Category: HR / Labor Relations Legal and Compliance Responsible Office: General Counsel	Procedure Title: Discrimination Complaint Procedure for Non-Title IX Discrimination and Title IX Discrimination (including Title IX sex-based harassment involving employee respondents) Document Number: 6501 Effective Date: August 15, 2026 This policy item applies to: State-Operated Campuses System Administration

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Summary

The State University of New York ("SUNY" or "University") is committed to maintaining a learning and workplace environment free from Sexual Harassment and unlawful Discrimination. In its continuing effort to seek equity in education and employment, and in support of Federal and State anti-discrimination legislation, SUNY has adopted this complaint procedure for the prompt and equitable investigation and resolution of allegations of unlawful discrimination on the basis of age, race, creed, color, national origin including shared ancestry and/or ethnic characteristics, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, domestic violence victim status, criminal conviction, arrest record, citizenship or immigration status, or any other characteristic protected by applicable state or federal law. Harassment on the basis of the above protected categories is one form of unlawful Discrimination. SUNY will take steps to prevent Discrimination and Harassment, to prevent the recurrence of Discrimination and Harassment, and to remedy its discriminatory effects on the victim(s) and others, if appropriate. Sex discrimination includes Sexual Harassment and sexual and interpersonal violence. Depending on whether the alleged conduct meets the

definition found at 34 C.F.R. § 106.30, it may be addressed under this procedure or the applicable Campus grievance procedure under Title IX of the Education Amendments of 1972 ("Title IX"). Retaliation against a person who files a complaint, serves as a witness, or assists or participates in any manner in this procedure is strictly prohibited and may result in disciplinary action.

Applicability

This procedure may be used by any current or former SUNY student or employee, or by any Third Party as defined below, concerning conduct arising from the individual's employment, enrollment, application, or participation in a SUNY program or activity.

Complaints alleging *Title IX Sexual Harassment* involving student Respondents will be investigated and adjudicated in accordance with the applicable Campus Title IX Grievance Procedure, rather than under this procedure. Employee grievance procedures established through negotiated contracts, academic grievance procedures, student disciplinary processes, and any other procedures defined by policy or contract generally operate independently from this procedure, but may be used to implement findings or otherwise address conduct identified through this procedure where appropriate.

For matters that are not required to be investigated and adjudicated in accordance with this procedure or a Campus's Title IX Grievance Procedure for student Respondents, the Campus may elect to refer the allegations at the outset of the process to the appropriate Campus office (e.g., student conduct, Human Resources, Title IX) for resolution in accordance with applicable campus policies and procedures. **Human Resources and/or Employee/Labor Relations must be notified of complaints involving employees at the outset of the processes described in this procedure.**

Furthermore, this procedure does not in any way deprive a Complainant of the right to file with outside enforcement agencies including, without limitation, the New York State Division of Human Rights ("SDHR"), the Equal Employment Opportunity Commission ("EEOC"), the United States Department of Education's Office for Civil Rights ("ED OCR"), the U.S. Department of Health and Human Services Office for Civil Rights ("HHS OCR"), and the Office of Federal Contract Compliance Programs of the United States Department of Labor ("OFCCP").

Each Campuses must use this procedure unless the Campus receives an approved exception. Requests for an exception, along with a copy of the requesting Campus's proposed Discrimination complaint procedure, must be submitted to the SUNY Office of General Counsel. The request for an exception will be acted upon by the General Counsel (or their designee) after a review of the Campus's proposed complaint procedure.

The Campus Affirmative Action Officer (or designee) or other appropriate official (collectively, "AAO") on each Campus and the AAO for the SUNY System Administration shall, upon receiving a complaint of alleged Discrimination, inform the Complainant about the complaint process and

other options for resolving the issue, assist the Complainant in using the complaint form and understanding the nature of the allegations, and provide the Complainant with information about available internal and external filing mechanisms, including applicable filing deadlines.

All distributed and published versions of this procedure must identify, for each Campus location, the name or title, office address, email address, and telephone number of the individual with whom to file a complaint.

Procedural Tracks:

There are two tracks for procedures based on affiliation of the Respondent and the applicable law(s):

- Section I sets forth the procedures for all Discrimination and Harassment complaints, including Title IX-covered discrimination other than Covered Sexual Harassment; and
- Section II sets forth the procedures for all Formal Complaints of Covered Sexual Harassment involving employee Respondents**.**

Note: *Complaints of Covered Sexual Harassment involving student Respondents must be investigated and adjudicated under the applicable Student Title IX Grievance Procedure and not pursuant to the procedures described herein.*

Definitions Applicable to non-Title IX Discrimination and Harassment Complaints

Capitalized terms used in this Procedure have the meanings assigned to them below. Terms may be used in the singular or plural, as context requires.

Campus shall be used for State-Operated campuses and System Administration.

Complainant is the individual bringing forward a complaint of Harassment, Discrimination and/or Retaliation.

Discrimination is the different treatment of an individual or group based solely or principally upon a factor prohibited by law that adversely affects the individual's or group's employment or academic status.

Discrimination may also result from failure of the Campus to provide reasonable accommodations to individuals when required due to the individual's disability, religion, pregnancy status, maternity, breastfeeding, transgender status, or sexual violence victim status, among others.

Harassment is a form of Discrimination consisting of oral, written, graphic or physical conduct relating to an individual's protected characteristics that has the effect of subjecting the individual to inferior terms, conditions or privileges of education or employment or interferes with or limits the ability of an individual to participate in or benefit from the University's programs or activities. Such conduct must amount to more than petty slights or trivial inconveniences but need not be severe or pervasive. Such protected characteristics include race, color, national origin, including

shared ancestry and/or ethnic characteristics, 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, criminal conviction status, or any other characteristic protected by applicable state or federal law.

Interim Measures are steps taken to stabilize the situation, prevent continuing misconduct, support the parties, and protect the integrity of the investigation. Whenever possible, Interim Measures will be structured so they do not disproportionately impact either party. Interim Measures for students may include, but are not limited to, information about how to obtain counseling and academic assistance in the event of sexual assault, and steps to take if the accused individual lives on campus and/or attends class with the complainant. Interim measures involving employees in collective bargaining units should be determined in consultation with the campus Human Resources or Employee/Labor Relations department.

Party means a Complainant or Respondent.

Respondent is the individual or entity against whom a complaint has been filed. When a complaint is made against a group or entity, the Campus shall identify an appropriate representative to act on behalf of the Respondent.

Retaliation is an adverse action taken against an individual as a result of complaining about or providing information regarding unlawful discrimination or harassment, exercising a legal right, and/or participating in a complaint investigation as a third-party witness. Adverse action includes being discharged, disciplined, academically disadvantaged, discriminated against, subjected to harassment or intimidation, or otherwise subject to adverse action because the individual reports discrimination or participates in an investigation under this procedure.

Third Party means any person who is not a SUNY student or employee but who is participating in, attempting to participate in, or otherwise interacting with a SUNY-sponsored program or activity, including applicants for admission or employment, interns, volunteers, contractors, vendors, visitors, and other persons conducting business with SUNY.

Definitions Applicable to Title IX Sexual Harassment

Actual Knowledge means notice of Covered Sexual Harassment or allegations of Covered Sexual Harassment to the institution's Title IX Coordinator or any official of the institution who has authority to institute corrective measures on behalf of the Campus. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute Actual Knowledge. This standard is not met when the only official of the institution with actual knowledge is also the Respondent. The mere ability or obligation to report Sexual Harassment or to inform a student about how to report Sexual Harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the Campus.

Campus shall be used for State-Operated campuses and System Administration.

Complainant means any individual who has reported being or is alleged to be the victim of conduct that could constitute Covered Sexual Harassment as defined under this procedure.

Consent means a knowing, voluntary and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate Consent. The definition of Consent does not vary based upon a participant's sex, sexual orientation, gender identity or gender expression.

Additionally:

- Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute Consent to any other sexual act.
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- Consent may be initially given but withdrawn at any time.
- Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in a sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs or other intoxicants may be incapacitated and therefore unable to Consent.
- Consent cannot be given when it is the result of any coercion, intimidation, force or threat of harm.
- When Consent is withdrawn or can no longer be given, sexual activity must stop.

Covered Sexual Harassment means any conduct on the basis of sex that satisfies one or more of the following:

1. An employee conditioning the provision of an aid, benefit, or service of the institution on an individual's participation in unwelcome sexual conduct (i.e., quid pro quo);

2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the institution's education program or activity (i.e. hostile environment harassment). In evaluating whether a hostile environment exists, the institution will consider a number of factors, including, but not limited to: the frequency, nature, and severity of the conduct; whether the conduct was physically threatening; the effect of the conduct on the Complainant's mental or emotional state; how the conduct affected the terms, conditions or privileges of employment or education; whether the conduct was directed at more than one person; whether the conduct arose in the context of other discriminatory conduct; whether there is a power differential between the parties; and whether the conduct implicates concerns related to academic freedom or protected speech;

3. Sexual assault (as defined in the Clery Act), which includes any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent. This includes the forcible sex offenses of rape and criminal sexual contact and the non-forcible sex offenses of incest and statutory rape. The applicable offenses are defined below:

    a. Rape: the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim;
    b. Criminal Sexual Contact: the intentional touching of the clothed or unclothed body parts without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation, or the forced touching by the victim of the actor's clothed or unclothed body parts, without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation;
    c. Incest: sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law;
    d. Statutory rape: sexual intercourse with a person who is under the age of consent in New York State.

4. Dating violence (as defined in the Violence Against Women Act (VAWA) amendments to the Clery Act), which includes any violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship; (ii) The type of relationship; and (iii) The frequency of interaction between the persons involved in the relationship.

5. Domestic violence (as defined in the VAWA amendments to the Clery Act and the Violence Against Women Act (VAWA) Reauthorization of 2022), which includes any felony or misdemeanor crimes of violence committed by a person who: (A) is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of New York, (B) who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, (C) shares a child in common with the victim; or (D) commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of New York.

6. Stalking (as defined in the VAWA amendments to the Clery Act), meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.

Note that conduct that does not meet one or more of these criteria may still be prohibited and subject to discipline under other campus policies, procedures, or contractual obligations.

Education Program or Activity means locations, events, or circumstances over which the Campus exercises substantial control over both the Respondent and the context in which the Sexual Harassment occurs, and includes:

- any on-campus premises;
- any off-campus premises that the Campus has substantial control over, including buildings or property owned or controlled by a recognized student organization; and
- activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operation of the Campus's programs and activities over which the Campus has substantial control.

Employee Title IX Grievance Process means the procedures in Section II of this Procedure for Covered Sexual Harassment Complaints Involving Employee Respondents.

Formal Complaint means a document, including an electronic submission, filed by a Complainant with a signature or other indication that the Complainant is the person filing the Formal Complaint, including using official campus email addresses, or signed by the Title IX Coordinator, alleging Sexual Harassment against a Respondent about conduct within the Campus's education program or activity, and requesting initiation of the grievance procedures to investigate the allegation of Sexual Harassment.

Party means Complainant or Respondent.

Relevant Evidence and Questions means any questions and evidence that tend to make an allegation of Covered Sexual Harassment more or less likely to be true. Relevant evidence is evidence that is available in a particular case that can be evaluated objectively. Relevant evidence includes, without limitation, the Parties' own statements, statements of witnesses, or other available evidence, including documentary and video evidence provided. "Relevant" evidence and questions do not include the following types of evidence and questions, which are deemed "irrelevant" at all stages of the Title IX Grievance Procedure:

- Evidence and questions about the Complainant's sexual predisposition or prior sexual behavior unless:
    - They are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or
    - They concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove Consent.
- Evidence and questions that constitute, or seek disclosure of, information protected under a legally recognized privilege.
- Any party's medical, psychological and similar records unless the party has given voluntary, written consent.

Respondent means any individual who has been reported to be the perpetrator of conduct that could constitute Covered Sexual Harassment as defined under this Procedure.

Student Title IX Grievance Procedure means the applicable Campus procedure for Title IX Sexual Harassment complaints involving student Respondents.

Supportive Measures means non-disciplinary, non-punitive, individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to the Campus's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the Campus's educational environment, or deter Sexual Harassment. Supportive Measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The Campus must maintain as confidential any Supportive Measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of the Campus to provide the Supportive Measures. The Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures.

I. Procedures for Discrimination and Harassment Complaints Other than Covered Sexual Harassment Complaints Against Student or Employee Respondents

This procedure provides a mechanism through which Campuses may identify, respond to, and prevent incidents of illegal discrimination. SUNY recognizes and accepts its responsibility in this regard and believes that the establishment of this internal grievance process will benefit students, faculty, staff, and administration, permitting investigation and resolution of violations of law or policy. All Parties involved in the investigation are expected to cooperate and provide truthful information throughout the investigation. Failure to do so may compromise the integrity of the investigation or cause delays. All members of the campus community are expected to cooperate with this procedure.

SUNY will keep investigations confidential to the extent possible. During any portion of the procedures detailed hereafter, neither the Complainant, Respondent(s), nor any witnesses shall employ audio or video taping devices.

Retaliation against a person who files a complaint, serves as a witness, or assists or participates in any manner in this procedure is strictly prohibited and may result in disciplinary action up to and including termination or expulsion. Participants who experience Retaliation should contact the Campus Affirmative Action Officer (or designee) or other appropriate official (collectively, "AAO") and may file a complaint pursuant to this procedure.

Unless prohibited by applicable law, SUNY will comply with law enforcement requests for cooperation, and such cooperation may require the campus to temporarily delay the fact-finding aspect of an investigation while the law enforcement agency is in the process of gathering evidence. The Campus will resume its investigation as soon as law enforcement notifies it that such investigation will not interfere with the criminal investigation or prosecution. The Campus

will implement appropriate interim steps during the law enforcement agency's investigation to provide for the safety of the victim(s) and the campus community, as described below.

If a parallel or overlapping complaint has been filed with an outside enforcement agency (*e.g.*, SDHR, ED OCR, HHS OCR, EEOC), the Campus may modify the deadlines and process described in this procedure to avoid interference with that agency's investigation. If litigation is initiated, the Campus may pause or continue the investigation in a manner that avoids conflict with litigation counsel, court procedures, and judicial rulings.

Consultation and Review

Any student, employee, or third party may consult with the AAO regarding potential Discrimination or Harassment. This initial contact may occur by telephone, email, videoconference, or in person.

The AAO will respond to all such inquiries, reports, and requests as promptly as possible and in a manner appropriate to the circumstances. The AAO's response may include Interim Measures to protect the Parties during the investigation process and information on filing a complaint using this procedure and/or with an outside enforcement agency.

Administrators, managers, and supervisors must immediately refer to the AAO any complaint or concern regarding potential Discrimination or Harassment that is reported to them or that they observe or otherwise become aware of.

Time Limitations for Filing a Non-Title IX Discrimination Complaint

Reports of Discrimination, Harassment, or Retaliation may be made at any time by any person and should be made as promptly as practicable. A Complainant seeking a formal investigation under this Procedure ordinarily should file within **one year** after the most recent alleged act of Discrimination, Harassment, or Retaliation.

In instances involving a complaint by a student against a faculty or staff member arising from a supervisory, evaluative, teaching, advising, thesis or dissertation supervision, coaching, clinical supervision, or similar relationship, a complaint ordinarily may be filed until one year after that relationship ends or three years after the most recent alleged act, whichever is earlier.

The AAO may accept a complaint filed outside the applicable period for good cause or when the Campus determines that review is otherwise warranted. Relevant considerations may include the nature and severity of the allegations; any ongoing effects or continuing conduct; evidence of a pattern; whether the alleged conduct arose in a supervisory, evaluative, or other relationship involving authority over the Complainant; circumstances affecting the Complainant's ability to file earlier; institutional safety or compliance concerns; and the availability of relevant evidence.

Delay may limit the Campus's ability to investigate the allegations, make findings, impose discipline, or provide particular remedies, but it does not prevent the Campus from reviewing the

information and taking other appropriate action. Filing a complaint under this Procedure does not extend any deadline for filing with an outside agency or court.

Conflicts of Interest

In the event that the AAO cannot conduct an investigation due to a conflict of interest, the Campus will ensure that the report of discrimination is investigated by individuals with experience and training in discrimination compliance.

Filing and Processing of Complaints

The AAO who receives any complaint of alleged discrimination shall:

1) Inform the complainant about the complaint process and other internal options to resolve the issue;

2) Assist the complainant in the use of the complaint form; and

3) Provide the complainant with information about various external agencies with which the complaint may be filed, including where to find applicable time limits for filing with each agency.

Although in limited circumstances, verbal complaints may be acted upon, the procedures set forth here rest upon the submission of a written complaint submitted by paper or electronically that will enable there to be a full and fair investigation of the facts.

All complaints must be submitted on the forms provided by the Campus (see Forms below). A Campus may use a local form that differs from Form A below, provided that the local form includes at least all the required fields that are in Form A.

As soon as reasonably possible after the filing of the complaint, the AAO will provide a copy of the complaint, along with a copy of this procedure, to the Respondent(s).

Informal Resolution

No party will be required to participate in informal resolution, and the Campus may never condition enrollment, employment, or enjoyment of any other right or privilege upon agreeing to informal resolution.

The AAO may attempt to resolve the underlying issue with the agreement of Complainant and Respondent. The time limitations for investigating a complaint shall be tolled (paused) during the pendency of the informal resolution process. Any party or the AAO may elect to end the informal resolution process and proceed to the formal resolution procedure at any time after the Charge of Discrimination form is filed. If the respondent is an employee, the campus human resources or employee/labor relations office must be involved prior to the AAO making any attempts to informally resolve the complaint.

If a resolution satisfactory to both the complainant and the respondent is reached, the AAO shall close the case, sending a written notice to that effect to the complainant and respondent(s). The written notice, a copy of which shall be attached to the original complaint form in the AAO's file, shall contain the terms of any agreement reached by complainant and respondent, and shall be signed and dated by the complainant, the respondent(s) and the AAO. (See Form B below)

If the AAO is unable to resolve the complaint to the mutual satisfaction of the complainant and respondent(s), the AAO shall notify the parties and initiate the investigation process.

Formal Investigation and Resolution

The formal complaint proceeding is commenced by the filing of a complaint form as described above and/or by a party's decision to discontinue the informal resolution process. The outcome of the process is a report describing the relevant evidence and making findings.

The investigatory process is guided by the need to balance the need to remedy unlawful Discrimination and Harassment with principles of fairness, due process, and confidentiality. Accordingly, parties to an investigation are afforded the following rights and protections:

- SUNY will maintain the confidentiality of discrimination reports to the fullest extent possible and requests the same of parties to the investigation and third-party witnesses. Records of conversations with parties or witnesses will not be released outside of the Campus unless required by law (e.g., outside investigation, FERPA, FOIL), court order, or as needed to pursue available remedies such as student/employee discipline.
- The Respondent is entitled to due process, including knowledge of the specific allegation(s) and an opportunity to respond prior to imposition of sanctions or an adverse employment or education action. No finding or presumption of wrongdoing will be made absent factual evidence that supports the finding.
- Complainants and Respondents will each have notice of the evidence presented during the investigation, as well as an opportunity to explain and respond to the evidence. The investigator will keep the parties informed of the progress of the investigation and any actions taken that may affect their rights.
- Complainants and third-party witnesses are protected against retaliation for reporting discrimination or participating in an investigation. If a party feels that any negative action has been taken as a result of reporting discrimination or participating in a complaint investigation, this allegation will be investigated separately.

At the outset of any complaint, the AAO must consult with the human resources and/or employee/labor relations office if the respondent is an employee. In conducting investigations, the AAO will consider relevant laws, policies and procedures, documentation, and information obtained from the complainant, respondent(s), and third-party witnesses. The standard of proof in complaints made under this Procedure is a preponderance of the evidence (more likely than not)

regardless of whether or not the allegations would also constitute a crime. The timeframe for investigating a report of discrimination will depend upon the complexity of the investigation **but should not exceed sixty days absent good cause as determined by the AAO**. At the conclusion of an investigation, the AAO will reduce their findings to a written report, including a recommended outcome on whether a violation occurred and, if warranted, referral to Human Resources/Employee Relations for appropriate disciplinary action.

Potential Outcomes of the Investigation of a Complaint

- The matter is resolved between the Parties and no other issues require campus involvement;
- The Complainant elects to withdraw the complaint 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 SUNY and/or Campus policies against discrimination and harassment;
- The preponderance of the evidence supports a finding of a violation of the SUNY and/or Campus policies against discrimination and harassment.

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

When the evidence supports a finding that a violation of law or policy occurred, the AAO will recommend appropriate action to the Campus president (or designee) to remedy such violation(s). If the Campus president is the Respondent, the findings and recommendation shall be submitted to the SUNY Chancellor (or designee), who will act in place of the Campus president.

i. *For employees (including student employees) not in a collective bargaining unit:* The president (or designee) may take such administrative action as they deem appropriate under their authority as the chief administrative officer of the campus, including but not limited to, termination, demotion, reassignment, suspension, reprimand, or training.

ii. *For students:* The president (or designee) may determine that sufficient information exists to refer the matter to the student conduct office or another appropriate disciplinary body for review and appropriate action under the applicable student conduct code. The potential outcomes may include reprimand, suspension, expulsion, or educational courses or activities.

iii. *For employees in collective bargaining units:* The president (or designee) may determine that sufficient information exists to refer the matter to their designee for disciplinary action, or other action as may be appropriate under the applicable collective bargaining agreement. Potential outcomes of that process may include a reprimand, suspension, termination, training, fine, demotion, or informal or formal counseling.

The action of the Campus president (or designee) shall be final unless further proceedings under the student code of conduct or applicable collective bargaining agreement are implicated. If the Campus president is the respondent, the Chancellor (or designee) shall issue a written statement indicating what action the Chancellor (or designee) proposes to take. The decision of the Chancellor (or designee) shall be final for purposes of this discrimination procedure.

Notice of Outcome

Following final determination and/or action, the president (or designee) shall issue a letter to the Complainant and to the Respondent(s) advising them that the matter, for purposes of this discrimination procedure, is closed. In cases of sex discrimination, the notice of outcome will include the sanctions, as appropriate.

II. Procedures for Covered Sexual Harassment Complaints Involving Employee Respondents

General Rules of Application

Effective Date

This Employee Title IX Grievance Process applies to incidents that occur on or after August 14, 2020. Incidents of sexual harassment alleged to have occurred before August 14, 2020, will be investigated and adjudicated according to the process in place at the time the incident allegedly occurred.

Should any portion of the Title IX Final Rule, 85 Fed. Reg. 30026 (May 19, 2020), be stayed or held invalid by a court of law, or should the Title IX Final Rule be withdrawn or modified to not require the elements of this Title IX grievance process, or the invalidated elements of this Title IX grievance process, those elements will be deemed revoked as of the publication date of the opinion or order and for all reports after that date, as well as any elements of the process that occur after that date if a case is not complete by that date of opinion or order publication. Should this Title IX grievance process be revoked in this manner, any conduct covered under this process shall be investigated and adjudicated under the existing Discrimination Complaint Procedure or the employee disciplinary process described in the collective bargaining agreement, as appropriate.

Scope of Procedure

SUNY Campuses have adopted a grievance procedure for the prompt and equitable resolution of Formal Complaints alleging Covered Sexual Harassment made by persons, including students and employees, who are participating or attempting to participate in its Campus's Education Program or Activity, or by the Title IX Coordinator, alleging any action that would be prohibited by Title IX or the Title IX regulations.

Title IX's prohibition on sex discrimination includes Covered Sexual Harassment in the form of quid pro quo harassment, hostile environment harassment, and four specific offenses (sexual assault, dating violence, domestic violence, and stalking). For the prompt and equitable resolution

of Formal Complaints alleging Covered Sexual Harassment involving a student Respondent, the campus will utilize the Campus's Title IX Grievance Procedure for student Respondents.

Non-Discrimination in Application

The requirements and protections of this Employee Title IX Grievance Process apply equally regardless of sex, sexual orientation, gender identity, gender expression or other protected classes covered by applicable federal or state law. All requirements and protections are equitably provided to individuals regardless of such status or status as a complainant, respondent, or witness. Individuals who wish to file a complaint about this policy, procedure, or process may contact the U.S. Department of Education's Office for Civil Rights ("ED OCR").

Office for Civil Rights
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-1475
Telephone: 202-453-6020
Fax: 202-453-6021
TDD: 800-877-8339
Email: OCR.DC@ed.gov

For complaints involving health care services, hospitals, or other programs or activities subject to the jurisdiction of the U.S. Department of Health and Human Services, including complaints that may fall under Title IX, individuals may also contact the Office for Civil Rights, U.S. Department of Health and Human Services ("HHS OCR"):

Office for Civil Rights
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Room 509F, HHH Building
Washington, D.C. 20201
Telephone: 1-800-368-1019
TDD: 1-800-537-7697
Email: OCRMail@hhs.gov

Confidentiality

This grievance procedure is intended to protect the confidentiality of parties and witnesses during the Title IX process, while also promoting the Campus's ability to meet its Title IX obligations, consistent with constitutional and other due process protections. The Campus will keep confidential the identity of any individual who has made a report or complaint of sexual harassment, including any individual who has made a report or filed a Formal Complaint of Sexual Harassment, any Complainant, any individual who has been reported to be the perpetrator of sexual harassment, any Respondent, and any witness, except as may be permitted by the FERPA statute,

20 U.S.C. § 1232g, or FERPA regulations, 34 C.F.R. part 99, or as required by law, or to carry out the purposes of 34 C.F.R. part 106, including the outcome of any investigation, hearing, or judicial proceeding arising thereunder. The Campus will limit the sharing of information to the extent permitted by law. Federal and state laws, rules, and regulations, including New York's Freedom of Information Law, may require disclosure in some circumstances.

The Campus will take reasonable steps to protect the privacy of the Parties and witnesses during the pendency of the grievance procedure, provided that the steps do not restrict the abilities of the Parties to obtain and present evidence, including by speaking to witnesses (as long as such does not result in Retaliation), consult with their family members, confidential resources, or advisors, or otherwise prepare for or participate in this grievance procedure. A Formal Complaint will require that the institution share the identity of a Complainant with the Respondent and the Parties' advisors, as well as relevant institutional employees who are assisting with the investigation or adjudication of the Formal Complaint.

Private vs. Confidential Resources

Several identified institutional offices will maintain the confidentiality of your reports, meaning those offices have the ability to not report crimes and violations to law enforcement or Campus officials without permission, except for extreme circumstances, such as a health and/or safety emergency or child abuse. Reports to confidential resources will not generally trigger an institutional investigation or remedy.

Below are the institutional offices/officials identified as confidential for Title IX purposes, who will not report to law enforcement or Campus officials without a Complainant's permission, except for extreme circumstances:

- Off-campus victim advocacy centers (if applicable);
- Campus medical and licensed mental health providers; and
- Religious officials who receive reports when in their ministerial capacity.

All other institutional offices and employees will maintain the *privacy* of reports of Covered Sexual Harassment to the greatest extent possible but cannot guarantee confidentiality. Information disclosed to these private resources will be relayed only as necessary to investigate and/or seek a resolution and to notify the Title IX Coordinator or designee, who is responsible for tracking patterns and spotting systemic issues.

A Campus may appropriately designate others beyond this list as confidential resources. If a Campus designates additional confidential resources, it must identify those resources in writing and clearly display that information on its website as part of its Title IX information.

Making a Report Regarding Covered Sexual Harassment to the Campus

Any person may report sex discrimination, including Covered Sexual Harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone or by electronic mail, using

the contact information listed for the Campus's Title IX Coordinator, or by any other means that results in the Campus's Title IX Coordinator receiving the person's verbal or written report.

Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address listed for the Campus's Title IX Coordinator. For confidential reporting resources that will not forward a report to the Title IX Coordinator, please reference the preceding section, titled "Private vs. Confidential Resources."

Non-Investigatory Measures Available Under the Title IX Grievance Procedure

Supportive Measures

Complainants who report allegations that could constitute Covered Sexual Harassment under this Procedure have the right to receive Supportive Measures from the Campus regardless of whether they desire to file a Formal Complaint. Supportive Measures are non-disciplinary and non-punitive.

Administrative Leave/Alternate Assignment

The Campus retains the authority to place a non-student employee Respondent on administrative leave or alternate assignment, for the duration of the Title IX Grievance Procedure, consistent with the relevant collective bargaining agreement. The Campus Human Resources/Employee Relations office will maintain responsibility for placing employees on administrative leave or alternate assignment.

Alcohol and/or Drug Use Amnesty

The health and safety of every student at the Campus is of utmost importance. The Campus recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. The Campus strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to institution officials.

A bystander or reporting individual who acts in good faith and discloses any incident of domestic violence, dating violence, stalking, or sexual assault to the Campus's officials or law enforcement will not be subject to the Campus's code of conduct for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.

Disability Accommodations

This Employee Title IX Grievance Process does not alter any institutional obligations under applicable federal and state disability laws, including the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, and the New York State Human Rights Law. Parties may submit requests for reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point before or during this Employee Title IX Grievance Procedure. Requests

will be evaluated in consultation with the appropriate Campus office, and accommodations may be provided where they do not fundamentally alter the process. The Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the Parties, even where the Parties may be receiving accommodations in other institutional programs and activities.

The Employee Title IX Grievance Process

Filing a Formal Complaint

The timeframe for this grievance procedure begins with the filing of a Formal Complaint. The grievance procedure will be concluded within a reasonably prompt timeframe, after the filing of the Formal Complaint, provided that the process may be extended for a good reason, including but not limited to the absence of a Party, a Party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

To file a Complainant must provide the Title IX Coordinator with a written, signed Formal Complaint describing the facts alleged. A Complainant may file a Formal Complaint under this Employee Title IX Grievance Procedure only if they are currently participating in, or attempting to participate in, the Campus's Education Program or Activity, including as an employee. For Complainants who do not meet these criteria, the Campus will utilize existing policy and/or procedure in the Student Code of Conduct and/or the employee disciplinary process as described in the collective bargaining agreement, or other Campus policies and/or procedures, as applicable to the Complaint received.

If a Complainant does not wish to file a Formal Complaint, the Title IX Coordinator may determine a Formal Complaint is necessary and sign one. If so, the Campus will inform the Complainant of this decision in writing. The Complainant need not participate further in the process but will receive all notices issued under this Employee Title IX Grievance Process. When the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator does not become a Complainant or Party to the Employee Title IX Grievance Process.

Nothing in any Campus policy or procedure, including this grievance procedure, precludes the Complainant from seeking the assistance of state or local law enforcement alongside the appropriate on-campus process.

Initial Assessment

Upon receipt of a report by a Complainant of alleged prohibited conduct by an employee, the Title IX Coordinator will make an initial assessment of the reported information and respond to any immediate health or safety concerns raised by the report. The steps in an initial assessment vary based on whether the identity of the Complainant is known.

In the initial assessment and meeting or correspondence with the Complainant, the Title IX Coordinator will:

- Assess the Complainant's safety and well-being and offer the Campus's support and assistance through available resources;

- Inform the Complainant that the Title IX Coordinator will maintain the Complainant's privacy to the greatest extent possible and disclose information only as necessary pursuant to this procedure;
- Inform the Complainant of their right to seek medical treatment (including a sexual assault forensic examination) and explain the importance of obtaining evidence and preserving forensic and other evidence, where applicable;
- Inform the Complainant of their right to contact law enforcement, be assisted by Campus officials in contacting law enforcement, or decline to contact law enforcement, and their right to seek a protective order;
- Inform the Complainant that the criminal justice system uses different standards of proof and evidence than this procedure and that any questions about whether the reported prohibited conduct constitutes a penal law violation should be addressed by law enforcement;
- Inform the Complainant about Campus and community resources, including counseling, health, and mental health services; victim advocacy; procedural advocacy; legal resources; visa and immigration assistance; student financial aid; and other resources both on campus and in the community, and how to request or contact such resources;
- Inform the Complainant of the right to seek appropriate and available Supportive Measures and how to request such measures and consider the Complainant's wishes with respect to Supportive Measures with or without the filing of a Formal Complaint;
- Ensure the Complainant is aware of their right to an advisor;
- Inform the Complainant of the right to file a Formal Complaint and seek resolution under this procedure; provide the Complainant with an overview of this procedure, including Supportive Measures; and inform the Complainant of the right to withdraw a Formal Complaint at any time prior to resolution and to decline or discontinue resolution under this Procedure at any time, including that declining to participate in an investigation and/or hearing under these procedures may limit the Campus's ability to investigate meaningfully and respond to a report of prohibited conduct;
- As possible and appropriate, ascertain the Complainant's preference for pursuing a Formal Complaint, Supportive Measures, or neither under this procedure, and discuss with the Complainant any concerns or barriers to participating in any investigation and resolution process under this procedure;
- Explain that the Campus prohibits retaliation, that retaliation constitutes prohibited conduct under this procedure, and that the Campus will take appropriate action in response to any act of retaliation;
- Inform the Complainant of their rights afforded under the Student Bill of Rights, if applicable;
- Communicate with appropriate Campus officials to determine whether the report triggers any Clery Act obligations, including the issuance of a timely warning or emergency notification, and take steps to meet those obligations; and
- Notify the Campus office of Human Resources/Employee Relations that a complaint against an employee has been received.

Determining Jurisdiction

The Title IX Coordinator or designee will determine if this procedure should apply to a Formal Complaint. This procedure will apply when all of the following elements are met, in the reasonable determination of the Title IX Coordinator, in consultation with the Campus designee for Human Resources:

1. The conduct is alleged to have occurred on or after August 14, 2020;
2. The conduct is alleged to have occurred in the United States;
3. The conduct is alleged to have occurred in the Campus's Education Program or Activity; and
4. The alleged conduct, if true, would constitute Covered Sexual Harassment as defined in this Procedure.

If all of the elements are met, the Campus will investigate the allegations according to this procedure.

Jurisdiction at Academic Medical Centers

SUNY includes a number of hospitals and Academic Medical Centers (AMCs), which are covered by this grievance procedure when the reported conduct falls within SUNY's education program or activity and otherwise meets the jurisdictional requirements of this procedure.

There are some activities and operations at an AMC that are likely to be outside the scope of Education Programs or Activities (e.g., purely clinical employment matters with no meaningful education nexus and no "substantial control" in an education context). Allegations of Covered Sexual Harassment occurring at an AMC outside the scope of its Education Program or Activity may be processed under Section I of this Procedure.

Multi-Party Situations and Consolidation of Complaints

The Campus may consolidate Formal Complaints alleging Covered Sexual Harassment against more than one employee Respondent, or by more than one Complainant against one or more employee Respondents, or by one Party against the other Party, where the allegations of Covered Sexual Harassment arise out of the same facts or circumstances.

Allegations Potentially Falling Under More Than One Policy or Procedure

If the alleged conduct, if true, includes conduct that would constitute Covered Sexual Harassment and conduct that would not constitute Covered Sexual Harassment, this Title IX grievance procedure will be applied in the investigation and adjudication of all the allegations.

Mandatory Dismissal

The Campus will investigate the allegations in a Formal Complaint. If the conduct alleged in the Formal Complaint would not constitute Covered Sexual Harassment, even if proved; did not occur in the Campus's Education Program or Activity; or did not occur against a person in the United States, then the Campus must dismiss the Formal Complaint regarding that conduct for purposes of Covered Sexual Harassment. Such a dismissal does not preclude action under the employee

disciplinary process as described in the applicable collective bargaining agreements, or other appropriate action based on Campus policy and/or procedures. Each Party may appeal a dismissal using the procedure outlined in "Appeals" below.

Discretionary Dismissal

The Title IX Coordinator or designee may dismiss a Formal Complaint brought under this procedure, or any specific allegations raised within that Formal Complaint, at any time during the investigation or hearing, if:

- A Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any allegations raised in the Formal Complaint;
- The Respondent is no longer employed by the Campus; or
- Specific circumstances prevent the Campus from gathering evidence sufficient to reach a determination regarding the Formal Complaint or allegations within the Formal Complaint.

Any Party may appeal a dismissal determination using the process set forth in "Appeals" below.

Notice of Dismissal

Upon reaching a decision that the Formal Complaint will be dismissed, the institution will promptly send written notice of the dismissal of the Formal Complaint or any specific allegation within the Formal Complaint and the reason for the dismissal, simultaneously to the Parties through their Campus email accounts. It is the responsibility of Parties to maintain and regularly check their Campus email accounts.

When a Formal Complaint is dismissed, the Campus will, at a minimum, offer Supportive Measures to the Complainant as appropriate and to the Respondent as appropriate (if the Respondent has been notified of the allegations), and take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that sex discrimination does not continue or recur within the Campus's Education Program or Activity.

Notice of Removal

Upon dismissal for the purposes of Title IX, the Campus retains discretion to utilize the SUNY Discrimination Complaint Procedure or the employee disciplinary process, as appropriate, to determine if a violation of one or more of those policies and/or procedures has occurred. If the Campus refers the allegations to another process, it will promptly provide written notice that the Formal Complaint has been dismissed and that the allegations have been removed from that procedure and referred to the other applicable process.

Notice of Allegations

The Title IX Coordinator will draft and provide the Notice of Allegations to each Party to the alleged Sexual Harassment. Such notice will occur as soon as practicable upon receipt of a Formal Complaint, if there are no extenuating circumstances.

The Parties will be notified through their Campus email accounts if they are a student or employee and by other reasonable means if they are neither.

The Campus will provide sufficient time for the Parties to review the Notice of Allegations and prepare a response before any initial interview.

The Title IX Coordinator or designee may determine that the Formal Complaint will be dismissed on the grounds identified above and will issue a Notice of Dismissal. If such a determination is made, any party to the allegations of Sexual Harassment identified in the Formal Complaint will receive the Notice of Dismissal in conjunction with, or in separate correspondence after, the Notice of Allegations.

Contents of Notice

The Notice of Allegations will include the following:

- Notice of this procedure and a hyperlink to a copy of the process.
- Notice of the allegations potentially constituting Covered Sexual Harassment and sufficient details known at the time the notice is issued, such as the identities of the Parties involved in the incident, if known, including the Complainant; the conduct allegedly constituting Covered Sexual Harassment; and the date and location of the alleged incident, if known.
- A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of this grievance procedure.
- A statement that the Parties may have an advisor of their choice, who may be, but is not required to be, an attorney;
- A statement that before the conclusion of the investigation, the Parties may inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which the Campus does not intend to rely in reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a Party or other source;
- Students are prohibited from knowingly making false statements or knowingly submitting false information during this process as provided in the Student Code of Conduct.

Ongoing Notice

If, during an investigation, the Campus decides to investigate allegations about the Complainant or Respondent that are not included in the Notice of Allegations and would otherwise constitute Covered Sexual Harassment and fall within this Employee Title IX Grievance Process, the Campus will notify the Parties whose identities are known of the additional allegations through their institutional email accounts or other reasonable means. The Parties will be provided sufficient time to review the additional allegations to prepare a response before any initial interview regarding those additional allegations.

Advisors of Choice

The Campus will provide the Parties equal access to advisors and support persons and will not limit the choice or presence of an advisor for either Party. Any restrictions on advisor participation will be applied equally.

Individuals participating as Complainant or Respondent in this procedure may be accompanied by an advisor of choice to any meeting or hearing to which they are required or are eligible to attend. The advisor of choice is not an advocate. Except where explicitly stated by this procedure, advisors of choice shall not participate directly in the process consistent with standard Campus policy and practice, except for required cross-examination by such advisor during a live hearing. The Campus may establish Rules of Decorum and otherwise establish restrictions regarding the extent to which advisors may participate in the proceedings.

An employee Respondent subject to a collective bargaining agreement has the right to appoint their applicable union representative as their advisor of choice. If such employee Respondent chooses to have an advisor of choice that is different from and in addition to their applicable union representative, the Complainant will be notified and allowed to have an additional advisor of choice or support person during this procedure.

The Campus will not intentionally schedule meetings or hearings on dates when the advisors of choice for all Parties are not available, provided that the advisors act reasonably in providing available dates and work collegially to find dates and times that meet all schedules within a reasonable timeframe.

The Campus's obligations to investigate and adjudicate in a prompt timeframe under Title IX and other Campus policies apply to matters governed under this procedure, and the Campus cannot agree to extensive delays solely to accommodate the schedule of an advisor of choice. The determination of what is reasonable shall be made by the Title IX Coordinator or designee. The Campus will not be obligated to delay a meeting or hearing under this process more than five (5) business days due to the unavailability of an advisor of choice, and may offer the Party the opportunity to obtain a different advisor of choice or utilize one provided by the Campus.

Notice of Meetings and Interviews

The Campus will provide, to a Party whose participation is invited or expected, written notice of the date, time, location, participants and purpose of all hearings, investigative interviews or other meetings with a Party, with sufficient time for the Party to prepare to participate.

For employee Respondents, all meetings, hearings, and investigative interviews are voluntary and are not considered an interrogation under the applicable collective bargaining agreements. The employee Respondent is responsible for providing any notifications to appropriate union representation.

Investigation

General Rules of Investigations

The Title IX Coordinator and/or an investigator designated by the Title IX Coordinator, in conjunction with the designee from Human Resources, will perform an investigation of the conduct alleged to constitute Covered Sexual Harassment in a reasonably prompt timeframe, after issuing the Notice of Allegations. The investigation will generally include individual interviews of the Complainant, the Respondent, and relevant witnesses. The Parties may submit in writing

the names of witnesses they would like the investigator to interview and proposed questions or topics for the investigator to address with witnesses or either Party. The investigator has the discretion to determine the relevance of any proffered witnesses, and, accordingly, the investigator will determine which witnesses to interview.

The Campus, and not the Parties, has the burden of proof and the burden of gathering evidence sufficient to reach a determination, i.e., the responsibility of showing a violation of this procedure has occurred. This burden does not rest with either Party and either Party may decide not to share their account of what occurred or may decide not to participate in an investigation or hearing. This does not shift the burden of proof away from the Campus and does not indicate responsibility.

The Campus cannot access, consider, disclose, or otherwise use a Party's medical records without voluntary, written consent from the individual to whom the records belong or about whom the records contain information. The Campus will provide an equal opportunity for the Parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence (i.e. evidence that tends to prove and disprove the allegations) as described below.

All deadlines and time requirements in this procedure may be extended for good cause as determined by the Title IX Coordinator or their designee. The Respondent and the Complainant, as well as their advisors, will be notified in writing of the delay, the reason for the delay, and provided the date of the new deadline or event. Extensions requested by one party will not typically be longer than five (5) business days.

Inspection and Review of Evidence

Prior to the completion of the investigation, the Parties will have an equal opportunity to inspect and review the evidence obtained through the investigation in an electronic format or a hard copy. The purpose of the inspection and review process is to allow each Party the equal opportunity to meaningfully respond to the evidence prior to the conclusion of the investigation. The Parties will have at least ten (10) business days to submit a written response, which the investigator will consider prior to completion of the investigative report.

Evidence that will be available for inspection and review by the Parties will be any evidence that is relevant or directly related to the allegations raised in the Formal Complaint. It will include:

1. Evidence that is related, even if that evidence does not end up being relied upon by the institution in making a determination regarding responsibility;
2. Inculpatory or exculpatory evidence (i.e. evidence that tends to prove or disprove the allegations) that is directly related to the allegations, whether obtained from a Party or other source.

All Parties must submit any evidence they would like the investigator to consider before the Parties' time to inspect and review evidence begins.

The Campus will provide each Party and the Party's advisor, if any, with the evidence made available for inspection and review. The Campus is not under an obligation to use any specific

process or technology to provide the evidence and shall have the sole discretion in terms of determining format and any restrictions or limitations on access.

Any evidence deemed relevant after inspection and review will be available at any hearing, including for purposes of cross-examination.

The Parties and their advisors must sign an agreement not to disseminate any of the evidence subject to inspection and review or use such evidence for any purpose unrelated to this Title IX grievance procedure.

The Parties and their advisors agree not to photograph or otherwise copy the evidence.

Inclusion of Evidence Not Directly Related to the Allegations

Evidence obtained in the investigation that is determined in the reasoned judgment of the investigator not to be directly related to or Relevant to the allegations in the Formal Complaint will be included in the appendices to the investigative report. These appendices will be made available exclusively to both Parties unless an appeal is filed.

Investigative Report

The investigator will create an investigative report that fairly summarizes Relevant evidence and, at least ten (10) business days prior to a hearing, will send the report, in electronic or hard-copy format, to each Party and the Party's advisor. The investigative report is not intended to catalog all evidence obtained by the investigator, but only to provide a fair summary of that evidence. Only Relevant evidence (including both inculpatory and exculpatory — i.e. tending to prove and disprove the allegations — relevant evidence) will be referenced in the investigative report. The investigator may redact irrelevant information from the investigative report when that information is contained in documents or evidence that are otherwise Relevant.

Hearing

General Rules of Hearings

The Campus will not issue discipline arising from an allegation of Covered Sexual Harassment without holding a live hearing.

The live hearing may be conducted with all Parties physically present in the same geographic location, or, at the request of either party, the Campus will provide for the live hearing to occur with the Parties located in separate rooms with technology enabling the Decision-maker and Parties to simultaneously see and hear the Parties or the witnesses answering questions. At the discretion of the Campus, any or all witnesses and other participants may appear at the live hearing virtually. At its discretion, the Campus may delay or adjourn a hearing based on technological errors not within a Party's control.

Prior to obtaining access to any evidence, the Parties and their advisors must sign an agreement not to disseminate any of the testimony heard or evidence obtained in the hearing or use such testimony or evidence for any purpose unrelated to this Title IX grievance procedure. Once signed, this agreement may not be withdrawn.

Continuances or Granting Extensions

The Campus may determine that multiple sessions or a continuance (i.e. a pause on the continuation of the hearing until a later date or time) is needed to complete a hearing. If so, the Campus will notify all participants and endeavor to accommodate all participants' schedules and complete the hearing as promptly as practicable.

Newly Discovered Evidence

As a general rule no new evidence or witnesses may be submitted during the live hearing.

If a Party identifies new evidence or witnesses that were not reasonably available prior to the live hearing and could affect the outcome of the matter, the Party may request that such evidence or witnesses be considered at the live hearing.

The Decision-maker will consider this request and make a determination regarding:

(1) whether such evidence or witness testimony was actually unavailable despite reasonable efforts prior to the hearing; and
(2) whether such evidence or witness testimony could affect the outcome of the matter.

The Party offering the newly discovered evidence or witness has the burden of establishing these questions by the preponderance of the evidence.

If the Decision-maker answers in the affirmative to both questions, then the Parties will be granted a reasonable pause in the hearing to review the evidence and/or prepare for questioning of the witness.

Participants in the Live Hearing

Live hearings are not public and the only individuals permitted to participate in the hearing are as follows:

Complainant and Respondent (The Parties)

- The Parties cannot waive the right to a live hearing, though they are not required to participate.
- The Campus may still proceed with the live hearing in the absence of a Party and may reach a determination of responsibility in their absence.
- The Campus will not threaten, coerce, intimidate or discriminate against the Party in an attempt to secure the Party's participation.
- The Decision-maker cannot draw an inference about the determination regarding responsibility based solely on a Party's absence from the live hearing or refusal to answer cross-examination or other questions.

The Decision-maker

- The Decision-maker will serve as a hearing body consisting of one individual selected by the Campus that is not a member of the same bargaining unit as the Respondent.

- The Decision-maker will not also have served as the Title IX Coordinator, Title IX investigator, or advisor to any Party in the case, nor may the Decision-maker serve on the appeals body in the case.
- The Decision-maker will not have a conflict of interest or bias in favor of or against Complainants or Respondents generally, or in favor of or against the Parties to the particular case.
- The Decision-maker will be trained on topics including how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for Complainants, and any technology to be used at the hearing.
- The Parties will have an opportunity to raise any objections regarding a Decision-maker's actual or perceived conflicts of interest or bias at the commencement of the live hearing.

Advisor of Choice

- The Parties have the right to select an advisor of their choice, who may be, but does not have to be, an attorney. For employee Respondents, the advisor of choice may also be their union representative, if applicable, but it is not required to be.
- If a Party does not have an advisor present at the live hearing, the Campus will provide, without fee or charge to that Party, an advisor of the Campus's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that Party.
- The advisor of choice may accompany the Parties to any meeting or hearing they are permitted to attend, but may not speak for the Party, except for the purpose of cross-examination at a live hearing.
- The Parties are not permitted to conduct cross-examination; it must be conducted by the advisor. As a result, if a Party does not select an advisor, the Campus will select an advisor to serve in this role for the limited purpose of conducting the cross-examination at no fee or charge to the Party.
- If a Party does not attend the live hearing, the Party's advisor may appear and conduct cross-examination on their behalf.
- If neither a Party nor their advisor appears at the hearing, the Campus will provide an advisor to appear on behalf of the non-appearing Party.

Witnesses

- Witnesses cannot be compelled to participate in the live hearing and have the right not to participate in the hearing free from retaliation.

Hearing Procedures

Title IX hearings are not civil or criminal proceedings and are not designed to mimic formal trial proceedings. They are primarily educational in nature, and the Campus will not permit any advisor or Decision-maker to question witnesses and Parties in an abusive, intimidating, or disrespectful manner. All Parties, advisors of choice, institutional staff and witnesses must treat others who are engaged in the process with respect. These standards apply equally to all Parties and their advisors regardless of sex, gender, or other protected class, and regardless of whether they are in the role of Complainant or Respondent.

For all live hearings conducted, the Decision-maker will open and establish rules and expectations for the hearing. The Parties will each be given an opportunity to provide opening statements. Questioning of the Parties and witnesses will occur according to the procedures below.

Live Cross-Examination Procedure

Each Party's advisor will conduct live cross-examination of the other Party or Parties and witnesses. During this live cross-examination the advisor will ask the other Party or Parties and witnesses Relevant questions and follow-up questions, including those challenging credibility directly, orally and in real time. Before any cross-examination question is answered, the Decision-maker will determine if the question is relevant and explain any decision to exclude a question as not relevant. Cross-examination questions that are duplicative of those already asked, including by the Decision-maker, may be deemed irrelevant if they have been asked and answered.

If the Decision-maker determines that an advisor's question is Relevant and not otherwise impermissible, then the question will be asked unless such question is unclear or harassing of the Party or witness being questioned.

The Decision-maker must give an advisor an opportunity to clarify or revise a question that the Decision-maker has determined is unclear or harassing and, if the advisor sufficiently clarifies or revises a question so that it is no longer unclear or harassing, the question will be asked.

Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove Consent.

Rules of Decorum

When a Party's advisor is removed from a hearing due to violation(s) of the Rules of Decorum, as described in the applicable Campus Grievance Procedure, the hearing will continue in the absence of that advisor. The Party may select a different advisor of their choice, or accept an advisor provided by the Campus for the limited purpose of cross-examination at the hearing. Reasonable delays, including the temporary adjournment of the hearing, may be anticipated should an advisor be removed. A Party cannot serve as their own advisor in this circumstance.

Where an advisor asks a relevant question in a manner that violates the Rules, such as yelling, screaming, badgering, or leaning-in to the witness or Party's personal space, the question may not be deemed irrelevant by the Decision-maker simply because of the manner it was delivered. Under that circumstance, the Decision-maker will notify the advisor of the violation of the Rules, and, if the question is Relevant, will allow the question to be re-asked in a respectful, non-abusive manner by the advisor (or a replacement advisor, should the advisor be removed for violation of the Rules).

Review of Transcript/Recording

The Campus will create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the Parties for inspection and review.

Determination Regarding Responsibility

Standard of Proof

The Campus presumes that the Respondent is not responsible for the alleged Covered Sexual Harassment until a determination is made at the end of this procedure. The Campus uses the preponderance of the evidence standard for investigations and determinations of responsibility for Formal Complaints covered under this procedure. This means that the investigation and hearing determine whether it is more likely than not that a violation of the procedure occurred.

General Considerations for Evaluating Testimony and Evidence

While the opportunity for cross-examination is required in all Title IX hearings, determinations regarding responsibility may be based in part, or entirely, on documentary, audiovisual and digital evidence, as warranted in the reasoned judgment of the Decision-maker.

The Decision-maker shall not draw inferences regarding a Party or witness's credibility based on the Party or witness's status as a Complainant, Respondent or witness, nor shall a Decision-maker base their judgments on stereotypes about how a Party or witness would or should act under the circumstances.

Generally, credibility judgments should rest on the demeanor of the Party or witness, the plausibility of their testimony, the consistency of their testimony, and its reliability in light of corroborating or conflicting testimony or evidence.

Still, credibility judgments should not rest on whether a Party or witness's testimony is non-linear or incomplete, or if the Party or witness is displaying stress or anxiety.

The Decision-maker will afford the highest weight relative to other testimony to first-hand testimony by Parties and witnesses regarding their own memory of specific facts that occurred. Both inculpatory and exculpatory (i.e., tending to prove and disprove the allegations) evidence will be weighed in equal fashion.

Except where specifically barred by the Title IX Final Rule, a witness' testimony regarding third-party knowledge of the facts at issue will be allowed, but will generally be accorded lower weight than testimony regarding direct knowledge of specific facts that occurred.

The Decision-maker cannot draw an inference about the determination regarding responsibility based solely on a Party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

The Final Rule requires that the Campus allow Parties to call "expert witnesses," character witnesses, and for the Campus to admit and allow testimony regarding polygraph tests and other procedures that are outside of standard use in academic and non-academic conduct processes. While these witnesses, testimony, and evidence are allowed by the Title IX Final Rule, the

Decision-maker will be instructed to afford lower weight to such processes relative to the testimony of fact witnesses.

Where a Party or witness' conduct or statements demonstrate that the Party or witness is engaging in retaliatory conduct, including but not limited to witness tampering and intimidation, the Decision-maker may draw an adverse inference as to that Party or witness' credibility.

Components of the Determination Regarding Responsibility

The written Determination Regarding Responsibility will be issued simultaneously to all Parties through their institutional email accounts, or other reasonable means as necessary. The Determination will include:

1. Identification of the allegations potentially constituting Covered Sexual Harassment;
2. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the Parties, interviews with Parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
3. Findings of fact supporting the determination;
4. Conclusions regarding the application of the code of conduct or other applicable policy to the facts;
5. For each allegation:
    i. A statement of, and rationale for, a determination regarding responsibility; and
    ii. A statement of, and rationale for, whether remedies designed to restore or preserve equal access to the Campus's Education Program or Activity will be provided by the Campus to the Complainant; and
6. The Campus's procedures and the permitted reasons for the Complainant and Respondent to appeal (described below in "Appeals").

Timeline of Determination Regarding Responsibility

If there are no extenuating circumstances, the determination regarding responsibility will be issued by the Campus within ten (10) business days of the completion of the hearing. See below for information regarding next steps on employee Respondent discipline where there is a finding of responsibility.

<u>*Referral to Human Resources for Further Disciplinary Action*</u>

- *For employees (including student employees) not in a collective bargaining unit*: The president or designee may take such administrative action as they deem appropriate under their authority as the chief administrative officer of the Campus, including but not limited to, termination, demotion, reassignment, suspension, reprimand, or training.

- *For employees in collective bargaining units*: The president or designee may determine that sufficient information exists to refer the matter to their designee for disciplinary action, or other action as may be appropriate under the applicable collective bargaining agreement.

The potential outcomes may include a reprimand, suspension, termination, training, fine, demotion, or informal or formal counseling.

Appeals

Parties may appeal a dismissal of a Formal Complaint, any included allegation, or a determination regarding responsibility by submitting a written appeal to the Campus within five (5) calendar days after receiving the written decision. Appeals will be reviewed by the Appeals Panel, with the composition described below. Except as required to explain the basis of new evidence, an appeal shall be limited to review of the verbatim record of the proceedings and/or supporting documents.

Such appeals shall be in writing and shall be delivered to the Campus. Each Party may appeal the dismissal of a Formal Complaint or any included allegations and/or a determination regarding responsibility on the following bases:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
3. The Title IX Coordinator, investigator(s), or Decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.

The other Party will be notified in writing when an appeal is filed, and the institution will implement appeal procedures equally for both Parties.

The Title IX Coordinator will administer the appeal process, including notifying the Parties, transmitting the appeal materials to the Appeals Panel, and coordinating applicable deadlines. The Title IX Coordinator will not participate in the Appeals Panel's deliberations or decision. If an appeal alleges that the Title IX Coordinator has a conflict of interest or bias that affected the outcome, another qualified Campus official will administer the appeal process and appoint or coordinate the Appeals Panel, as appropriate. The Decision-maker(s) for the appeal will not be the same individuals as the Decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator. Both Parties will be provided a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.

Within fourteen (14) business days of receipt of all appeal materials, the Campus will issue a written decision describing the result of the appeal and the rationale for the result; and provide the written decision simultaneously to both Parties.

The submission of an appeal stays (or pauses) any sanctions for the pendency (or duration while the appeal is being deliberated and decided upon) of an appeal. Supportive Measures and remote learning opportunities remain available during the pendency of the appeal.

Composition of Panel

The Appeals Panel will review all appeals brought forward by either Party. It shall be composed of individuals who have been appointed by the Campus and have been trained in accordance with

state and federal law. The Panel shall be trained annually on Title IX processes and decision-making.

In the event that a member of the Appeals Panel cannot hear the case or must recuse themselves, the Campus may appoint another panel member to review the case.

For appeals involving a student Complainant, the Appeals Panel will consist of at least two individuals at the Campus. For appeals that involve an employee Complainant, the Appeals Panel will consist of one or more individuals at the Campus. In all instances, Appeals Panel members must be Management-Confidential or not part of the same collective bargaining unit as the Respondent.

Finality

The determination regarding responsibility becomes final on the date the Campus provides the Parties with the written determination of the appeal or, if no appeal is filed, on the date the opportunity to appeal expires.

Retaliation

No person may intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX of the Education Amendments of 1972 or its implementing regulations, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under Title IX. Complaints alleging Retaliation involving a student may be addressed under the Campus's Student Code of Conduct; complaints involving an employee may be referred to the Campus Human Resources Office.

Forms

Form A - Charge of Discrimination

Form B - Template for Memorandum Outlining Mutual Agreement Between Parties

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Related Procedures

SUNY Policies on Sexual Violence Prevention and Response

Available on the Sexual Violence Prevention Workgroup website
Includes: Definition of Affirmative Consent, Policy for Alcohol and/or Drug Use Amnesty in Sexual Violence Cases, Campus Climate Assessment Policy, Sexual Violence Victim/Survivor Bill of Rights, Sexual Violence Response Policy, Options for Confidentially Disclosing Sexual Violence, and Student Onboarding and Ongoing Education Guide

SUNY Policy Doc. No. 6502, Equal Opportunity: Access, Employment and Fair Treatment in the State University of New York

SUNY Policy Doc. No. 6504, Policy on Mandatory Reporting and Prevention of Child Sexual Abuse

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Other Related Information

SUNY Procedure Doc. No. 6503 - Sexual Orientation Nondiscrimination

SUNY Policy Doc. No. 6506 - Sexual and Romantic Relationship Policy

SUNY Policy Doc. No. 6507 - Sexual Harassment Response and Prevention Statement

SUNY Student Conduct Institute

SUNY SAVR Resource

Authority

New York State Human Rights Law, available on the New York State Division of Human Rights website, or in PDF format from the same site.

Title IX of the Education Amendments of 1972, Federal Law

Title VI of the Civil Rights Act of 1964, Federal Law

Section 504 of the Rehabilitation Act of 1973, Federal Law

Section 1557 of the Patient Protection and Affordable Care Act, Federal Law

Title II of the Americans with Disabilities Act of 1990 (ADA), Federal Law

Title V of the Americans with Disabilities Act of 1990, Federal Law

Related guidance is available on the U.S. Department of Education Laws and Policy page and the U.S. Department of Health and Human Services Laws and Regulations page.

The following federal employment discrimination laws enforced by the U.S. Equal Employment Opportunity Commission are available on the EEOC Laws page:

- Title VII of the Civil Rights Act of 1964
- The Age Discrimination in Employment Act of 1967
- Title I of the Americans with Disabilities Act of 1990 (ADA)
- The Equal Pay Act of 1963
- The Pregnancy Discrimination Act

History

This document was updated and adopted in August 2026 to maintain alignment with the 2020 Title IX final regulations, incorporate procedures for Title IX Sexual Harassment complaints involving employee Respondents, and improve the efficiency and effectiveness of the process for addressing complaints.

This document was updated in October 2018 pursuant to Labor Law §201-g, which requires every employer in the State of New York to adopt a sexual harassment prevention policy that meets or exceeds enumerated minimum standards in order to prevent and combat sexual harassment in the workplace.

This document was updated in May 2015 pursuant to a SUNY-wide compliance review with the U.S. Department of Education Office for Civil Rights. Document No. 6500 has been eliminated. Prior to this most recent update, this document was last published in March 2003.

Appendices

Appendix A - External Enforcement Agencies