b></p>	<p><b>Prior authorization is not required for:</b></p> <ul style="list-style-type: none"> <li>• Artificial insemination - intra-cervical</li> <li>• Artificial insemination - intra-uterine</li> <li>• Blood tests</li> <li>• Endometrial biopsy</li> <li>• Hysterosalpingogram</li> <li>• Hysteroscopy</li> <li>• Laparoscopy</li> <li>• Post coital tests</li> <li>• Semen analysis</li> <li>• Sono-hysteroogram (hysterosonography)</li> <li>• Sperm washing for artificial insemination</li> <li>• Testis biopsy</li> <li>• Ultrasound</li> </ul> <p><b>Prior authorization is required for coverage and to determine the medical procedure performed for:</b></p> <ul style="list-style-type: none"> <li>• Injectable infertility contraceptives administered in the office/hospital (benefits are determined by the medical procedure)</li> </ul>
<p style="text-align: center;"><b>Covered prescription drugs</b></p>	<p><b>Prior authorization is not required for:</b></p> <ul style="list-style-type: none"> <li>• Oral infertility contraceptives</li> </ul> <p><b>Prior authorization is required for:</b></p> <ul style="list-style-type: none"> <li>• Self-injectable infertility contraceptives</li> </ul>
<p style="text-align: center;"><b>Non-covered infertility services (including corresponding prescription drugs)</b></p>	<ul style="list-style-type: none"> <li>• Cloning or experimental procedures</li> <li>• Cost for an ovum donor or donor sperm</li> <li>• Cryopreservation and storage of embryos</li> <li>• Gamete intrafallopian tube transfers (GIF)</li> <li>• In-vitro fertilization (IVF)</li> <li>• Procedures that are experimental or investigational (unless approved by Prior Authorization)</li> <li>• Ovulation predictor kits</li> <li>• Reversal of an elective sterilization</li> <li>• Sex change procedures</li> <li>• Sperm storage costs</li> <li>• All costs for and relating to surrogate motherhood (refer to plan maternity benefits)</li> <li>• Zygote intrafallopian transfers (ZIF)</li> </ul>

# EXHIBIT D





SECURE PORTAL

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**TO:** All Insurers Authorized to Write Accident and Health Insurance in New York State, Article 43 Corporations, and Health Maintenance Organizations ("HMOs") (collectively, "issuers")

**RE:** Health Insurance Coverage for the Treatment of Gender Dysphoria

**STATUTORY AND REGULATORY REFERENCES:** Mental Health Parity and Addiction Equity Act of 2008; N.Y. Civ. Serv. Law Article 11; N.Y. Ins. Law §§ 3221 and 4303 and Article 49; N.Y. Pub. Health Law Article 49; Chapter 748 of the Laws of 2006, as amended by Chapter 502 of the Laws of 2007; 45 C.F.R. § 146.136; 11 NYCRR 52 (Insurance Regulation 62)

**Introduction**

The purpose of this circular letter is to provide guidance to issuers regarding health insurance coverage for the treatment of gender dysphoria.<sup>1</sup> An issuer may not deny medically necessary treatment otherwise covered by a health insurance policy or contract ("policy") solely on the basis that the treatment is for gender dysphoria. Further, an issuer is required to provide an insured with the full range of utilization review appeal rights as described in Article 49 of both the Insurance Law and the Public Health Law (collectively, "Article 49") for any gender dysphoria treatment that is denied based on medical necessity.

**Analysis**

An issuer may not deny medically necessary treatment otherwise covered by a health insurance policy solely on the basis that the treatment is for gender dysphoria. 11 NYCRR 52 (Insurance Regulation 62) prohibits an insurer from limiting coverage by type of illness, treatment, or medical condition. See 11 NYCRR § 52.16(c).

Furthermore, Sections 3221(l)(5) and 4303(g) and (h) of the Insurance Law ("Timothy's Law") require an issuer delivering or issuing a group or school blanket policy in New York that provides coverage for inpatient hospital care or for physician services to provide coverage for the diagnosis and treatment of mental, nervous, or emotional disorders or ailments. Pursuant to Section 6 of Chapter 748 of the Laws of 2006, as amended by Chapter 502 of the Laws of 2007, which enacted Timothy's Law, the Superintendent is to take such action as necessary to ensure that a policy's definition of "mental, nervous or emotional disorders or ailments" is not "unreasonable." As provided in Section 6, in determining whether a definition is reasonable, the Superintendent is to ensure that any exclusions from or limitations on covered benefits are consistent with the benefits provided to public officers and employees pursuant to Civil Service Law Article 11 (i.e., the Empire Plan). The Empire Plan defines mental health care to include medically necessary care for a condition that has been classified as a mental disorder in the current American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders ("DSM").

The current, fifth edition of the DSM recognizes a diagnosis of gender dysphoria<sup>2</sup> for people whose gender at birth is contrary to the one with which they identify. Since the DSM classifies gender dysphoria as a mental disorder, and it is thus covered under the Empire Plan, Timothy's Law requires an issuer delivering or issuing a group or school blanket policy in New York that provides coverage for inpatient hospital care or for physician services to provide coverage for the diagnosis and treatment of gender dysphoria.

Additionally, the federal rule (45 C.F.R. § 146.136) interpreting the federal Mental Health Parity and Addiction Equity Act of 2008 ("MHPAEA") provides that no issuer providing both medical/surgical benefits and mental health or substance use disorder benefits may apply any treatment limitation to mental health or substance use disorder benefits that it does not apply to substantially all medical/surgical benefits in the same classification. Under the federal rule, any condition defined by the plan or coverage as being or not being a mental health condition must be defined to be consistent with generally recognized independent standards of current medical practice.

Issuers in New York should use the DSM as the recognized independent standard of current medical practice in determining what constitutes a mental health condition. Therefore, since the DSM recognizes a diagnosis of gender dysphoria, an issuer's definition of mental health condition is also required to include gender dysphoria, entitling persons with gender dysphoria to MHPAEA's protections.

An issuer retains the right to review gender dysphoria treatment for medical necessity purposes, as it may do with any benefit covered under a health insurance policy. But, as with any covered benefit, any such review in a gender dysphoria treatment case must be performed with the full range of appeal rights set forth in Article 49.

**Conclusion**

An issuer of a policy that includes coverage for mental health conditions may not exclude coverage for the diagnosis and treatment of gender dysphoria. Although an issuer may subject gender dysphoria treatment to a medical necessity review, any such review must be performed consistently with the provisions of Article 49.

Please direct any questions regarding this circular letter to Thomas Fusco, Supervising Insurance Attorney, by mail at Health Bureau, New York State Department of Financial Services, Walter J. Mahoney Office Building, 65 Court Street, Room 7, Buffalo, New York 14202, or by e-mail at [thomas.fusco@dfs.ny.gov](mailto:thomas.fusco@dfs.ny.gov).

Very truly yours,

Lisette Johnson  
Bureau Chief, Health Bureau

<sup>1</sup> "Gender dysphoria" is the term currently used for the condition of people whose gender at birth is contrary to the one with which they identify.

<sup>2</sup> The previous version of the DSM, the DSM-IV, recognized a diagnosis of gender identity disorder for the same condition.

**Department of Financial Services****Consumer Quicklinks**

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File a FOIL Request  
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# EXHIBIT E



## **DISCRIMINATION ON THE BASIS OF GENDER IDENTITY**

### **9 New York Code of Rules and Regulations (NYCRR) §466.13**

#### **466.13** Discrimination on the basis of gender identity.

(a) Statutory Authority. Pursuant to N.Y. Executive Law § 295.5, it is a power and a duty of the Division to adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions of the N.Y. Executive Law, article 15 (Human Rights Law).

(b) Definitions.

(1) Gender identity means having or being perceived as having a gender identity, self-image, appearance, behavior or expression whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the sex assigned to that person at birth.

(2) A transgender person is an individual who has a gender identity different from the sex assigned to that individual at birth.

(3) Gender dysphoria is a recognized medical condition related to an individual having a gender identity different from the sex assigned at birth.

(c) Discrimination on the basis of gender identity is sex discrimination.

(1) The term “sex” when used in the Human Rights Law includes gender identity and the status of being transgender.

(2) The prohibitions contained in the Human Rights Law against discrimination on the basis of sex, in all areas of jurisdiction where sex is a protected category, also prohibit discrimination on the basis of gender identity or the status of being transgender.

(3) Harassment on the basis of a person’s gender identity or the status of being transgender is sexual harassment.

(d) Discrimination on the basis of gender dysphoria or other condition meeting the definition of disability in the Human Rights Law set out below is disability discrimination.

(1) The term “disability” as defined in Human Rights Law § 292.21, means (a) a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques or (b) a record of such an impairment or (c) a condition regarded by others as such an impairment, provided, however, that in all provisions of this article dealing with employment, the term shall be limited to disabilities which, upon the provision of reasonable accommodations,

do not prevent the complainant from performing in a reasonable manner the activities involved in the job or occupation sought or held.

(2) The term “disability” when used in the Human Rights Law includes gender dysphoria or other condition meeting the definition of disability in the Human Rights Law set out above.

(3) The prohibitions contained in the Human Rights Law against discrimination on the basis of disability, in all areas of jurisdiction where disability is a protected category, also prohibit discrimination on the basis of gender dysphoria or other condition meeting the definition of disability in the Human Rights Law set out above.

(4) Refusal to provide reasonable accommodation for persons with gender dysphoria or other condition meeting the definition of disability in the Human Rights Law set out above, where requested and necessary, and in accordance with the Divisions regulations on reasonable accommodation found at 9 NYCRR § 466.11, is disability discrimination.

(5) Harassment on the basis of a person’s gender dysphoria or other condition meeting the definition of disability in the Human Rights Law set out above is harassment on the basis of disability.

# EXHIBIT F





# Discrimination and Harassment Policy

## POLICY INFORMATION

**Date Established:** 3/1/2010

**Date Last Updated:**

11/3/2015

**Category:**

Human Resources

**Responsible Office:**

Equity, Diversity and  
Inclusion

**Responsible Executive:**

President

## POLICY CONTENTS

- Summary
- Policy Statement
- Background
- Applicability
- Definitions
- Responsibility
- Procedure
- Contact Information
- Related Information
- History
- Presidential Approval
- Appendix A
- Appendix B
- Options in Brief

## Summary

The University at Buffalo prohibits discrimination and harassment and requires that accommodations be provided to individuals when such accommodations are reasonable and necessary as a result of an individual's disability, religion, pregnancy, maternity, or breastfeeding status. This policy describes the procedure the university will follow to investigate or resolve complaints of discrimination and harassment.

## Policy Statement

The University at Buffalo (UB, university) is committed to ensuring equal employment, educational opportunity, and equal access to services, programs, and activities without regard to an individual's race, color, national origin, sex, religion, age, disability, gender, pregnancy, gender identity, gender expression, sexual orientation, predisposing genetic characteristics, marital status, familial status, veteran status, military status, domestic violence victim status, or ex-offender status. This includes, but is not limited to, recruitment, the application process, examination and testing, hiring, training, grading, disciplinary actions, rates of pay or other compensation, advancement, classification, transfer and reassignment, discharge, and all other terms and conditions of employment, educational status, and access to university programs and activities. Employees, students, applicants or other members of the university community (including but not limited to vendors, visitors, and guests) may not be subjected to harassment that is prohibited by law or treated adversely based upon a protected characteristic.

The university will provide accommodations to ensure the full participation of individuals in university programs, when such accommodations are reasonable and necessary due to an individual's disability, religion, pregnancy, maternity, or breastfeeding status. The university will provide accommodations to individuals with disabilities in accordance with its *Reasonable Accommodation Policy*. Religious accommodations will be provided in accordance with the university's *Religious Accommodation and Expression Policy*.

This policy prohibits retaliation against anyone who files a complaint, participates in an investigation, or opposes a discriminatory act, practice, or policy. Retaliation will not be tolerated and may result in a referral to the university's disciplinary process.

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## Background

The university's policy is in accordance with federal and state laws and regulations prohibiting discrimination and harassment. These laws include the *Americans with Disabilities Act* (ADA), *Section 504 of the Rehabilitation Act of 1973*, *Title IX of the Education Amendments of 1972*, *Title VII of the Civil Rights Act of 1964 as Amended by the Equal Employment Opportunity Act of 1972*, and the *New York State Human Rights Law*. These laws prohibit discrimination and harassment, including sexual harassment and sexual violence.

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## Applicability

This policy:

- Applies to all persons without regard to race, color, national origin, sex, religion, age, disability, gender, pregnancy, gender identity, gender expression, sexual orientation, predisposing genetic characteristics, marital status, familial status, veteran status, military status, domestic violence victim status, or ex-offender status
- Applies to all members of the university community, including students, faculty, staff, volunteers, vendors, visitors, and guests
- Applies to all employment and educational practices and actions

- Applies to all job classifications and titles in the university and to all types of appointments under university jurisdiction, whether full time, part time, or volunteers
  - Governs all university policies, practices, and actions including but not limited to recruitment, hire, rate of pay or other compensation, advancement, upgrading, promotion, demotion, renewal, non-renewal, termination, transfer, layoff, leave, training, grading, housing, and employee and student benefits of whatever nature
  - Applies to all university organizational units
  - Expects that each contractor, supplier, union, public agency, or cooperative agent will support this policy by complying with applicable state and federal equal employment opportunity laws and regulations
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## Definitions

### Complainant

An individual bringing forward a complaint of harassment, discrimination, or retaliation, whether on the individual's own behalf or on behalf of another person or group.

### Discrimination

Different treatment of an individual or group based upon a factor prohibited by law, including race, color, national origin, sex, religion, age, disability, gender, pregnancy, gender identity, gender expression, sexual orientation, predisposing genetic characteristics, marital status, familial status, veteran status, military status, domestic violence victim status, and ex-offender status, that adversely affects the individual's or group's employment or academic status. Policies or practices that adversely impact a protected group may also constitute discrimination, even when applied in a consistent manner.

Harassment is a form of discrimination. Sex discrimination also includes, but is not limited to sexual harassment, sexual assault, and sexual violence.

Discrimination may also result from failure of the university to provide accommodations to individuals when required due to the individual's disability, religion, pregnancy status, maternity, and/or breastfeeding status.

### Harassment

Conduct that is unwelcome, severe, pervasive, or persistent enough to interfere with an individual's employment, education, or other access to university programs and activities, and that is targeted toward an individual or group based on a protected factor, including race, color, national origin, sex, religion, age, disability, gender, pregnancy, gender identity, gender expression, sexual orientation, predisposing genetic characteristics, marital status, familial status, veteran status, military status, domestic violence victim status, and ex-offender status; harassment is a form of discrimination.

### Preponderance of the Evidence

The standard of proof in discrimination cases, which determines whether it is "more likely than not" that the discriminatory or harassing act(s) occurred.

### Respondent

An individual or entity against whom a complaint has been filed.

### Retaliation

An adverse action taken against an individual as a result of complaining about discrimination or harassment, exercising a legal right such as obtaining a reasonable accommodation, and/or participating in a complaint investigation as a third party witness. Adverse actions may include, but are not limited to: termination/dismissal, failure to promote or assign salary increases, the assignment of lower grades or performance evaluations than other individuals who perform similarly, attempts to intimidate or harass the individual, the assignment of less desirable work to the individual, and/or the provision of negative references with respect to academic work or employment.

### Sexual Harassment

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- submission to or enduring such conduct when rejected is made either explicitly or implicitly a term or condition of instruction, employment, or participation in other university activities or
- submission to or rejection of such conduct by an individual is used as a basis for evaluation in making academic or personnel decisions affecting an individual or
- such conduct has the purpose or effect of unreasonably interfering with an individual's performance or creating an intimidating, hostile, or offensive university environment.

Sexual harassment, sexual violence and other forms of sex discrimination are prohibited under *Title IX of the Education Amendments of 1972*, *Title VII of the Civil Rights Act of 1964*, and *New York State Human Rights Law*. This university definition of sexual harassment is based on Equal Employment Opportunity Commission (EEOC) and Office of Civil Rights (OCR) regulations. Employees who observe or become aware of sexual harassment, sexual violence and other forms of sex discrimination or harassment should report this information to the Director of Equity, Diversity and Inclusion (EDI), who also serves as the university's Title IX Coordinator.

See Appendix A for additional information regarding sexual harassment, and Appendix B for a full explanation of the rights of victims of sexual assault, domestic violence, dating violence, and stalking.

### Sexual Harassment Information Advisors

University personnel who have received extensive sexual harassment training, conducted by the Director of EDI or designee, to act as educators and trainers and provide general information on sexual harassment. These individuals may be designated by the president, provost, vice presidents, and/or deans to serve as Sexual Harassment Information Advisors in their respective areas.

### Title IX

*Title IX of the Education Amendments of 1972*, a federal law that prohibits sex discrimination in any education program or activity that receives federal financial assistance.

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## Responsibility

### President, Provost, Vice Presidents, Deans, Directors, Department Heads, Managers, Supervisors

- Prevent discrimination and harassment whenever possible; initiate a referral for disciplinary and/or corrective action when appropriate.
- Provide information to individuals in their units regarding the procedure described in this policy.
- Refer persons with inquiries or complaints to this policy and EDI.

### Supervisors, instructors, and others with authority to make decisions on behalf of the university

- Ensure that these decisions are made based upon legitimate, non-discriminatory reasons.
- Report instances of discrimination and harassment based upon a protected characteristic to EDI.

### Director of Equity, Diversity and Inclusion (EDI)

- Administer this policy.
- Investigate allegations of discrimination and harassment.
- Supervise the activities of the Sexual Harassment Information Advisors.

### Sexual Harassment Information Advisors

- Disseminate information and provide education regarding this policy.
- Act as a resource for faculty, staff, and students on issues of sexual harassment.
- Provide information regarding questions or concerns about sexual harassment.
- Direct individuals to EDI for a more in-depth assessment of situations or concerns brought to their attention.
- Sexual Harassment Information Advisors are not authorized to conduct investigations or maintain records of confidential discussions.

### Faculty, Staff, Students

- Refrain from behavior that creates a hostile environment for others, regardless of whether it is the individuals' intent to create a hostile environment.
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## Procedure

EDI is the campus office designated to manage this complaint procedure. EDI will receive complaints, conduct necessary investigations, report findings, and make recommendations in accordance with the procedures outlined below.

The discrimination complaint procedure provides a mechanism through which the university may identify, respond to, prevent, and eliminate incidents of illegal discrimination. It may be used by any person who believes he or she has been the subject of discrimination in connection with UB. If a claim of discrimination or harassment involves a non-UB entity such as a contractor, vendor, or affiliated hospital, UB will coordinate as necessary to ensure that an appropriate investigation is conducted and that discriminatory and/or harassing behaviors are addressed.

### Timeframes for Filing a Complaint

Ordinarily, complaints should be filed within one year after the last act of alleged discrimination or harassment occurred. In instances involving a student complaint against a faculty member charging discrimination that occurred in the context of a subordinate-supervisor academic relationship (e.g., teaching, advising, thesis or dissertation supervision, coaching, clinical medical supervision), the time period may be extended until one year after the student is no longer under the faculty member's academic or clinical medical supervision or three years from the date the most recent alleged discrimination occurred, whichever is earlier. Failure to file a complaint within the relevant limitation period may lead to dismissal of the complaint.

### Complaint Handling

#### *Initial Consultation with Complainant*

Any member of the UB community may speak confidentially with an EDI representative regarding potential discrimination or harassment. The representative will determine the nature of the issue or concern, obtain relevant facts, and provide guidance as to whether the matter falls under the office's jurisdiction. EDI will maintain a confidential record of the conversation, to the extent allowed by law. If the matter does not fall under EDI's jurisdiction, and/or if there are parallel avenues which the individual could pursue (e.g., academic grievance procedures), information will be provided regarding the university resources available to address the concern. If the matter falls within EDI's jurisdiction and the individual wishes to pursue a complaint, the complainant will be advised of the subsequent steps in the investigatory process.

In cases where the reporting individual wishes to discuss the matter but not proceed with the complaint investigation process, EDI will maintain a confidential record of the conversation, to the extent allowed by law. It should be noted that in instances of harassment, there may be situations where the university is legally obligated to pursue complaint investigation regardless of the individual's willingness to proceed. In this event, the individual will be notified, and steps identified to protect the complainant against retaliation and ensure an acceptable working or learning environment for the complainant. In instances involving allegations of serious misconduct, the matter may be referred to appropriate disciplinary channels for investigation.

Victims of sexual assault, domestic violence, dating violence, and stalking have multiple options for redress, as well as the right to obtain assistance in order to ensure they can continue to participate in university programs and activities. These options and rights are described *Appendix B - Student's Bill of Rights*.

The complainant will be asked to complete an initial Intake and Information Sheet, and will be provided assistance in completing this form when necessary. Failure or refusal to complete this form will not preclude investigation of the complaint. Individuals may contact EDI anonymously, either for consultation or to file a complaint. It is important to note that due process considerations may limit the ability to investigate or resolve anonymous complaints.

### *The Investigatory Process*

The investigatory process is guided by the need to balance the remedy of unlawful discrimination and harassment with principles of fairness, due process, and confidentiality. Accordingly, parties to a complaint are afforded the following rights and protections:

- EDI maintains the confidentiality of complaints to the fullest extent possible, and requests the same of parties to the complaint and third party witnesses. Records of conversations with parties or witnesses will not be released unless required by law or court order.
- The respondent is entitled to due process, including knowledge of the specific allegation(s) against him or her and an opportunity to respond. No presumption of wrongdoing will be made absent factual evidence.

- Complainants and respondents will each have notice of the evidence presented during the investigation, as well as an opportunity to explain and/or respond to the evidence.
- Complainants and third party witnesses are protected against retaliation for filing complaints of discrimination and/or participating in an investigation. If a party feels that any negative action has been taken as a result of filing a complaint or participating in a complaint investigation, this allegation will be investigated separately.
- A complainant, respondent, or third party witness may choose to be accompanied by a person of their choice; these individuals must maintain confidentiality and may not impede or interfere with the investigator's ability to obtain necessary information.
- For instances involving sex discrimination, complainants will be made aware of their Title IX rights and available resources on and off-campus, and the right, if any, to file a complaint with local law enforcement.

For complaints that also involve law enforcement proceedings, EDI will comply with law enforcement requests for cooperation, including when such cooperation may require EDI to temporarily suspend the fact-finding aspect of an investigation while the law enforcement agency is in the process of gathering evidence. EDI will resume its investigation as soon as it is notified by the law enforcement agency that it has completed the evidence gathering process.

In conducting a complaint investigation, EDI considers relevant laws, policies and procedures, documentation, and information obtained from the complainant, respondent, and third party witnesses. The standard of proof in complaints made under this policy is preponderance of the evidence. The timeframe for handling a complaint will depend upon the complexity of the investigation, but should not exceed sixty days absent good cause. The following are potential outcomes of a complaint investigation:

- the matter is resolved between the parties and there are no other issues requiring EDI involvement
- the complainant elects to withdraw the complaint and/or requests that there be no further investigation, and there are no other factors which require continuation of the investigation
- there is insufficient evidence to support a finding of a violation of the university's policies against discrimination and/or harassment
- there is sufficient evidence to support a finding of a violation of the university's policies against discrimination and/or harassment; in this event, EDI will recommend appropriate action to the supervisor or unit head to remedy such violation(s); employee or student misconduct may result in the referral of the matter through the applicable campus disciplinary mechanism(s). Disciplinary recommendations for misconduct may include, but are not limited to, a reprimand, suspension, or termination. Non-disciplinary remedies for misconduct may include, but are not limited to, training, reassignment, or informal or formal counseling.

The parties to a complaint will receive notice of the outcome of the investigation.

#### **Conflicts of Interest**

In the event that the investigatory process outlined in this policy may result in a conflict of interest, the university will take necessary measures to ensure that the investigation is thorough and impartial. These measures may include reassignment of the responsibility for the investigation. In the event that EDI cannot conduct an investigation due to a conflict of interest, the university will ensure that the complaint is investigated by individuals with experience and training in discrimination compliance. If EDI is precluded from investigating a complaint, the office may still assist complainants and respondents in seeking a voluntary resolution to the matter, as appropriate.

Complaints against the university's president will be handled in accordance with the State University of New York (SUNY) *Discrimination Complaint Procedure*.

#### **Failure to Cooperate**

If a complainant refuses to cooperate and/or respond to requests for information in a timely manner, EDI will proceed with an investigation based on the information already provided. In the event that this information does not allow for an effective investigation, the complaint will be closed with notice to the complainant.

In the event that a respondent refuses to cooperate and/or respond to requests for an interview or other information, the respondent's supervisor will issue the respondent a directive to cooperate with the investigation. If the respondent's supervisor cannot issue such a directive because of a conflict of interest, the respondent will be directed to cooperate by the next individual in the chain of command. Failure to comply with this directive will result in a referral for disciplinary action.

#### **Other Avenues for Complaint Reporting**

There is no right to appeal an EDI finding. A complainant may file a charge of discrimination with the appropriate state or federal enforcement agencies at any point in the process, subject to applicable time limitations. It is important to note that filing an internal complaint pursuant to the procedure may not extend the time limits established by state and federal enforcement agencies. It is not necessary to pursue university complaint procedures before filing an external complaint.

State and federal enforcement agencies include:

New York State Division of Human Rights  
The Walter J. Mahoney State Office Building  
65 Court Street, Suite 506  
Buffalo, NY 14202  
Phone: 716-847-7632

Equal Employment Opportunity Commission  
6 Fountain Plaza, Suite 350  
Buffalo, NY 14202  
Phone: 1-800-669-4000

Office for Civil Rights, New York Office  
U.S. Department of Education  
32 Old Slip, 26th Floor  
New York, NY 10005-2500  
Phone: 646-428-3900

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## Contact Information

Contact Information		
Contact	Phone	Email
Equity, Diversity and Inclusion	716-645-2266	<a href="mailto:diversity@buffalo.edu">diversity@buffalo.edu</a>

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## Related Information

### UNIVERSITY LINKS

- › [Academic Grievance Policy and Procedures for Undergraduate Students](#)
- › [Equity, Diversity and Inclusion](#)
- › [Graduate Medical Education Policy and Procedure Against Discrimination and Harassment](#)
- › [Nepotism Policy](#)
- › [Notice of Non-Discrimination](#)
- › [Options for Confidentially Disclosing Sexual Violence](#)
- › [Reasonable Accommodation Policy](#)
- › [Religious Accommodation and Expression Policy](#)
- › [Sexual Violence Response Policy](#)
- › [Students' Bill of Rights](#)
- › [The Graduate School Policy Library](#)
- › [University Policies and Guidelines for Faculty and Staff](#)
- › [Unwanted Sexual Experience](#)

### RELATED LINKS

- › [Research Foundation Equal Opportunity and Antidiscrimination Policy](#)
- › [Research Foundation Resolving Discrimination, Harassment, and Retaliation Complaints Procedure](#)
- › [Research Foundation Sexual Harassment Policy](#)
- › [State University of New York Discrimination Complaint Procedure, Document 6501](#)
- › [U.S. Equal Employment Opportunity Commission \(EEOC\)](#)
- › [U.S. Equal Employment Opportunity Commission \(EEOC\) - Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors](#)



- U.S. Equal Employment Opportunity Commission (EEOC) – Guidelines on Discrimination Because of Sex, U.S. Code of Federal Regulations, Part 1604 [↗](#)
- U.S. Equal Employment Opportunity Commission (EEOC) – Policy Guidance on Employer Liability Under Title VII for Sexual Favoritism [↗](#)
- U.S. Equal Employment Opportunity Commission (EEOC) – Sexual Harassment [↗](#)
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## History

November 2015	Updated to add familial status as an additional bias that is protected by law.
October 2015	Updated <i>Appendix B</i> to reflect New York State legislation modifying the <i>Students' Bill of Rights</i> , formerly the <i>Sexual Violence Victim/Survivor Bill of Rights</i> .
June 2015	Updated <i>Appendix B</i> to reflect the current SUNY <i>Sexual Violence Victim/Survivor Bill of Rights</i> .
June 2014	Updated to comply with a Resolution Agreement between SUNY and the Department of Education Office for Civil Rights. The major changes include the addition of some definitions, clarification of the legal standard for considering complaints, and an expansion of the description of rights available to victims of sexual violence, dating violence, domestic violence, and stalking (captured in the policy and a revised <i>Appendix B</i> ).
April 2012	Updated procedures pertaining to a potential conflict of interest and added <i>Appendix B</i> regarding sexual violence.
November 2011	Updated Office of Equity, Diversity and Affirmative Action (EDAAA) department name to reflect the current name of Office of Equity, Diversity and Inclusion (EDI).

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## Presidential Approval

*Signed by President John B. Simpson*

3/1/2010

*John B. Simpson, President*

*Date*

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## Appendix A

### Sexual Harassment

In determining whether conduct constitutes harassment, consideration will be given to the record as a whole and to the totality of circumstances, including the nature of the sexual advances and the context in which the incidents occurred.

Certain behavior can be classified as sexual harassment even if a relationship appears voluntary in the sense that one was not coerced into participating. A central element in the definition of sexual harassment is that the behavior is unwelcome.

Some acts or practices that have the effect of discouraging individuals of either sex from pursuing academic or professional interests may not constitute sexual harassment because they are not sexual in nature. Such acts may nevertheless constitute illegal sex discrimination if the behavior is directed toward members of one sex and not the other.

Sexual harassment can take different forms, and the determination of what constitutes sexual harassment will vary according to the particular circumstances. Sexual harassment may involve behavior by a person of either sex against a person of the same or opposite sex. Harassment that is sexual in content is always actionable regardless of the harasser's sex, sexual orientation, or motivations.

Examples of sexual harassment may include but are not limited to:

- Seeking sexual favors or relationships in return for the promise of a favorable grade or other academic opportunity
- Conditioning an employment-related action (such as hiring, promotion, salary increase, or performance appraisal) on a sexual favor or relationship
- 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 his or her employment or academic responsibilities

The first two examples illustrate what is characterized as the "quid pro quo" form of sexual harassment. The third example illustrates the "hostile environment" form of sexual harassment. "Hostile environment" sexual harassment is unwelcome sexual behavior toward another employee or student that is sufficiently severe or pervasive to alter the conditions of the victim's employment or academic pursuits and create a work or educational environment that a reasonable person would find abusive. (This explanation of "hostile environment" sexual harassment is based on U.S. Supreme Court decisions (e.g., Meritor Savings Bank, FSB v. Vinson 477 U.S. 57, 67 (1986)).

Isolated instances (e.g., a sexual comment or joke), ordinarily will not constitute sexual harassment unless the circumstances are egregious. Such sexual behavior does not constitute harassment if it is welcomed (i.e., voluntary and consensual). It is important to note that conduct in the workplace or educational setting may fall short of the legal standard for sexual harassment but may still be addressed as unprofessional and/or inappropriate.

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## Appendix B

### Student's Bill of Rights

The State University of New York and UB are committed to providing options, support and assistance to victims/survivors of sexual assault, domestic violence, dating violence, and/or stalking to ensure that they can continue to participate in university-wide and campus programs, activities, and employment. All victims/survivors of these crimes and violations, regardless of race, color, national origin, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, or criminal conviction, have the following rights, regardless of whether the crime or violation occurs on campus, off campus, or while studying abroad:

All students have the right to:

1. Make a report to local law enforcement and/or state police;
2. Have disclosures of domestic violence, dating violence, stalking, and sexual violence assault treated seriously;
3. Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressures from the institution;
4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
5. Be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services, where available;
6. Be free from any suggestion that the reporting individual or victim/survivor is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
7. Describe the incident to as few institutional representatives as practicable and not to be required to unnecessarily repeat a description of the incident;
8. Be free from retaliation by the university, the accused and/or the respondent, and/or their friends, family and acquaintances within the jurisdiction of UB;
9. Access to at least one level of appeal of a determination;
10. Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or respondent throughout the judicial or conduct process including during all meetings and hearings related to such process;
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the university.

### Options in Brief

Victims/survivors have many options that can be pursued simultaneously, including one or more of the following:

- Receive resources, such as counseling and medical attention;
- Confidentially or anonymously disclose a crime or violation (for detailed information on confidentiality and privacy, visit [Options for Confidentially Disclosing Sexual Violence](#)) [↗](#).
- Make a report to:
  - An employee with the authority to address complaints, including the Title IX Coordinator, a Student Conduct employee, or a Human Resources employee;

- • the University Police Department [\[2\]](#);
- • Local law enforcement; and/or
- • Family Court or Civil Court.

Copies of this Bill of Rights shall be distributed annually to students, made available on UB's website, and posted in each campus residence hall, dining hall, and student union or campus center and shall include links or information to access the Sexual Violence Response Policy [\[2\]](#) and the Options for Confidentially Disclosing Sexual Violence [\[2\]](#).

*Revised August 13, 2015*

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