



SUNY Poly's Title IX Grievance Policy

Effective August 14, 2020

Any questions regarding this policy can be directed to
SUNY Poly's Title IX Coordinators via
TitleIX@sunypoly.edu.

Contents

Section One: Introduction	4
Section Two: Definitions	5
Section Three: The Title IX Grievance Policy	8
Prohibited Behavior	9
General Rules of Application	10
Effective Date	10
Revocation by Operation of Law	10
Non-Discrimination in Application	10
Disability Accommodations	10
Student Account Holds	11
Making a Report Regarding Covered Sexual Harassment	11
Confidentiality vs. Privacy	12
Confidential Reporting	12
Private Reporting	12
Non-Investigatory Measures Available Under the Title IX Grievance Policy	13
Supportive Measures	13
Emergency Removal	14
Administrative Leave	15
Section Four: The Title IX Grievance Process	15
Filing a Formal Complaint	15
Multi-Party Situations	16
Determining Jurisdiction	16

Allegations Potentially Falling Under Two Policies 16

Discretionary Dismissal 17

Notice of Dismissal under Title IX..... 17

Notice of Applicability of Student Code 17

Notice of Allegations 17

 Contents of Notice..... 18

 Ongoing Notice..... 19

Advisor of Choice and Participation of Advisor of Choice 19

Notice of Meetings and Interviews 20

Delays 20

Investigation 20

 General Rules of Investigations 20

 Inspection and Review of Evidence..... 21

 Inclusion of Evidence Not Directly Related to the Allegations..... 22

 Investigative Report 22

Hearing..... 23

 Notice of Charge..... 23

 Pre-hearing Meeting..... 23

 General Rules of Hearings 24

 Continuances or Granting Extensions..... 25

 Newly-discovered Evidence 25

 Participants in the Live Hearing 25

 Hearing Procedures 28

Determination Regarding Responsibility	29
Standard of Proof	29
General Considerations for Evaluating Testimony and Evidence.....	30
Components of the Determination Regarding Responsibility	31
Timeline of Determination Regarding Responsibility.....	31
Review of Recording and/or Transcript.....	32
Finality	32
Section Four: Sanctions	32
Sanctions for Covered Sexual Harassment Violations	35
Transcript Notation	37
Section Five: Appeals.....	38
Final Appeal.....	39
Section Six: Retaliation.....	40
Section Seven: Maintenance of Records.....	41

Title IX Grievance Policy

Section One: Introduction

What is the purpose of the Title IX Grievance Policy?

Title IX of the Educational Amendments of 1972 prohibits any person in the United States from being discriminated against on the basis of sex in seeking access to any educational program or activity receiving federal financial assistance. The U.S. Department of Education, which enforces Title IX, has long defined the meaning of Title IX's prohibition on sex discrimination broadly to include various forms of sexual harassment and sexual violence that interfere with a student's ability to equally access educational programs and opportunities.

On May 19, 2020, the U.S. Department of Education issued a Final Rule under Title IX of the Education Amendments of 1972 that:

- Defines the meaning of "sexual harassment" (including forms of sex-based violence)
- Addresses how this institution **must** respond to reports of misconduct falling within that definition of sexual harassment, and
- Mandates a grievance process that institutions **must** follow to comply with the law in these specific covered cases before issuing a disciplinary sanction against a person accused of sexual harassment.

See, 85 Fed. Reg. 30026 (May 19, 2020). The full text of the Final Rule and its extensive Preamble are available here: <http://bit.ly/TitleIXReg>

Based on the Final Rule, SUNY Polytechnic Institute ("SUNY Poly" or the "College") has implemented the following Title IX Grievance Policy, effective August 14, 2020.

How does the Title IX Grievance Policy impact other campus disciplinary policies?

In recent years, "Title IX" cases have become a short-hand for any campus disciplinary process involving sex discrimination, including those arising from sexual harassment and sexual assault. But under the Final Rule, SUNY Poly must narrow both the geographic scope of its authority to act under Title IX and the types of "sexual harassment" that it must subject to its Title IX investigation and adjudication process. **Only** incidents falling within the Final Rule's definition of sexual harassment will be investigated and, if appropriate, brought to a live hearing through the Title IX Grievance Policy described herein.

SUNY Poly remains committed to addressing any violations of its policies, even those not meeting the narrow standards defined under the Title IX Final Rule.

Specifically, our campus has a Student Code of Conduct (<https://sunypoly.edu/sites/default/files/student%20conduct/Student-Code-Conduct2020-2021.pdf>) that defines certain behavior as a violation of campus policy, including non-consensual sexual contact, non-consensual sexual intercourse, sexual exploitation, sexual harassment, dating violence, domestic violence, and stalking (Section Three: Prohibited Behavior #16 and #17). SUNY Poly's Sexual Harassment Response and Prevention policy (<https://sunypoly.edu/sites/default/files/Title%20IX/Sexual-Harassment-Prevention-Policy.pdf>) also outlines prohibited behavior.

To the extent that alleged misconduct falls outside the Title IX Grievance Policy, or misconduct falling outside the Title IX Grievance Policy is discovered in the course of investigating covered Title IX misconduct, SUNY Poly retains authority to investigate and adjudicate the allegations under the policies and procedures defined within the Student Code of Conduct and/or SUNY's Discrimination Complaint Procedure (https://www.suny.edu/sunypp/documents.cfm?doc_id=451) through a separate grievance proceeding.

The elements established in the Title IX Grievance Policy under the Final Rule have no effect and are not transferable to any other policy of the College for any violation of the Code of Conduct, employment policies, or any civil rights violation except as narrowly defined in this Policy. This Policy does not set a precedent for other policies or processes of the College and may not be cited for or against any right or aspect of any other policy or process.

How does the Title IX Grievance Policy impact the handling of complaints?

Our existing Title IX office and reporting structure remains in place. What has changed is the way our Title IX office will handle different types of reports arising from sexual misconduct, as detailed in full throughout this policy.

Section Two: Definitions

The following terms are defined for the purposes of this Title IX Grievance Policy only.

“Business days” shall mean days in which the administrative offices of SUNY Poly are officially open for business.

“Complainant” shall mean 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 policy.

“College official” and “SUNY Poly official” shall mean any person employed by SUNY Poly, performing assigned administrative or professional responsibilities. This term also includes resident advisors while acting within the scope of their duties.

“Consent” is 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.

- 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. When consent is withdrawn or can no longer be given, sexual activity must stop.
- Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in 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.
- Consent cannot be given if any of the parties are under the age of 17.

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

- An employee conditioning educational benefits on participation in unwelcome sexual conduct (i.e., quid pro quo);
- Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to SUNY Poly’s education program or activity;
- 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;
- 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; (iii) The frequency of interaction between the persons involved in the relationship.

- Domestic violence (as defined in the VAWA amendments to the Clery Act), which includes any felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under New York State domestic or family violence laws or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of New York State.
- 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 under SUNY Poly's Student Code of Conduct.

"Director of Community Standards" refers to the Director of Community Standards and their designee(s).

"Education Program or Activity" includes:

- Any on-campus SUNY Poly premises
- Any off-campus premises that SUNY Poly has substantial control over. This includes buildings or property owned or controlled by a recognized student organization.
- Activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of SUNY Poly's programs and activities over which the College has substantial control.

"Formal Complaint" is a document – including an electronic submission - filed by a complainant with a physical or digital signature or other indication that the complainant is the person filing the formal complaint, or signed by the Title IX Coordinator, alleging sexual harassment against a respondent about conduct within SUNY Poly's education program or activity and requesting initiation of the procedures consistent with the Title IX Grievance Policy to investigate the allegation of sexual harassment.

“Hearing Body” is a panel of persons authorized by the Vice President for Student Affairs to determine whether one or more students have violated the Title IX grievance policy and recommend imposition of sanctions.

“Relevant evidence and questions” refers to any questions and evidence that tends to make an allegation of sexual harassment more or less likely to be true. 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 Process:

- 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. 34 C.F.R. § 106.45(6)(i).
- 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. 85 Fed. Reg. 30026, 30294 (May 19, 2020).

“Respondent” shall mean any individual who has been reported to be the perpetrator of conduct that could constitute covered sexual harassment as defined under this policy.

“Student Organization” is a group of students who have complied with the appropriate requirements, including both student clubs, organizations and teams, for SUNY Poly recognition and/or registration.

“SUNY Poly premises” includes all land, buildings, space, facilities, and other property in the possession of or owned, used, or controlled by SUNY Poly (including adjacent streets and/or sidewalks) or its affiliated entities.

“Title IX Coordinator” refers to the Title IX Coordinator(s), Deputy Title IX Coordinator(s), Investigator(s) designated by the Title IX Coordinators(s), and their designee(s).

“Vice President for Student Affairs” refers to the Vice President for Student Affairs or Assistant Vice President for Student Affairs.

Section Three: The Title IX Grievance Policy

Prohibited Behavior

Consistent with the Final Rule under Title IX of the Education Amendments of 1972 that that was issued by the U.S. Department of Education on May 19, 2020, this policy prohibits covered sexual harassment. Any of the following conduct on the basis of sex constitutes covered sexual harassment:

- A. An employee conditioning educational benefits on participation in unwelcome sexual conduct (i.e., quid pro quo);
- B. Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to SUNY Poly's education program or activity;
- C. 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;
- D. 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; (iii) The frequency of interaction between the persons involved in the relationship.
- E. Domestic violence (as defined in the VAWA amendments to the Clery Act), which includes any felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under New York State domestic or family violence laws or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of New York State.
- F. 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.

Please note that SUNY Poly's definition of consent, as defined in this policy, will be used for any references to consent in the prohibited behaviors above.

General Rules of Application

Effective Date

The Title IX Grievance Policy is effective as of August 14, 2020, and will only apply to sexual harassment alleged to have occurred 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.

Revocation by Operation of Law

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 policy, this policy, or the invalidated elements of this policy, 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 the Title IX Grievance Policy be revoked in this manner, any conduct covered under the Title IX Grievance Policy shall be investigated and adjudicated under the existing Student Code of Conduct.

Non-Discrimination in Application

The requirements and protections of this policy apply equally regardless of sex, sexual orientation, gender identity, gender expression, or other protected classes covered by 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 SUNY Poly's policy or process may contact the Department of Education's Office for Civil Rights using contact information available at <https://ocrcas.ed.gov/contact-ocr>.

Disability Accommodations

This Policy does not alter any institutional obligations under federal disability laws including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point before or during the Title IX Grievance Process that 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 SUNY Poly programs and activities.

Student Account Holds

If a respondent withdraws from SUNY Poly while a Title IX grievance process is pending, a notation may be placed on the respondent's transcript stating "withdrew with conduct charges pending."

All pending Title IX grievances must be resolved prior to a student's graduation, transfer from or continued education at SUNY Poly. As a result, SUNY Poly may place holds on a respondent's student account until the Title IX grievance process is completed.

Making a Report Regarding Covered Sexual Harassment

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.

Katie Tynan-Simon, Title IX Coordinator
Student Center S228
100 Seymour Road
Utica, NY 13502
315-792-7235
ktynan@sunypoly.edu

Dr. Mark Montgomery, Deputy Title IX Coordinator
Kunsela Hall B233
100 Seymour Road
Utica, NY 13502
315-792-7338
montgom@sunypoly.edu

Rhonda Haines, Vice President for Human Resources
NFE Suite 2100
257 Fuller Road
Albany, NY 12203
518-956-7362
rhaines@sunypoly.edu

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.

Confidentiality vs. Privacy

Consistent with SUNY Poly's Student Code of Conduct, references in this policy 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* throughout this policy mean SUNY Poly 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 Poly will limit the disclosure as much as practicable, even if the Title IX Coordinator determines that the request for confidentiality cannot be honored.

Confidential Reporting

The following Officials may provide confidentiality:

- SUNY Poly Wellness Center staff, including the Director of Wellness Center, Licensed Mental Health Counselors, Licensed Medical Professionals, Health Promotion Coordinator, and Wellness Center administrative and support staff
- Counseling and Psychological Services staff through University at Albany (Dutch Quad)
- Health Services staff through University at Albany (Dutch Quad)

Private Reporting

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

- Title IX Coordinator
- Deputy Title IX Coordinator
- Officials with Authority:
 - SUNY Poly President
 - Chief Operating Officer & Chief of Staff
 - Vice President for Student Affairs
 - Vice President for Human Resources
 - Director of Community Standards
 - University Police Chief
- Other Required Reporters: All SUNY Poly non-student employees, except those employees that are designated as confidential resources, are required under SUNY Poly

policy to report incidents of sex discrimination, including sexual harassment and sexual violence, to the Title IX Coordinator.

Non-Investigatory Measures Available Under the Title IX Grievance Policy

Supportive Measures

Complainants who report allegations that could constitute covered sexual harassment under this policy, have the right to receive appropriate and reasonably available supportive measures from SUNY Poly regardless of whether they desire to file a complaint.

Supportive measures are non-disciplinary and non-punitive individualized services, which are designed to restore or preserve the complainant's equal access to SUNY Poly's education program or activity without unreasonably burdening the other party. Supportive measures may include but are not limited to, counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, administrative directives that place 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

SUNY Poly must treat any supportive measures provided to the complainant as confidential, to the extent that maintaining such confidentiality would not impair the ability of the College to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

Administrative Directives

If there is a concern for the well-being of a member of the SUNY Poly community, or to prevent disruption to SUNY Poly operations, an appropriate College official may issue an administrative directive. SUNY Poly utilizes three types of administrative directives: cease and desist order, no contact order, and persona non grata status.

The terms of the administrative directive shall be specified in the administrative directive notice letter issued. A student who has been issued an administrative directive shall be entitled to a prompt review of the need for and/or terms of the administrative directive. Any party seeking a review shall submit a written request with supporting documentation to the Vice President for Student Affairs. The decision of the Vice President for Student Affairs shall be made within two (2) business days of the receipt of the written request and shall be final. The party who submitted the request shall be notified of the decision regarding the administrative directive in writing.

Cease and Desist Order

A Cease and Desist Order is a written directive issued between two parties which prohibits contact, either directly or through a third party. A Cease and Desist Order is considered mutual in that it applies to both the parties and does not restrict the movement of either party on campus. A College official under the direction of the Vice President for Student Affairs may issue a Cease and Desist Order between any two parties even if there is no investigation in progress and/or no conduct charges pending. A Cease and Desist Order can also be issued in cases in which conduct proceedings have concluded and did not result in a finding of responsibility. A Cease and Desist Order shall remain in place until it is amended or withdrawn. Any intentional violation of a Cease and Desist Order may be considered a separate violation of the Student Code of Conduct.

No Contact Order

A No Contact Order is a written directive prohibiting contact through any means with a protected person, either directly or through a third party. If the respondent and the complainant observe each other in a public place, it is the responsibility of the respondent to leave the area immediately and without directly contacting the complainant. If SUNY Poly finds it appropriate, it may make a schedule for the reporting individual and the complainant to use the same College facilities and services, while maintaining the terms of the No Contact Order. A No Contact Order issued as an administrative directive is considered temporary pending the resolution a Title IX formal complaint. In cases in which a respondent is found not responsible following a Board Hearing, the No Contact Order shall be withdrawn. The student conduct officer or designee may, at their discretion, issue a Cease and Desist Order between the two parties. Any intentional violation of a No Contact Order may be considered a separate violation of the Student Code of Conduct.

Persona Non Grata

A persona non grata letter is an order which prohibits a person's presence from SUNY Poly premises and College sponsored or supervised functions. When the accused is not a member of the College community and presents a threat to the health and safety of a member of the College community, University Police or other College officials may provide assistance to the reporting individual in obtaining a persona non grata letter, subject to legal requirements and College policy.

Emergency Removal

SUNY Poly retains the authority to remove a respondent from the College's program or activity on an emergency basis, where SUNY Poly (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 Poly determines such removal is necessary, the respondent will be provided notice and an opportunity to challenge the decision immediately following the removal. A respondent seeking to challenge the decision shall submit a written request with supporting documentation to the Vice President for Student Affairs. The decision of the Vice President for Student Affairs shall be made within two (2) business days of the receipt of the written request and shall be final. The respondent shall be notified of the decision regarding the emergency removal in writing.

Administrative Leave

SUNY Poly retains the authority to place a non-student employee respondent on administrative leave during the Title IX Grievance Process, consistent with applicable collective bargaining agreements, employee handbooks, and SUNY Poly policies and rules.

Section Four: The Title IX Grievance Process

Filing a Formal 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, and no longer than one hundred and twenty (120) business days after the filing of the Formal Complaint, provided that the Process may be extended for 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 Poly, including as an employee. For complainants who do not meet this criteria, the College will utilize existing policy in SUNY Poly's Student Code of Conduct.

If a complainant does not wish to make a Formal Complaint, the Title IX Coordinator may determine a Formal Complaint is necessary. In such cases, the Title IX Coordinator signs the formal complaint but is not considered a complainant or a party to the complaint. SUNY Poly 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 and Process.

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

Multi-Party Situations

SUNY Poly 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 the Title IX Grievance Process should apply to a Formal Complaint. The Process 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 Poly'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 Poly will investigate the allegations according to the Title IX Grievance Process outlined in this policy.

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

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 in the investigation and adjudication of all of the allegations.

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 Poly; or,
- If specific circumstances prevent SUNY Poly 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 the Appeals section of this policy.

Notice of Dismissal under Title IX

Upon reaching a decision that the Formal Complaint will be dismissed, SUNY Poly 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 SUNY Poly assigned email accounts, unless extenuating circumstances dictate alternate delivery as determined by the College. If a party is not a student or employee, notice of dismissal will be issued through other reasonable means. It is the responsibility of the parties to maintain and regularly check their email accounts. The Title IX Coordinator or Director of Community Standards may, at their discretion, utilize additional delivery.

Notice of Applicability of Student Code

Upon dismissal for the purposes of Title IX, SUNY Poly retains discretion to utilize the Student Code of Conduct to determine if a violation of prohibited behavior as defined in the Student Code has occurred. If so, the College will promptly send written notice of the dismissal of the Formal Complaint under the Title IX Grievance Policy and the subsequent transition of the allegations to the applicable conduct process outlined in the Student Code of Conduct.

Notice of Allegations

The Title IX Coordinator will draft and provide the Notice of Allegations to any party to the allegations of sexual harassment. Such notice will occur as soon as practicable, after SUNY

Poly receives a Formal Complaint of the allegations, if there are no extenuating circumstances.

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

SUNY Poly 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 may determine that the Formal Complaint must be dismissed on the mandatory grounds identified in this policy (see Determining Jurisdiction portion of this policy), 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 SUNY Poly's Title IX Grievance Policy 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.
- Notice of the name of the Title IX Coordinator assigned to the investigation of the case. The complainant or respondent may request in writing that the Title IX Coordinator be removed on the basis of bias or conflict of interest, and set forth the specific basis for the request with supporting information. The Vice President of Student Affairs will determine whether the challenge has merit and respond to the request in writing within two (2) business days. Please note that if the individual assigned to conduct the investigation of the case were to change, for any reason, both parties would receive notification in writing.
- 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 SUNY Poly 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, as required under 34 C.F.R. § 106.45(b)(5)(vi);
- A statement that SUNY Poly’s Code of Conduct (Section Three: Prohibited Behavior 19.c) prohibits falsification, distortion or misrepresentation of information to the conduct officer, College official, or the Hearing Board.

Ongoing Notice

If, in the course of an investigation, SUNY Poly 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, SUNY Poly will notify the parties whose identities are known of the additional allegations by their SUNY Poly assigned 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 charges.

Advisor of Choice and Participation of Advisor of Choice

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

The College 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. 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 Poly.

SUNY Poly 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 Poly’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 the College

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 Director of Community Standards. SUNY Poly 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 Poly.

Notice of Meetings and Interviews

SUNY Poly 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 Title IX Grievance Process of up to five (5) business days for good cause (granted or denied in the sole judgment of the Title IX Coordinator or Director of Community Standards) provided that the requestor provides reasonable notice and the delay does not overly inconvenience other parties.

For example, a request to take a five business 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 business 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 Director of Community Standards shall have sole judgment to grant further pauses in the Process.

Investigation

General Rules of Investigations

The Title IX Coordinator will perform an investigation under a reasonably prompt timeframe of the conduct alleged to constitute covered sexual harassment after issuing the Notice of Allegations.

When conducting the investigation, The Title IX Coordinator will attempt to meet with the complainant and the respondent (separately) to collect statements. Both parties will be asked to provide any documentation or supporting information (including but not limited to text messages, phone logs, video or audio recordings, photographs, social media posts or messages, letters, emails) and identify potential witnesses. The Title IX Coordinator will

attempt to interview witnesses and will collect and review documentation and evidence provided by the witnesses.

SUNY Poly 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 the College and a party's lack of participation does not indicate responsibility.

SUNY Poly 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. The College 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 SUNY Poly 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.

Prior to their review of the evidence, 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. The agreement also prohibits the parties and their advisors from photographing or otherwise copying the evidence.

All parties should submit any evidence they would like the Title IX Coordinator to consider prior to when the parties' time to inspect and review evidence begins.

SUNY Poly will send the evidence made available for each party and each party's advisor, if any, to inspect and review through an electronic format or a hard copy. SUNY Poly 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 parties will have ten (10) business days to inspect and review the evidence and submit a written response by email to the Title IX Coordinator, after which Title IX Coordinator will not be required to accept a late submission. The Title IX Coordinator will consider the parties' written responses before completing the Investigative Report. The institution will provide copies of the parties' written responses to the Title IX Coordinator to all parties and their advisors, if any.

SUNY Poly will provide the parties five (5) business days after the initial inspection and review of evidence, and before the Title IX Coordinator completes their Investigative Report, to provide additional evidence in response to their inspection and review of the evidence, and then provide the parties five (5) business days to inspect, review, and respond to the party's additional evidence through a written response to the Title IX Coordinator. Those written responses will be disclosed to the parties.

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

Inclusion of Evidence Not Directly Related to the Allegations

Evidence obtained in the investigation that is determined in the reasoned judgment of the Title IX Coordinator 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 a student. 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 will create an Investigative Report that fairly summarizes relevant evidence, and will provide that Report to the parties at least ten (10) business days prior to the hearing in an electronic format or a hard copy for each party's review and written response. SUNY Poly is not under an obligation to use any specific process or technology to provide the Investigative Report and shall have the sole discretion in terms of determining format and any restrictions or limitations on access.

The Investigative Report will include and summarize the relevant evidence (including both inculpatory and exculpatory – i.e. tending to prove and disprove the allegations), as determined by the Title IX Coordinator. The Title IX Coordinator will include, as an

appendix to the report, the remaining evidence that was deemed irrelevant, but directly related to allegations in the Formal Complaint, although only relevant evidence will be summarized in the report. A procedural timeline will also be included as an appendix to the report.

Once the investigation is complete and the Title IX Coordinator generates the final report, the Investigative Report is then provided to the Director of Community Standards to initiate the live hearing portion of the Title IX Grievance Policy.

Hearing

Notice of Charge

Unless circumstances prohibit, the parties shall be provided notice of the charges within five (5) business days of the Office of Community Standards' receipt of the final Investigative Report from the Title IX Coordinator. Written notice of charges includes information about the circumstances surrounding the potential Title IX Grievance Policy violation including, where available, the date, time, location and factual allegations.

Pre-hearing Meeting

Prior to the live hearing, both the complainant and the respondent are invited to schedule and attend a (separate) pre-hearing meeting with the Director of Community Standards within five (5) business days from the date of the notice of charge letter. If a party needs to reschedule the pre-hearing meeting, the party must notify the Director of Community Standards no less than 48 hours prior to the scheduled meeting and request to reschedule the meeting. In the event the party does not schedule, reschedule, or fails to attend the pre-hearing meeting, the Director of Community Standards will move forward with scheduling the live hearing.

At the pre-hearing meeting, the following information related to the live hearing is reviewed:

- **Live Hearing Rules & Process, including SUNY Poly's Decorum Policy for the Title IX Grievance Process**
- **List of Hearing Board members:** The complainant and the respondent will be provided with the names of the Hearing Board members and an opportunity to challenge the participation of any board member on the basis of bias or conflict of interest. A challenge of a Hearing Board member must be made in writing to the Director of Community Standards within 48 hours of receipt of the Notice of Hearing and must state the specific reason(s) for the challenge. The Director of Community Standards will determine whether the challenge has merit and notify the complainant and the respondent of the decision within two (2) business days. The College reserves

the right to change the Hearing Board composition at any time, with notice and an opportunity to challenge a Hearing Board member's participation.

- **Case specific information:** In preparation for the live hearing, the Director of Community Standards will provide the complainant and respondent with a final opportunity to review the hearing case file, which the Hearing Board will review prior to the live hearing. The hearing case file includes, but is not limited to, the final Investigative Report prepared by the Title IX Coordinator, including all evidence obtained as part of the investigation that is directly related to the allegations in the Formal Complaint and a procedural timeline.
- **Witnesses:** The Director of Community Standards will be responsible for the notification of witnesses to attend the live hearing.
- **Pre-hearing Agreement:** Prior to the hearing, the parties and their advisors must sign an agreement not to disseminate any of the testimony heard or evidence obtained in the live hearing or use such testimony or evidence for any purposes unrelated to the Title IX Grievance Process. Once signed, this Agreement may not be withdrawn. See, 85 Fed. Reg. 30026, 30435 (May 19, 2020)

The Director of Community Standards shall schedule a live hearing within ten (10) business days of the pre-hearing meeting unless special periods (e.g., holidays, breaks) dictate otherwise. The complainant and respondent shall be notified of the time and place of the live hearing at least four (4) business days prior to the hearing.

General Rules of Hearings

SUNY Poly will not issue a disciplinary sanction 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 SUNY Poly's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually through remote video conferencing. The video conferencing technology utilized will enable participants simultaneously to see and hear each other. At its discretion, SUNY Poly may delay or adjourn a hearing based on technological errors not within a party's control.

The hearing will be recorded by the Office of Community Standards through audio recording, and/or audiovisual recording, and/or transcript. Cameras or other reproduction equipment, other than SUNY Poly's recording device, are not permitted in the hearing, unless as a result of a preapproved reasonable accommodation. The deliberation of the hearing board is closed and shall not be recorded.

The recording of the hearing shall be the property of SUNY Poly and will be retained for seven (7) years from the end of the academic year in which the Title IX grievance process

was resolved, except in a matter of suspension or expulsion, in which case the record is maintained indefinitely.

The hearing recording and/or transcript will be made available to the parties for inspection and review.

Continuances or Granting Extensions

SUNY Poly 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 Poly 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 Hearing Board will consider this request and make a determination regarding (1) whether such evidence or witness testimony was actually unavailable by reasonable effort 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 Hearing Board answers in the affirmative to both questions, then the parties will be granted a reasonable pause in the hearing to review the evidence or prepare for questioning.

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.
- SUNY Poly 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 Poly 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 SUNY Poly’s Decorum Policy for the Title IX Grievance Process
<https://sunypoly.edu/sites/default/files/Title%20IX/SUNY%20Poly%20Decorum%20Policy%20for%20Title%20IX%20Grievance%20Process%20FINAL..pdf>

The Decision-maker

- The live hearing is conducted by a panel, the “Hearing Board”, which is comprised of students, faculty, and/or staff which reviews student conduct cases, discrimination complaints, and Title IX Formal Complaints. The Hearing Board acts as the decision-maker in the Title IX Grievance Policy. The Hearing Board is appointed by the Vice President of Student Affairs on an annual basis. A quorum of five (5) Board members to include at least two (2) students and two (2) staff and/or faculty members shall be required for the live hearing. One member of the Hearing Board will be designated as Hearing Board Chairperson by the Director of Community Standards.
- No member of the Hearing Board will also have served as the Title IX Coordinator, Title IX Investigator, or advisor to any party in the case, nor may any member of the Hearing Board serve on the appeals body in the case.

- No member of the Hearing Board will have a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.
- The Hearing Board 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 member's of the Hearing Board 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.
- 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.
- 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, SUNY Poly 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 or against the parties to the particular case.
- The advisor is not prohibited from being a witness in the matter. However, the perceived conflict of interest that may be created under this situation will be taken into account by the Hearing Board in weighing the credibility and persuasiveness of the advisor-witness's testimony.
- 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, SUNY Poly 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 SUNY Poly's Decorum Policy for the Title IX Grievance Process, and may be removed upon violation of that Policy or the signed process agreements

<https://sunypoly.edu/sites/default/files/Title%20IX/SUNY%20Poly%20Decorum%20Policy%20for%20Title%20IX%20Grievance%20Process%20FINAL..pdf>

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 Hearing Board 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 SUNY Poly's Decorum Policy for the Title IX Grievance Process

<https://sunypoly.edu/sites/default/files/Title%20IX/SUNY%20Poly%20Decorum%20Policy%20for%20Title%20IX%20Grievance%20Process%20FINAL..pdf>

Hearing Procedures

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

- The Director of Community Standards will open and establish rules and expectations for the hearing;
- The Parties will each be given the opportunity to provide opening statements;
- The Hearing Board will ask questions of the Parties and Witnesses;
- Parties, via their advisors, will be given the opportunity for live cross-examination after the Hearing Board conducts its initial round of questioning. 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 Hearing Board will determine if the question is relevant. Cross-examination questions that are duplicative of those already asked, including by the Hearing Board may be deemed irrelevant if they have been asked and answered. During the Parties' cross-examination, the Hearing Board will have the authority to pause cross-examination at any time for the purposes of asking the Hearing Board's own follow

up questions; and any time necessary in order to enforce the established Decorum Policy.

- 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 Hearing Board. A Party's waiver of cross-examination does not eliminate the ability of the Hearing Board to use statements made by the Party.
- The Parties will each be given the opportunity to provide closing statements
- Following the closing statements, the Hearing Board will begin their deliberations. All deliberations are closed and shall include only the Hearing Board members. The Hearing Board Chairperson will serve as a facilitator during the deliberation. A review of information will be conducted by the Hearing Board to determine respondent's non-responsibility/responsibility as to each of the charges. The decision shall be made by a majority vote (abstentions are not permitted) of the Hearing Board. A decision of responsibility shall be made only if the allegations contained in each charge have been established by a preponderance of the evidence.
- If the Hearing Board has found the respondent responsible for one or more violations, the respondent and the complainant each shall have the opportunity to make an impact statement before the Hearing Board prior to the Hearing Board's deliberation on appropriate sanctions. Impact statements outline the complainant's or respondent's thoughts or opinions regarding an appropriate sanction. The Hearing Board is not bound by these statements in determining sanctions. After impact statements are made, the respondent, complainant, and their respective advisors are dismissed.
- At this time, chairperson will summon the Director of Community Standards, who will provide the Hearing Board with the respondent's conduct record, if any, for consideration by the Hearing Board for the purposes of issuing sanctions. The Director of Community Standards will be dismissed and the Hearing Board will begin its deliberation on sanctions. The Hearing Board shall agree by majority vote (no abstentions) on appropriate sanction(s). The Hearing Board Chairperson will communicate the Hearing Board's decision regarding the respondent's responsibility and a recommendation of appropriate sanction(s) to the Director of Community Standards.

Determination Regarding Responsibility

Standard of Proof

SUNY Poly uses the preponderance of the evidence standard for investigations and determinations regarding responsibility of Formal Complaints covered under this Policy. This means that the investigation and hearing 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 Hearing Board.

The Hearing Board 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 Hearing Board 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 Poly allow parties to call "expert witnesses" for direct and cross examination. While the expert witness will be allowed to testify and be crossed as required by the Final Rule, the Hearing Board will be instructed to 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 Poly allow parties to call character witnesses to testify. While the character witnesses will be allowed to testify and be crossed as required by the Final Rule, the Hearing Board will be instructed to afford very low weight to any non-factual character testimony of any witness.

The Final Rule requires that SUNY Poly 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 to testify and be crossed as required by the Final Rule, the Hearing Board 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 Hearing Board may draw an adverse inference as to that party's or witness' credibility.

Components of the Determination Regarding Responsibility

The written determination regarding responsibility will be issued simultaneously to the respondent and the complainant through their SUNY Poly assigned 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 and/or Student Code of Conduct, 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 SUNY Poly imposes on the respondent; and
 - c. Whether remedies designed to restore or preserve equal access to the SUNY Poly's education program or activity will be provided by SUNY Poly to the complainant; and
6. SUNY Poly's procedures and the permitted reasons for the complainant and respondent to appeal (described in the Appeals section of this Policy).

Timeline of Determination Regarding Responsibility

If there are no extenuating circumstances, the determination regarding responsibility will be issued by SUNY Poly within five (5) business days of the completion of the hearing.

Review of Recording and/or Transcript

The recording and/or transcript of the hearing will be available for review by the parties within two (2) business days, unless there are any extenuating circumstances. The recording and/or transcript of the hearing will not be provided to parties or advisors of choice.

Finality

The determination regarding responsibility becomes final either on the date that the Director of Community Standards 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 the Appeals section of this policy, or if an appeal is not filed, the date on which the opportunity to appeal expires.

Section Four: Sanctions

In keeping with SUNY Poly's values, any sanction(s) imposed is for the purposes of educating students about the seriousness of their action(s), deterring subsequent violations, and promoting civility and positive growth, while maintaining the safety and integrity of SUNY Poly.

SUNY Poly recognizes that not all violations of the SUNY Poly policy are the same. As a result, SUNY Poly reserves the right to impose differing sanctions. When considering appropriate sanctions, the Hearing Board will consider the following information:

- the nature and severity of the conduct;
- the respondent's prior conduct history;
- the impact of the conduct;
- how the College has sanctioned similar incidents in the past; and
- whether the respondent has accepted responsibility.

When there is a finding of responsibility one or more of the following sanctions may be imposed:

- A. **Disciplinary Warning**: An official communication that the Title IX Grievance Policy has been violated and more severe disciplinary action may follow if the respondent is found responsible for further violations of this or any College policy.
- B. **Disciplinary Probation**: A higher level sanction issued due to the serious nature of the violation. Probation shall be for a designated period of time. If the respondent is found to be in violation of this policy or any College policies during the probationary period, heightened sanctions may be imposed. At the

discretion of campus offices and programs, respondents on disciplinary probation may be ineligible for employment and/or participation in certain activities.

- C. **Final Probation**: A final notice to the respondent that may be imposed, dependent on the severity of the violation when a respondent a) violates this policy and/or the Student Code of Conduct while on disciplinary probation, and/or b) fails to complete previously imposed sanctions. At the discretion of campus offices and programs, students on final probation may be ineligible for employment and/or participation in certain activities.
- D. **Deferred Residence Hall Suspension**: A final notice to the student that indicates a further violation of this policy and/or the Student Code of Conduct may result in residence hall suspension or residence hall expulsion. This sanction is used when the respondent is found responsible for multiple violations of the Residence Hall policies, fails to complete previously imposed sanctions, or adhere to previously imposed conditions.
- E. **Residence Hall Suspension**: A disciplinary sanction in which the respondent is removed from campus housing and restricted from the buildings and grounds of the residential complexes for a defined period of time, after which the student is eligible to return. Conditions for readmission shall be specified in the outcome letter. The respondent will be responsible for all assessed charges including room and board.
- F. **Residence Hall Expulsion**: A disciplinary sanction which results in the permanent removal of the student from campus housing and permanent restriction from the buildings and grounds of the residential complexes. The respondent will be responsible for all assessed charges including room and board.
- G. **Change in Residence Hall Assignment**: A written directive to relocate to an alternative residence hall assignment.
- H. **Suspension**: A disciplinary status that results in the respondent's temporary separation from the College for a specific amount of time. A suspended respondent is assigned persona non grata status for the duration of the suspension. If needed, conditions for readmission shall be specified in the outcome letter. Respondents who are suspended during an academic semester will be withdrawn from all coursework with a (W) grade and be responsible for all assessed charges including tuition, fees, room and board. Suspension from the College will result in a notation on the respondent's academic record.
- I. **Expulsion**: A disciplinary status, which is the permanent separation of the student from SUNY Poly. An expelled student is assigned persona non grata status. Respondents who are expelled during an academic semester will be withdrawn from all coursework with a (W) grade and be responsible for all assessed charges including tuition, fees and room and board. Expulsion from the College will result in a notation on the respondent's academic record.

- J. **Loss of Privileges**: A disciplinary status in which the respondent is denied specific privileges for a designated period of time. Loss of privileges may include, but are not limited to:
1. A restriction from possessing particular items on campus;
 2. A restriction from a particular College building, facility, or space;
 3. A restriction from a particular social event or membership in a student organization;
 4. A restriction from hosting visitors and/or guests;
 5. Deactivation of a student organization, including SUNY Poly recognition, for a specified period of time;
 6. Other restrictions as assigned.
- K. **Restitution**: Payment for loss, damage, or injury. This payment may take the form of monetary reimbursement or the cost for appropriate service or compulsory program.
- L. **Community Restitution**: Service to SUNY Poly, service to the greater community or other related discretionary assignments subject to prior approval of the Director of Community Standards.
- M. **Behavioral and/or Mental Health Assessment**: By a specified date, a respondent must complete a behavioral and/or mental health assessment and follow through with all recommendations made as a result of the assessment.
- N. **Behavioral Agreement**: A plan established by the Director of Community Standards that clearly defines behavioral expectations and standards that the respondent is required to abide by.
- O. **Discretionary Sanctions**: Other related sanctions that meet the approval of the Director of Community Standards, that include but are not limited to:
1. Letter of apology;
 2. Essay or research paper on assigned topic;
 3. Program presentations;
 4. Substance abuse education program;
 5. Educational/training program or workshops.
- P. **No Contact Order**: A written directive prohibiting contact with another protected person, either directly or through a third party. If the respondent and the protected person observe each other in a public place, it is the responsibility of the respondent to leave the area immediately and without directly contacting the protected person.

Failure to complete a sanction may result in a registration, transcript, and/or diploma hold being placed on the students account.

Sanctions for Covered Sexual Harassment Violations

This section establishes the available sanctions, as described above, for violations of covered sexual harassment.

When a student is found responsible for covered sexual harassment (Prohibited Behavior B under this policy), unwelcome conduct on the basis of sex that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to SUNY Poly’s education program or activity, the following sanctions are available:

Status Sanctions	Additional Sanctions
<ul style="list-style-type: none"> • Expulsion • Suspension for 10, 9, 8, 7, 6, 5, 4, 3, 2 or 1 semester(s) • Suspension for 10, 9, 8, 7, 6, 5, 4, 3, 2 or 1 semester(s) and if readmitted final probation through graduation • Suspension for 10, 9, 8, 7, 6, 5, 4, 3, 2 or 1 semester(s) and if readmitted final probation for 8, 7, 6, 5, 4, 3, 2 or 1 semester • Final probation through graduation • Final probation for 8, 7, 6, 5, 4, 3, 2 or 1 semester(s) • Disciplinary probation for 8, 7, 6, 5, 4, 3, 2 or 1 semester(s) 	<p>A respondent who is placed on suspension, final probation, and/or disciplinary probation/warning, may also receive one or more of the following additional sanctions:</p> <ul style="list-style-type: none"> • Residence hall expulsion • Residence hall suspension • Deferred residence hall suspension • Discretionary sanctions • Behavioral and/or mental health assessment • Loss of privileges • Restitution • No Contact Order

When a student is found responsible for sexual assault* (Prohibited Behavior C) in violation of this policy, the following sanctions are available:

Status Sanctions	Additional Sanctions
<ul style="list-style-type: none"> • Expulsion • Suspension for 10, 9, 8, 7, 6, 5, 4, 3, 2 or 1 semester(s) • Suspension for 10, 9, 8, 7, 6, 5, 4, 3, 	<p>A respondent who is placed on suspension, final probation, and/or disciplinary probation/warning, may also receive one or more of the following</p>

<p>2 or 1 semester(s) and if readmitted final probation through graduation</p> <ul style="list-style-type: none"> • Suspension for 10, 9, 8, 7, 6, 5, 4, 3, 2 or 1 semester(s) and if readmitted final probation for 8, 7, 6, 5, 4, 3, 2 or 1 semester • Final probation through graduation • Final probation for 8, 7, 6, 5, 4, 3, 2 or 1 semester(s) • Disciplinary probation for 8, 7, 6, 5, 4, 3, 2 or 1 semester(s) 	<p>additional sanctions:</p> <ul style="list-style-type: none"> • Residence hall expulsion • Residence hall suspension • Deferred residence hall suspension • Discretionary sanctions • Behavioral and/or mental health assessment • Loss of privileges • Restitution • No Contact Order
<p>*Please note that the sexual assault as defined by the Clery Act, includes fondling, rape, incest, and statutory rape. If a student is found responsible for rape, the College will impose a minimum sanction of suspension with additional requirements.</p>	

When a student is found responsible for dating violence (Prohibited Behavior D) or domestic violence (Prohibited Behavior E) in violation of this policy, the following sanctions are available:

Status Sanctions	Additional Sanctions
<ul style="list-style-type: none"> • Expulsion • Suspension for 10, 9, 8, 7, 6, 5, 4, 3, 2 or 1 semester(s) • Suspension for 10, 9, 8, 7, 6, 5, 4, 3, 2 or 1 semester(s) and if readmitted final probation through graduation • Suspension for 10, 9, 8, 7, 6, 5, 4, 3, 2 or 1 semester(s) and if readmitted final probation for 8, 7, 6, 5, 4, 3, 2 or 1 semester • Final probation through graduation • Final probation for 8, 7, 6, 5, 4, 3, 2 or 1 semester(s) 	<p>A respondent who is placed on suspension and/or final probation, the following additional sanctions are available:</p> <ul style="list-style-type: none"> • Residence hall expulsion • Residence hall suspension • Deferred residence hall suspension • Discretionary sanctions • Behavioral and/or mental health assessment • Loss of privileges • Restitution • No Contact Order

When an individual is found responsible for stalking (Prohibited Behavior F) in violation of this policy, the following sanctions are available:

Status Sanctions	Additional Sanctions
<ul style="list-style-type: none"> • Expulsion • Suspension for 10, 9, 8, 7, 6, 5, 4, 3, 2 or 1 semester(s) • Suspension for 10, 9, 8, 7, 6, 5, 4, 3, 2 or 1 semester(s) and if readmitted final probation through graduation • Suspension for 10, 9, 8, 7, 6, 5, 4, 3, 2 or 1 semester(s) and if readmitted final probation for 8, 7, 6, 5, 4, 3, 2 or 1 semester • Final probation through graduation • Final probation for 8, 7, 6, 5, 4, 3, 2 or 1 semester(s) • Disciplinary probation for 8, 7, 6, 5, 4, 3, 2 or 1 semester(s) 	<p>A respondent who is placed on suspension, final probation, and/or disciplinary probation the following additional sanctions are available:</p> <ul style="list-style-type: none"> • Residence hall expulsion • Residence hall suspension • Deferred residence hall suspension • Discretionary sanctions • Behavioral and/or mental health assessment • Loss of privileges • Restitution • No Contact Order

Transcript Notation

A respondent’s transcript will be subject to conduct notation for all cases in which the sanction imposed is expulsion or suspension from SUNY Poly. This includes, but is not limited to, cases in which a respondent is found responsible for an act of violence that meets the reporting requirements found in the Clery Act at 20 U.S.C. § 1092 (f)(1)(F)(i)(I)-(VIII) Part 1. The notation will state that the respondent was “*suspended after a finding of responsibility for a Code of Conduct violation*” or “*expelled after a finding of responsibility for a Code of Conduct violation.*” The date the sanction was imposed will also be noted on the transcript.

An appeal seeking removal of a transcript notation for a suspension should be submitted, in writing, to the Vice President of Student Affairs with written documentation showing rehabilitation or other good cause for transcript notation removal. The decision of the Vice President for Student Affairs on whether to remove the notation is final. If the appeal for the removal of the transcript notation is granted, the notation shall not be removed prior to one year after conclusion of the suspension. If a finding of responsibility is vacated for any reason, any such transcript notation shall be removed.

A transcript notation of expulsion is a permanent notation of the transcript and shall not be removed.

Section Five: 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 to the Director of Community Standards in electronic form within five (5) business days of being notified of the decision, indicating the grounds for the appeal. Failure to submit an appeal within the allotted time will render the original decision final and conclusive.

The limited grounds for appeal available are as follows:

- Procedural irregularity that affected the outcome of the matter (i.e. a failure to follow SUNY Poly'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 evidence presented does not support the decision;
- The sanction(s) imposed were not appropriate for the violation.

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, SUNY Poly 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.

An appeal request that does not specify the grounds for the appeal may be returned to the party for correction, but the time for appeal will not be extended.

Appeals will be decided by an Appellate Board, which is comprised of three (3) Appellate Board members of which at least one (1) student and at least one (1) faculty or staff member. The Vice President of Student Affairs shall appoint the membership as necessary. One member of the Appellate Board will serve as chairperson. The Appellate Board, will be free

of conflict of interest and bias, and the Board members will not serve as Title IX Coordinator, Title IX Investigator, or the Hearing Board members in the same matter.

The Appellate Board will be convened within five (5) business days of receipt of the request for an appeal. The Appellate Board does not rehear a Title IX grievance, but rather, determines if the conclusion reached is valid based on specific grounds. The appeal will be reviewed based on the preponderance of evidence standard. The complainant and the respondent will generally not have the opportunity to meet with the Appellate Board unless, in the Appellate Board's discretion, a meeting would serve to clarify an issue related to the appeal. The Appellate Board deliberations are closed and are not recorded.

For an appeal of a dismissal of a formal complaint or any included allegations, the Appellate Board shall choose one of the following courses of action after review of the information:

- A. Uphold the dismissal
- B. Overturn the dismissal and direct the Title IX Coordinator to begin a Title IX grievance process;

For an appeal of a determination regarding responsibility, the Appellate Board shall choose one of the following courses of action after review of the information:

- C. Uphold the decision and implement the sanction(s), if any;
- D. Uphold the hearing decision, but change the sanction(s);
- E. Overturn the hearing decision and, if appropriate, implement sanctions;
- F. Grant a new live hearing;
 - 1. When a new hearing is granted, the record of the previously conducted hearing will not be introduced or provided to members of the Hearing Board, except, at the discretion of the Hearing Board's Chairperson, to challenge contradictory testimony.

The outcome of an appeal will be provided in writing simultaneously to both parties within six (6) business days of the Appellate Board's review. The outcome notification will include rationale for the decision.

Final Appeal

Either party may appeal a determination regarding responsibility of the Appellate Board to the SUNY Poly President or their designee, only when the sanction, or potential sanction (see Sanctions for Covered Sexual Harassment Violations portion of this policy) for the alleged violation involves suspension or expulsion. This appeal must be submitted to the SUNY Poly President or their designee by close of business on the fifth (5th) business day following the date the Appellate Board decision letter is issued to the parties. If the

President or their designee agrees to consider an appeal, in their sole discretion, they shall be provided and may consider the records of the Appellate Board, live hearing, hearing case file and such written submissions and oral arguments as the President or their designee requests. The President or their designee shall make such determination as they deem appropriate and the decision shall be final.

Section Six: Retaliation

SUNY Poly 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 Student 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

Individuals alleging retaliation by a student may file a complaint under SUNY Poly's Student Code of Conduct (<https://sunypoly.edu/sites/default/files/student%20conduct/Student-Code-Conduct2020-2021.pdf>). Individuals alleging retaliation by an employee may utilize SUNY's Discrimination Complaint Procedure (https://www.suny.edu/sunypp/documents.cfm?doc_id=451).

Section Seven: Maintenance of Records

SUNY Poly will maintain records of the following for a period of seven (7) years from the end of the academic year in which the Title IX grievance process was resolved, except in a matter that resulted in suspension or expulsion, in which case the record is maintained indefinitely:

- Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript of the live hearing;
- Any disciplinary sanctions imposed on the respondent;
- Any remedies provided to the complainant designed to restore or preserve equal access to the recipient's education program or activity;
- Any appeal and the result therefrom;
- Any informal resolution and the result therefrom; and
- All materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process

Date of Last Revision: 12/14/2020

- References to SUNY Poly's Sexual Harassment Response and Prevention Policy and SUNY's Discrimination Complaint Procedure added to Section One