



## Grievance Process and Procedure for Addressing Formal Complaints of Sexual Harassment Under the Title IX Regulations

### Processes and Procedures:

#### **Making a Report Regarding Covered Sexual Harassment to the Institution**

Any person may report sex discrimination, including 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 Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Any person may also make a report using the Discrimination and Sexual Harassment Complaint Form: [N:/Forms and Applications/Human Resources/Discrimination, Sexual Harassment or Workplace Violence Complaint](#).

#### Contact Information for the Title IX Coordinator:

Lottie Jameson  
SUNY Adirondack  
640 Bay Road  
Scoville Building, Room 326  
Queensbury, NY 12804  
[jamesonl@sunyacc.edu](mailto:jamesonl@sunyacc.edu)  
518.832.7741

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 Title IX Coordinator.

Reporting information is also available on the Sexual Assault Prevention and Response website: <https://www.sunyacc.edu/sexual-assault-prevention-and-response>.

#### **Confidential Reporting**

The following Officials will provide privacy, but *not* confidentiality, upon receiving a report of conduct prohibited under this policy:

- Title IX Coordinator or designee;
- Dean of Student Affairs;
- Residence Life staff, including Resident Directors and Resident Assistants;
- Public Safety staff; and
- Faculty, administrators and most staff.

The following Officials may provide confidentiality:

- SUNY Adirondack Counseling Services – located on the Queensbury campus
- Planned Parenthood 24-Hour Rape Crisis Hotline: 1-866-307-4086
- Domestic Violence Project 24-Hour Hotline: 518-793-9496
- Saratoga County Wellspring Victim Services 24-Hour Hotline: 518-584-8188

### **Confidentiality vs. Privacy**

Consistent with SUNY Adirondack Student Code of Conduct, references made to *confidentiality* refer to the ability of identified confidential resources to not report crimes and violations to law enforcement or college officials without permission, except for extreme circumstances, such as a health and/or safety emergency or child abuse. References made to *privacy* mean SUNY Adirondack offices and employees who cannot guarantee confidentiality but will maintain privacy to the greatest extent possible, and information disclosed 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. SUNY Adirondack will limit the disclosure as much as practicable, even if the Title IX Coordinator determines that the request for confidentiality cannot be honored.

### **Non-Investigatory Measures Available Under the Title IX Grievance Policy**

#### **Supportive Measures**

Complainants (as defined above), who report allegations that could constitute covered sexual harassment under this policy, have the right to receive supportive measures from SUNY Adirondack regardless of whether they desire to file a complaint, which may include counseling, extensions of deadlines or other courses-related adjustments, modification in on-campus work or class schedules, campus escort services, restrictions on contact between the parties (no contact orders), changes in on-campus work or housing locations, leaves of absence, increase security and monitoring of certain areas of the campus as appropriate.

Supportive measures are non-disciplinary and non-punitive.

#### **Emergency Removal**

SUNY Adirondack retains the authority to remove a respondent from the College's programs or activities on an emergency basis, where SUNY Adirondack (1) undertakes an individualized safety and risk analysis and (2) determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of covered sexual harassment justifies a removal.

If SUNY Adirondack determines such removal is necessary, the respondent will be provided notice and an opportunity to challenge the decision within three (3) business days following the removal. If the respondent challenges the removal, the administrator hearing the challenge will issue a decision within five (5) business days of the request. The administrator will then not be involved in any decision regarding responsibility of the respondent or any other appeal resulting from the process. Regardless of the outcome of this meeting, SUNY Adirondack may still proceed with the investigation and hearing process

**Administrative Leave** SUNY Adirondack retains the authority to place a non-student employee respondent on administrative leave during the Title IX Grievance Process, consistent with the applicable collective bargaining agreement or Employee Handbook.

### **Filing a Formal Title IX Complaint**

The timeframe for the Title IX Grievance Process begins with the filing of a Formal Complaint. The Grievance Process will be concluded within a reasonably prompt manner, 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. The procedure for applying for extensions is described below.

To file a Formal Complaint, a complainant must provide the Title IX Coordinator a written, signed complaint describing the facts alleged. Complainants are only able to file a Formal Complaint under this policy if they are currently participating in, or attempting to participate in, the education programs or activities of SUNY Adirondack, including as an employee. For complainants who do not meet this criterion, the College will utilize existing regulations and policies listed in the Other Related Information section of the Title IX Grievance policy.

If a complainant does not wish to make a Formal Complaint, the Title IX Coordinator may determine a Formal Complaint is necessary. SUNY Adirondack will inform the complainant of this decision in writing, and the complainant need not participate in the process further but will receive all notices issued under this policy.

Nothing in the Title IX Grievance Policy or the Student Code of Conduct prevents a complainant from seeking the assistance of state or local law enforcement alongside the appropriate on-campus process.

A complainant who files a Formal Complaint may elect, at any time, to address the matter through an Informal Resolution Procedure [\[see Appendix A\]](#), only in cases involving non-physical acts in which the Complainant and the Respondent are students.

### **Multi-Party Situations**

SUNY Adirondack may consolidate Formal Complaints alleging covered sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of covered sexual harassment arise out of the same facts or circumstances.

### **Determining Jurisdiction**

The Title IX Coordinator will determine if this Title IX Grievance Policy should apply to a Formal Complaint. The policy will apply when all of the following elements are met, in the reasonable determination of the Title IX Coordinator:

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 SUNY Adirondack's education program or activity; and
4. The alleged conduct, if true, would constitute covered sexual harassment as defined in this policy.

If all of the elements are met, SUNY Adirondack will investigate the allegations according to the Grievance Process and Procedures.

### **Allegations Potentially Falling Under Two Policies**

If the alleged conduct, if true, includes conduct that would constitute covered sexual harassment and conduct that would not constitute covered sexual harassment, the Title IX Grievance Process will be applied to investigation and adjudication of only the allegations that constitute covered sexual harassment.

### **Mandatory Dismissal**

If any one of these elements are not met, the Title IX Coordinator will notify the parties that the Formal Complaint is being dismissed for the purposes of the Title IX Grievance Policy. Each party may appeal this dismissal using the procedure outlined in "Appeals," below.

### **Discretionary Dismissal**

The Title IX Coordinator may dismiss a Formal Complaint brought under the Title IX Grievance Policy, 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 enrolled or employed by SUNY Adirondack; or,
- If specific circumstances prevent SUNY Adirondack from gathering evidence sufficient to reach a determination regarding the Formal Complaint or allegations within the Formal Complaint.

Each 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 institutional email accounts. It is the responsibility of parties to maintain and regularly check their email accounts.

### **Notice of Removal/Referral to Other Adjudication Process**

Upon dismissal of a Formal Complaint for the purposes of Title IX, SUNY Adirondack retains discretion to utilize the Code of Conduct and/or Sexual Misconduct Policy to determine if a violation has occurred. If so, SUNY Adirondack will promptly send written notice of the dismissal of the Formal Complaint under the Title IX Grievance Policy and to inform the parties that the allegations will be investigated using the Code of Conduct and/or Sexual Misconduct Policy, and not the Title IX Grievance Policy.

### **Notice of Allegations**

If the Formal Complaint moves forward, using the Title IX Grievance Policy, the Title IX Coordinator will draft and provide the Notice of Allegations to all parties alleged to be involved in the covered sexual harassment. Such notice will occur as soon as practicable, after the institution receives a Formal Complaint of the allegations, if there are no extenuating circumstances.

The parties will be notified by their SUNY Adirondack email accounts if they are a student or employee, and by other reasonable means if they are neither.

SUNY Adirondack will provide five (5) business days for respondents to review the Notice of Allegations and prepare a response before any initial interview.

The Title IX Coordinator may determine that the Formal Complaint must be dismissed on the mandatory 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 the institution's Title IX Grievance Policy, including any informal resolution process if applicable and a hyperlink to a copy of the policy.
- 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 the grievance process.
- A statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney, as required under 34 C.F.R. § 106.45(b)(5)(iv).
- 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 institution intends 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, as required under 34 C.F.R. § 106.45(b)(5)(vi).
- A statement that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

### **Ongoing Notice**

If, in the course of an investigation, the institution decides to investigate allegations about the complainant or respondent that are not included in the Notice of Allegations and are otherwise covered "sexual harassment" falling within the Title IX Grievance Policy, the institution will notify the parties whose identities are known of the additional allegations by their institutional email accounts or other reasonable means, if they are not students or employees at SUNY Adirondack.

The parties will be provided five (5) business days to review the additional allegations to prepare a response before any initial interview regarding those additional charges.

### **Advisor of Choice and Participation of Advisor of Choice**

SUNY Adirondack will provide the parties equal access to advisors and support persons; any restrictions on advisor participation will be applied equally.

SUNY Adirondack has a long-standing practice of requiring students to participate in the process directly and not through an advocate or representative. Students participating as Complainant or Respondent in this process 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 Policy, as consistent with the Final Rule, Advisors of Choice shall not participate directly in the process as per standard policy and practice of SUNY Adirondack.

SUNY Adirondack will not intentionally schedule meetings or hearings on dates where 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.

SUNY Adirondack's obligations to investigate and adjudicate in a prompt timeframe under Title IX and other college policies apply to matters governed under this Policy, and SUNY Adirondack 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.

SUNY Adirondack 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 SUNY Adirondack.

### **Notice of Meetings and Interviews**

SUNY Adirondack 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.

### **Delays**

Each party may request a one-time delay in the Grievance Process of up to five (5) days for good cause (granted or denied in the sole judgment of the Title IX Coordinator, or designee), provided that the requestor provides reasonable notice and the delay does not overly inconvenience other parties.

For example, a request to take a five day pause made an hour before a hearing for which multiple parties and their advisors have traveled to and prepared for shall generally not be granted, while a request for a five day pause in the middle of investigation interviews to allow a party to obtain certain documentary evidence shall generally be granted.

The Title IX Coordinator, or designee, shall have sole judgment to grant further pauses in the Process.

## **Investigation**

### **General Rules of Investigations**

The Title IX Coordinator, and/or an investigator designated by the Title IX Coordinator, will perform an investigation of the conduct alleged to constitute covered sexual harassment, under a reasonably prompt timeframe, generally within sixty (60) business days, after issuing the Notice of Allegations.

SUNY Adirondack and not the parties, has the burden of proof and the burden of gathering evidence, i.e. the responsibility of showing a violation of this Policy 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 SUNY Adirondack and does not indicate responsibility.

SUNY Adirondack cannot access, consider, or disclose medical records without a waiver from the party (or parent, if applicable) to whom the records belong or of whom the records include information. SUNY Adirondack 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.

## **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. The purpose of the inspection and review process is to allow each party the equal opportunity to meaningfully respond to the evidence prior to conclusion of the investigation.

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

1. Evidence that is relevant, 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 prior to when the parties' time to inspect and review evidence begins. See, 85 Fed. Reg. 30026, 30307 (May 19, 2020).

The institution will send the evidence made available for each party and each party's advisor, if any, to inspect and review through an electronic means or, where that may not be possible, in hard copy. SUNY Adirondack 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. The investigator's preliminary report will be provided with the evidence.

The parties will have ten (10) business days to inspect and review the evidence and submit a written response by email to the investigator. The investigator will consider the parties' written responses before finalizing the Investigative Report. Parties may request a reasonable extension as their designated extension request.

SUNY Adirondack will provide copies of the parties' written responses to the investigator to all parties and their advisors. See, 85 Fed. Reg. 30026, 30307 (May 19, 2020).

After receipt of the parties' written responses, the investigator may choose to interview or re-interview a party, both parties, or witness(es), and may provide the parties with written notice, extending the investigation and explaining the reason for the extension.

Any evidence subject to 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 the Title IX grievance process. See, 85 Fed. Reg. 30026, 30435 (May 19, 2020).



The parties and their advisors agree not to photograph or otherwise copy the evidence. See, 85 Fed. Reg. 30026, 30435 (May 19, 2020).

### **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 the allegations in the Formal Complaint will not be disclosed, or may be appropriately redacted before the parties' inspection to avoid disclosure of personally identifiable information of the parties. Any evidence obtained in the investigation that is kept from disclosure or appropriately redacted will be documented in a "privilege log" that may be reviewed by the parties and their advisors, if any. See, 85 Fed. Reg. 30026, 30438 (May 19, 2020).

### **Investigative Report**

The Title IX Coordinator and/or an investigator designated by the Title IX Coordinator will create an Investigative Report that fairly summarizes relevant evidence.

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 is/are otherwise relevant. See, 85 Fed. Reg. 30026, 30304 (May 19, 2020).

## **Hearing**

### **General Rules of Hearings**

SUNY Adirondack will not issue a disciplinary sanction arising from an allegation of covered sexual harassment without holding a live hearing unless otherwise resolved through an informal resolution process.

The live hearing may be conducted with all parties physically present in the same geographic location, or, at the College's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually through Zoom or another remote conferencing platform. This technology will enable participants simultaneously to see and hear each other. At its discretion, SUNY Adirondack may delay or adjourn a hearing based on technological errors not within a party's control.

All proceedings will be recorded through either audio recording or audiovisual recording by SUNY Adirondack. For privacy reasons, neither parties nor their advisors are allowed to record the hearings. Cameras or other reproduction equipment, other than SUNY Adirondack's audio

recording or audiovisual recording devices, are not permitted in a hearing, unless as a result of reasonable accommodation. The recording or corresponding transcript, at the discretion of SUNY Adirondack, will be made available to the parties for inspection and review.

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 the Title IX Grievance Process. Once signed, this Agreement may not be withdrawn See, 85 Fed. Reg. 30026, 30435 (May 19, 2020).

### **Continuances or Granting Extensions**

SUNY Adirondack 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, SUNY Adirondack will notify all participants and endeavor to accommodate all participants' schedules and complete the hearing as promptly as practicable.

### **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.
- The institution may still proceed with the live hearing in the absence of a party, and may reach a determination of responsibility in their absence, including through any evidence gathered that does not constitute a "statement" by that party. 85 Fed. Reg. 30026, 30361 (May 19, 2020).
  - For example, A verbal or written statement constituting part or all of the sexual harassment itself is not a "prior statement" that must be excluded if the maker of the statement does not submit to cross-examination about that statement. In other words, a prior statement **would not** include a document, audio recording, audiovisual reading, and digital media, including but not limited to text messages, emails, and social media postings, that constitute the conduct alleged to have been the act of sexual harassment under the formal complaint. See, OCR Blog (May 22, 2020), available at <https://www2.ed.gov/about/offices/list/ocr/blog/20200522.html>
- SUNY Adirondack will not threaten, coerce, intimidate or discriminate against the party in an attempt to secure the party's participation. See 34 C.F.R. § 106.71; see also 85 Fed. Reg. 30026, 30216 (May 19, 2020).
- If a party does not submit to cross-examination, the decision-maker cannot rely on any prior statements made by that party in reaching a determination regarding responsibility, but may reach a determination regarding responsibility based on evidence that does not constitute a "statement" by that party.
- 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. See 34 C.F.R. §106.45(b)(6)(i).

- The parties shall be subject to the institution's Title IX Grievance Process Hearing Rules of Decorum [[See Appendix B](#)].

#### *The Decision-maker/Hearing Officer*

- The hearing body will consist of a single Decision-maker/Hearing Officer.
- The Decision-maker/Hearing Officer cannot also have served as the Title IX Coordinator, Title IX investigator, or advisor to any party in the case, nor may they serve on the appeals body in the case.
- The Decision-maker/Hearing Officer will have no 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/Hearing Officer 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/Hearing Officer's actual or perceived conflicts of interest or bias upon receipt of notice identifying the decision-maker or 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.
- 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 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 institution 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.
- The advisor is not prohibited from having 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 advisor is not prohibited from being a witness in the matter.
- If a party does not attend the live hearing, the party's advisor may appear and conduct cross-examination on their behalf. 85 Fed. Reg. 30026, 30340 (May 19, 2020).
- If neither a party nor their advisor appear at the hearing, the College will provide an advisor to appear on behalf of the non-appearing party. See, 85 Fed. Reg. 30026, 30339-40 (May 19, 2020).
- Advisors shall be subject to the institution's Title IX Grievance Process Hearing Rules of Decorum, and may be removed upon violation of those Rules.

#### *Witnesses*

- Witnesses cannot be compelled to participate in the live hearing, and have the right not to participate in the hearing free from retaliation. See, 85 Fed. Reg. 30026, 30360 (May 19, 2020).

- If a witness does not submit to cross-examination, as described below, the decision-maker cannot rely on any statements made by that witness in reaching a determination regarding responsibility, including any statement relayed by the absent witness to a witness or party who testifies at the live hearing. 85 Fed. Reg. 30026, 30347 (May 19, 2020).
- Witnesses shall be subject to the institution's Title IX Grievance Process Hearing Rules of Decorum.

### **Hearing Procedures**

For all live hearings conducted under this Title IX Grievance Policy, the procedure will be as follows:

- The Decision-maker/Hearing Officer will open and establish rules and expectations for the hearing;
- The Parties will each be given the opportunity to provide opening statements.;
- The Decision-maker/Hearing Officer will ask questions of the Parties and Witnesses;
- Parties will be given the opportunity for live cross-examination after the Decision-maker/Hearing Officer conducts its initial round of questioning. During the Parties' cross-examination, the Decision-maker/Hearing Officer will have the authority to pause cross-examination at any time for the purposes of asking their own follow up questions; and any time necessary in order to enforce the established Title IX Grievance Process Hearing Rules of Decorum.
- Should a Party or the Party's Advisor choose not to cross-examine a Party or Witness, the Party shall affirmatively waive cross-examination through a written or oral statement to the Decision-maker/Hearing Officer. A Party's waiver of cross-examination does not eliminate the ability of the Decision-maker/Hearing Officer to use statements made by the Party.

### **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/Hearing Officer will determine if the question is relevant. [[See Relevance Guide Appendix C](#)] 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.

### **Review of Recording/Transcript**

A recording or transcript of the hearing, at the discretion of SUNY Adirondack, will be available for review by the parties within five (5) business days, unless there are any extenuating circumstances. The recording or transcript of the hearing will not be provided to parties or advisors of choice.

## **Determination Regarding Responsibility**

### **Standard of Proof**

SUNY Adirondack uses the preponderance of the evidence standard for investigations and determinations regarding responsibility of formal complaints covered under this Policy. This means that the Decision-maker/Hearing Officer determines whether it is more likely than not that a violation of the Policy 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' credibility based on the party or witness' status as a complainant, respondent, or witness, nor shall it base its judgments in 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' testimony is non-linear or incomplete, or if the party or witness is displaying stress or anxiety.

The Decision-makers 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 Final Rule requires that SUNY Adirondack allow parties to call "expert witnesses" for direct and cross examination. While the expert witness will be allowed to testify and be cross-examined as required by the Final Rule, the Decision-maker/Hearing Officer will afford lower weight to non-factual testimony of the expert relative to fact witnesses, and any expert testimony that is not directed to the specific facts that occurred in the case will be afforded lower weight relative to fact witnesses, regardless of whether the expert witness testimony is the subject of cross examination and regardless of whether all parties present experts as witnesses.

The Final Rule requires that SUNY Adirondack allow parties to call character witnesses to testify. While the character witnesses will be allowed to testify and be cross-examined as required by the

Final Rule, the Decision-maker will afford very low weight to any non-factual character testimony of any witness.

The Final Rule requires that SUNY Adirondack admit and allow testimony regarding polygraph tests (“lie detector tests”) and other procedures that are outside of standard use in academic and non-academic conduct processes. While the processes and testimony about them will be allowed as required by the Final Rule, the Decision-maker will 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 SUNY Adirondack email account, 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 which section of the Title IX Grievance Policy, the Student Code of Conduct and/or any of the policies listed in the Other Related Information section of the Title IX Grievance Policy, if any, the respondent has or has not violated.
5. For each allegation:
  - a. A statement of, and rationale for, a determination regarding responsibility;
  - b. A statement of, and rationale for, any disciplinary sanctions the College imposes on the respondent or a recommendation that the procedure listed in a collective bargaining agreement is followed; and
  - c. A statement of, and rationale for, whether remedies designed to restore or preserve equal access to the College’s education program or activity will be provided by the College to the complainant; and
6. The College’s procedures and the permitted reasons for the complainant and respondent to appeal (described below in “Appeal”).

### **Timeline of Determination Regarding Responsibility**

If there are no extenuating circumstances, the determination regarding responsibility will be issued by SUNY Adirondack within 10 business days of the completion of the hearing.

## **Finality**

The determination regarding responsibility becomes final either on the date that the institution provides the parties with the written determination of the result of the appeal, if an appeal is filed consistent with the procedures and timeline outlined in “Appeals” below, or if an appeal is not filed, the date on which the opportunity to appeal expires.

## **Appeals**

Each party may appeal (1) the dismissal of a formal complaint or any included allegations and/or (2) a determination regarding responsibility. To appeal, a party must submit their written appeal within five (5) business days of being notified of the decision, indicating the grounds for the appeal.

The limited grounds for appeal available are as follows:

- Procedural irregularity that affected the outcome of the matter (i.e. a failure to follow the institution’s own procedures);
- 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;
- The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against an individual party, or for or against complainants or respondents in general, that affected the outcome of the matter.

The submission of appeal stays any sanctions for the pendency of an appeal. Supportive measures and remote learning opportunities remain available during the pendency of the appeal.

If a party appeals, the institution will as soon as practicable notify the other party in writing of the appeal, however the time for appeal shall be offered equitably to all parties and shall not be extended for any party solely because the other party filed an appeal.

Appeals may be no longer than five (5) pages (not including attachments). Appeals should be submitted in electronic form using Arial or Times New Roman, 12-point font, and single-spaced. Appeals should use footnotes, not endnotes. Appeals that do not meet these standards may be returned to the party for correction, but the time for appeal will not be extended unless there is evidence that technical malfunction caused the appeal document not to meet these standards.

Appeals will be decided by an appeals panel of a least one SUNY Adirondack administrator and two other decision-makers, who will be free of conflict of interest and bias, and will not serve as investigator, Title IX Coordinator, or Hearing Decision-maker/Officer in the same matter.

The outcome of appeal will be provided in writing simultaneously to both parties, and include the appeal panel’s rationale for the decision.

## **Retaliation**

SUNY Adirondack will keep the identity of any individual who has made a report or complaint of sex discrimination confidential, including the identity of any individual who has made a report or filed a Formal Complaint of sexual harassment under this Title IX Grievance Policy, any

Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding under this Title IX Grievance Policy.

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.

No person may intimidate, threaten, coerce, or discriminate against any individual 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 this Title IX Grievance Policy.

Any intimidation, threats, coercion, or discrimination, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations constitutes retaliation. This includes any charges filed against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but that arise from the same facts or circumstances as a report or complaint of sex discrimination or a report or Formal Complaint of sexual harassment. For reports involving drugs and alcohol, please see Policy on Alcohol and/or Drug Use Amnesty in Sexual and Interpersonal Violence Cases located at <https://www.sunyacc.edu/sexual-assault-prevention-and-response>.

Complaints alleging retaliation may be filed according to the SUNY Adirondack grievance procedures for sex discrimination using this form: [Discrimination, Sexual Harassment or Workplace Violence Complaint.pdf](#)