SUNY Polytechnic Institute

SUNY Poly's Student Grievance Policy

Effective August 15, 2026 Any questions regarding this policy can be directed to SUNY Poly's Title IX Coordinators via **TitleIX@sunypoly.edu**

SUNY POLYTECHNIC INSTITUTE

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SUNY POLYTECHNIC INSTITUTE

SUNY Poly Title IX Grievance Procedure for Student Respondents

Under the May 19, 2020 Title IX Final Rule

Policy Statement

The U.S. Department of Education and other federal agencies that provide financial assistance, including the U.S. Department of Health and Human Services, enforce Title IX and have 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 or employee's ability to equally access our education 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);[1]
- Addresses how SUNY Polytechnic Institute ***must*** respond to reports of misconduct falling within that definition of Sexual Harassment;[2] and
- Mandates a grievance process that this institution ***must*** follow to comply with the law in these specific covered cases before issuing a disciplinary sanction against a person accused of Sexual Harassment.[3]

General Rules of Application

Effective Date

The Title IX Grievance Procedure is effective as of August 14, 2020 and will apply only to Sexual Harassment alleged to have occurred on or after August 14, 2020.[4] Incidents of Sexual Harassment alleged to have occurred before August 14, 2020,[5] 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 Reg. 30026 (May 19, 2020), be stayed or held invalid by a court of law, or should the Title IX Final Rule be withdrawn or modified to not require the elements of this procedure, or the invalidated elements of this procedure, those elements will be deemed revoked as of the publication date of the opinion or order and for all reports after that date, as well as any elements of the Procedure that occur after that date if a case is not complete by that date of opinion or order publication. Should the Title IX Grievance Procedure be revoked in this manner, any conduct covered under the Title IX Grievance Procedure shall be investigated and adjudicated under the existing

[1] 34 C.F.R. § 106.30(a).
[2] 34 C.F.R. § 106.44.
[3] 34 C.F.R. § 106.45.
[4] 85 Fed. Reg. 30026 (May 19, 2020).
[5] 85 Fed. Reg. 30026 (May 19, 2020).

Student Code of Conduct, the Discrimination Complaint Procedure, any other appropriate SUNY Polytechnic Institute policy and/or procedure, or the employee disciplinary process as described in the collective bargaining agreement, as appropriate.

Non-Discrimination in Application

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

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

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

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

Reports and Complaints Involving Employee Respondents

All cases involving employee Respondents will be evaluated, investigated, and adjudicated under Section II of SUNY Procedure (6501), as applicable.

SUNY POLYTECHNIC INSTITUTE

Definitions

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

Covered Sexual Harassment or Sexual Harassment:[6] For the purposes of this Title IX Grievance Procedure, "Covered Sexual Harassment" includes any conduct on the basis of sex that satisfies one or more of the following:

1. An employee conditioning the provision of an aid, benefit, or service of the institution on an individual's participation in unwelcome sexual conduct (i.e., quid pro quo);[7]

2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the institution's education program or activity (i.e., hostile environment harassment).[8] In evaluating whether a hostile environment exists, the institution will consider a number of factors, including, but not limited to: the frequency, nature, and severity of the conduct; whether the conduct was physically threatening; the effect of the conduct on the Complainant's mental or emotional state; how the conduct affected the terms, conditions or privileges of employment or education; whether the conduct was directed at more than one person; whether the conduct arose in the context of other discriminatory conduct; whether there is a power differential between the parties; and whether the conduct implicates concerns related to academic freedom or protected speech;

3. Sexual assault[9] (as defined in the Clery Act), which includes any sexual act directed against another person without the consent of the victim, including instances where the victim is incapable of giving Consent. This includes the forcible sex offenses of rape and criminal sexual contact and the non-forcible sex offenses of incest and statutory rape. The applicable offenses are defined below:

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

[6] 34 C.F.R. § 106.30(a).
[7] 34 C.F.R. § 106.30(a).
[8] 34 C.F.R. § 106.30(a).
[9] 34 C.F.R. § 106.30(a); 20 U.S.C. 1092(f)(6)(A)(v).

4. Dating violence[10] (as defined in the Violence Against Women Act (VAWA) amendments to the Clery Act), which includes any violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship; (ii) The type of relationship; and (iii) The frequency of interaction between the persons involved in the relationship.

5. Domestic violence[11] (as defined in the VAWA amendments to the Clery Act and the Violence Against Women Act Reauthorization of 2022), which includes any felony or misdemeanor crimes of violence committed by a person who: (A) is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of New York, (B) who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, (C) shares a child in common with the victim; or (D) commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of New York.

6. Stalking[12] (as defined in the VAWA amendments to the Clery Act), meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.

Note that conduct that does not meet one or more of these criteria may still be prohibited and subject to discipline under the Student Code of Conduct, action under the Discrimination Complaint Procedure, action under other SUNY Polytechnic Institute policies and/or procedures, or the employee disciplinary process as described in the collective bargaining agreement.

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

Consent:[13] For the purposes of this Title IX Grievance Procedure, "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

[10] 34 C.F.R. § 106.30(a); 34 U.S.C. 12291(a)(10).
[11] 34 C.F.R. § 106.30(a); 34 U.S.C. 12291(a)(8).
[12] 34 C.F.R. § 106.30(a); 34 U.S.C. 12291(a)(30).
[13] 34 C.F.R. § 106.30(a); N.Y. Ed. L. § 6441 (2015).

Consent. The definition of Consent does not vary based upon a participant's sex, sexual orientation, gender identity or gender expression.

Additionally:

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

Education Program or Activity:[14] For the purposes of this Title IX Grievance Procedure, SUNY Polytechnic Institute "Education Program or Activity" includes:

• Any on-campus premises

• Any off-campus premises that SUNY Polytechnic Institute 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 Polytechnic Institute's programs and activities over which SUNY Polytechnic Institute has substantial control. Cases outside of the United States do not fall within the jurisdiction of the Grievance Procedure. Refer to the section on jurisdiction below.

Formal Complaint:[15] For the purposes of this Grievance Procedure, "Formal Complaint" means a document — including an electronic submission — filed by a Complainant/Reporting Individual with a signature or other indication that the Complainant/Reporting Individual is the person filing the Formal Complaint, or signed by the Title IX Coordinator, alleging Covered Sexual Harassment by a Respondent within SUNY Polytechnic Institute Education Program or Activity and requesting initiation of the Title IX Grievance Procedure to investigate the allegation of Covered Sexual Harassment.

Complainant:[16] For the purposes of this Title IX Grievance Procedure, Complainant means any individual who has reported being or is alleged to be the victim of conduct that could constitute Covered Sexual Harassment.

[14] 34 C.F.R. § 106.44(a).
[15] 34 C.F.R. § 106.30(a).
[16] 34 C.F.R. § 106.30(a); N.Y. Ed. L. § 6439(9).

Relevant Evidence and Questions:[17] "Relevant" evidence and questions refer to any questions and evidence that tends to make an allegation of sexual harassment more or less likely to be true. Relevant evidence is evidence that is available in a particular case that can be evaluated objectively. Relevant evidence includes, without limitation, the parties' own statements, statements of witnesses, or other available evidence, including documentary and video evidence provided.[18] "Relevant" evidence and questions do not include the following types of evidence and questions, which are deemed "irrelevant" at all stages of the Grievance Procedure:

- Evidence and questions about the Complainant's sexual predisposition or prior sexual behavior unless:
    - They are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or
    - They concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove Consent.[19]
- Evidence and questions that constitute, or seek disclosure of, information protected under a legally recognized privilege.[20]
- Any Party's medical, psychological, and similar records unless the Party has given voluntary, written Consent.[21]

Respondent:[22] For the purposes of this Title IX Grievance Procedure, Respondent means any individual who has been reported to be the perpetrator of conduct that could constitute Covered Sexual Harassment as defined under this Procedure. Reports and complaints regarding employees are handled under the separate procedure, which is identified above.

Reporting Individual:[23] An individual who brings forward a report of conduct that may violate this Procedure. A Reporting Individual may, but need not, be the Complainant.

Supportive Measures:[24] Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to SUNY Polytechnic Institute Education Program or Activity without unreasonably burdening the other Party, including measures designed to protect the safety of all Parties or SUNY Polytechnic Institute's educational environment, or deter Sexual Harassment. Supportive Measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security

[17] 85 Fed. Reg. 30026, 30246-49 (May 19, 2020).
[18] 85 Fed. Reg. at 30247.
[19] 34 C.F.R. § 106.45(b)(6)(i).
[20] 34 C.F.R. § 106.45(b)(1)(x).
[21] 85 Fed. Reg. at 30294.
[22] 34 C.F.R. § 106.30(a); N.Y. Ed. L. § 6439(8).
[23] N.Y. Ed. L. § 6439(9).
[24] 34 C.F.R. § 106.30(a); N.Y. Ed. L. § 6444(3).

and monitoring of certain areas of the campus, and other similar measures. SUNY Polytechnic Institute must maintain as confidential any Supportive Measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide the Supportive Measures. The Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures.

Confidentiality

This grievance procedure is intended to protect the confidentiality of Parties and witnesses during the Title IX process, while also promoting SUNY Polytechnic Institute's ability to meet SUNY Polytechnic Institute's its Title IX obligations, consistent with constitutional and other due process protections. SUNY Polytechnic Institute will keep confidential the identity of any individual who has made a report or complaint of Sexual Harassment, including any individual who has made a report or filed a Formal Complaint of Sexual Harassment, any Complainant, any individual who has been reported to be the perpetrator of Sexual Harassment, any Respondent, and any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, or its implementing regulations, 34 C.F.R. Part 99; as required by law; or as necessary to carry out the purposes of 34 C.F.R. Part 106, including the outcome of any investigation, hearing, or judicial proceeding arising thereunder. SUNY Polytechnic Institute will limit the sharing of information to the extent permitted by law. Federal and state laws, rules and regulations, including New York's Freedom of Information Law, may require disclosure in some circumstances.

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

Private vs. Confidential Resources[25]

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

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

SUNY Poly Wellness Center. Campus Center Suite 217

[25] 85 Fed. Reg. at 30523-24.

All other institutional offices and employees will maintain the *privacy* of reports of Covered Sexual Harassment to the greatest extent possible but cannot guarantee confidentiality. Privacy generally means that information related to a report of Covered Sexual Harassment will be shared only with a limited circle of individuals, including individuals who need to know in order to assist in the review, investigation, or resolution of the report or to deliver resources or support services. While not bound by confidentiality or privilege, these individuals will be discreet and respect the privacy of all individuals involved in the process. Information disclosed to these private resources will be relayed only as necessary to investigate and/or seek a resolution and to notify the Title IX Coordinator or designee, who is responsible for tracking patterns and identifying systemic issues.

Making a Report Regarding Covered Sexual Harassment to the Institution

Any person may report sex discrimination, including Covered Sexual Harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or Covered 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.[26]

Dr. Mark Montgomery 315.792.7338
montgom@sunypoly.edu
Kunsela Hall B249

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.[27] For confidential reporting resources that will not forward a report to the Title IX Coordinator, please reference the preceding section, titled "Private vs. Confidential Resources."

Non-Investigatory Measures Available Under the Title IX Grievance Procedure

Supportive Measures[28]

Complainants who report allegations that could constitute Covered Sexual Harassment under this Procedure, and Respondents, have the right to receive Supportive Measures from SUNY Polytechnic Institute regardless of whether a Complainant desires to file a Formal Complaint. Supportive Measures are non-disciplinary and non-punitive.

Emergency Removal[29]

[26] 34 C.F.R. § 106.8(a).
[27] 34 C.F.R. § 106.8(a).
[28] 34 C.F.R. § 106.44(a).
[29] 34 C.F.R. § 106.44(c).

SUNY Polytechnic Institute retains the authority to impose emergency removals on a student Respondent on an emergency basis, where SUNY Polytechnic Institute

(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 Polytechnic Institute determines an emergency removal is necessary, the Respondent will be provided notice and an opportunity to challenge the decision immediately following the notification. The Respondent may challenge the emergency removal in writing to the Vice-President for Student Affairs or heir designee within two (2) business/school/calendar days of the receipt of the emergency removal notification.[30]

Alcohol and/or Drug Use Amnesty[31]

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

A bystander or a Reporting Individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to SUNY Polytechnic Institute officials or law enforcement will not be subject to SUNY Polytechnic Institute's code of conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.

Disability Accommodations[32]

This grievance procedure does not alter any institutional obligations under applicable federal and state disability laws including the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, and the New York State Human Rights Law. Parties may request reasonable accommodations for disclosed disabilities from the Title IX Coordinator at any point before or during this Title IX grievance procedure. Requests will be evaluated in consultation with the appropriate Campus office, and accommodations may be provided where they do not fundamentally alter the process. The Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the Parties, even where the Parties may be receiving accommodations in other institutional programs and activities.

[30] 34 C.F.R. § 106.44(c); N.Y. Ed. L. § 6444(1)(4)(f).
[31] 85 Fed. Reg. at 30535-38; N.Y. Ed. L. § 6442.
[32] 85 Fed. Reg. at 30493-95.

SUNY POLYTECHNIC INSTITUTE

The Title IX Grievance Procedure

Filing a Formal Complaint[33]

The timeframe for this Title IX grievance procedure begins with the filing of a Formal Complaint. This grievance procedure will be concluded within a reasonably prompt timeframe after the filing of the Formal Complaint, provided that the process may be extended for a good reason, including but not limited to the absence of a Party, a Party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.[34]

To file a Formal Complaint, a Complainant must provide the Title IX Coordinator with a written, signed Formal Complaint describing the facts alleged.[35] Complainants may file a Formal Complaint under this Procedure only if they are currently participating in, or attempting to participate in, SUNY Polytechnic Institute's Education Programs or Activities, including as an employee.[36] For Complainants/Reporting Individuals who do not meet these criteria, SUNY Polytechnic Institute will utilize existing policy in the Student Code of Conduct, the Discrimination Complaint Procedure, other applicable SUNY Polytechnic Institute policies and/or procedures, or the employee disciplinary process as described in the applicable collective bargaining agreement, as appropriate.

If a Complainant does not wish to file a Formal Complaint, the Title IX Coordinator may determine a Formal Complaint is necessary and sign one.[37] If so, SUNY Polytechnic Institute will inform the Complainant of this decision in writing. The Complainant need not participate further in the process but will receive all notices issued under this Procedure. When the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator does not become a Complainant or Party to this Procedure.

Nothing in the Title IX Grievance Procedure, Student Code of Conduct or SUNY Discrimination Complaint Procedure prevents a Complainant or Reporting Individual from seeking the assistance of state or local law enforcement alongside the appropriate on-campus process.

Initial Assessment

Upon receipt of a report of alleged prohibited conduct, the Title IX Coordinator will make an initial assessment of the reported information and respond to any immediate health or safety concerns raised by the report.[38] The steps in an initial assessment vary based on whether the identity of the Complainant is known.[39]

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

[33] 34 C.F.R. § 106.30(a).
[34] 34 C.F.R. § 106.45(b)(1)(v).
[35] 34 C.F.R. § 106.30(a).
[36] 34 C.F.R. § 106.30(a).
[37] 34 C.F.R. § 106.30(a); 85 Fed. Reg. at 30089.
[38] *See* N.Y. Ed. L. § 6444.
[39] *See* N.Y. Ed. L. § 6444.

- Assess the Complainant's safety and well-being and offer SUNY Polytechnic Institute's support and assistance through available resources;[40]
- Inform the Complainant that the Title IX Coordinator will maintain the Complainant's privacy to the greatest extent possible and disclose information only as necessary pursuant to this Procedure;[41]
- Inform the Complainant of their right to seek medical treatment (including a sexual assault forensic examination) and explain the importance of obtaining evidence and preserving forensic and other evidence;[42]
- Inform the Complainant of their right to contact law enforcement, be assisted by SUNY Polytechnic Institute officials in contacting law enforcement, or decline to contact law enforcement, and their right to seek a protective order;[43]
- Inform the Complainant that the criminal justice system uses different standards of proof and evidence than this Procedure and that any questions about whether the reported prohibited conduct constitutes a penal law violation should be addressed by law enforcement;[44]
- Inform the Complainant about and community resources, including counseling, health, and mental health services; victim advocacy; procedural advocacy; legal resources; visa and immigration assistance; student financial aid; and other resources both on campus and in the community, and how to request or contact such resources;[45]
- Inform the Complainant of the right to seek appropriate and available Supportive Measures and how to request such measures and consider the Complainant's wishes with respect to Supportive Measures with or without the filing of a Formal Complaint;[46]
- Ensure the Complainant is aware of their right to an advisor of their choice, who may be, but is not required to be, an attorney;[47]
- Inform the Complainant of the right to file a Formal Complaint and seek resolution under this grievance procedure; provide the Complainant with an overview of this procedure, including Supportive Measures; and inform the Complainant of the right to withdraw a Formal Complaint at any time prior to resolution and to decline or discontinue resolution under this procedure at any time, including that declining to participate in an investigation and/or hearing under these procedures may limit SUNY Polytechnic Institute's ability to investigate meaningfully and respond to a report of prohibited conduct;[48]
- As possible and appropriate, ascertain the Complainant's preference for pursuing a Formal Complaint, Supportive Measures, or neither under this Procedure, and discuss with the Complainant any concerns or barriers to participating in any investigation and resolution process under this Procedure;[49]

[40] N.Y. Ed. L. § 6444(2), (3), & (4).
[41] N.Y. Ed. L. § 6444(1).
[42] N.Y. Ed. L. § 6444(3).
[43] N.Y. Ed. L. § 6444(2).
[44] N.Y. Ed. L. § 6444(1)(b).
[45] N.Y. Ed. L. § 6444(3) & (7).
[46] N.Y. Ed. L. § 6444(4)(h).
[47] N.Y. Ed. L. § 6444(5)(c)(i).
[48] N.Y. Ed. L. § 6444(1)(f).
[49] N.Y. Ed. L. § 6444(4)(h).

- Explain that SUNY Polytechnic Institute prohibits retaliation, that retaliation constitutes prohibited conduct under these procedures, and that SUNY Polytechnic Institute will take appropriate action in response to any act of retaliation;[50]
- Inform the Complainant of their rights afforded under the Student Bill of Rights;[51] and
- Communicate with appropriate SUNY Polytechnic Institute officials to determine whether the report triggers any Clery Act obligations, including the issuance of a timely warning or emergency notification, and take steps to meet those obligations.

Determining Jurisdiction

The Title IX Coordinator or designee will determine if the procedure should apply to a Formal Complaint. This procedure will apply when all 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;[52]
2. The conduct is alleged to have occurred in the United States;[53]
3. The conduct is alleged to have occurred in SUNY Polytechnic Institute's Education Program or Activity;[54] and
4. The alleged conduct, if true, would constitute Covered Sexual Harassment as defined in this Procedure.[55]

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

Jurisdiction at Academic Medical Centers

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

There are some activities and operations at an AMC that are likely to be outside the scope of an Education Program or Activity (e.g., purely clinical employment matters with no meaningful education nexus and no "substantial control" in an education context). Allegations of Covered Sexual Harassment occurring at an AMC outside the scope of its Education Program or Activity may be processed under Section I of SUNY Procedure 6501, as applicable.

Multi-Party Situations and Consolidation of Complaints[56]

SUNY Polytechnic Institute may consolidate Formal Complaints alleging Covered Sexual Harassment against more than one Respondent, by more than one Complainant against one or more Respondents, or

[50] N.Y. Ed. L. § 6444(2).
[51] N.Y. Ed. L. § 6443.
[52] 85 Fed. Reg. at 30028.
[53] 34 C.F.R. § 106.11.
[54] 34 C.F.R. § 106.11.
[55] 34 C.F.R. § 106.30(a).
[56] 34 C.F.R. § 106.45(b)(4).

by one Party against the other Party, where the allegations of Covered Sexual Harassment arise out of the same facts or circumstances.

Allegations Potentially Falling Under More Than One Policy or Procedure[57]

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

Mandatory Dismissal[58]

SUNY Polytechnic Institute will investigate the allegations in a Formal Complaint. If the conduct alleged in the Formal Complaint would not constitute Covered Sexual Harassment as defined in federal law, even if proved; did not occur in SUNY Polytechnic Institute's Education Program or Activity; or did not occur against a person in the United States, then SUNY Polytechnic Institute must dismiss the Formal Complaint regarding that conduct for purposes of Sexual Harassment under Title IX.[59] Such a dismissal does not preclude action under another provision of the institution's Student Code of Conduct, the Discrimination Complaint Procedure, any other appropriate SUNY Polytechnic Institute policy and/or procedure, or the employee disciplinary process as described in the applicable collective bargaining agreement.[60] Each Party may appeal a dismissal using the procedure outlined in "Appeals" below.

Discretionary Dismissal[61]

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

- A Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any allegations raised in the Formal Complaint;
- The Respondent is no longer enrolled or employed by SUNY Polytechnic Institute; or,
- Specific circumstances prevent SUNY Polytechnic Institute from gathering evidence sufficient to reach a determination regarding the Formal Complaint or allegations within the Formal Complaint.[62]

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

[57] *See* 34 C.F.R. § 106.6(h).
[58] 34 C.F.R. § 106.45(b)(3).
[59] 34 C.F.R. § 106.45(b)(3)(i).
[60] 34 C.F.R. § 106.45(b)(3)(i).
[61] 34 C.F.R. § 106.45(b)(3).
[62] 34 C.F.R. § 106.45(b)(3)(ii).

Notice of Dismissal[63]

Upon reaching a decision that the Formal Complaint will be dismissed, SUNY Polytechnic Institute 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 the Parties to maintain and regularly check their institutional email accounts.

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

Notice of Removal[64]

Upon dismissal for purposes of Title IX, SUNY Polytechnic Institute retains discretion to address the allegations under the Student Code of Conduct, the Discrimination Complaint Procedure, another applicable SUNY Polytechnic Institute policy or procedure, or the employee disciplinary process, as appropriate. If SUNY Polytechnic Institute refers the allegations to another process, it will promptly provide written notice that the Formal Complaint has been dismissed under this Title IX grievance procedure and that the allegations have been removed from that procedure and referred to the other applicable process.

Notice of Allegations[65]

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

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

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

The Title IX Coordinator or designee may determine that the Formal Complaint will be dismissed on the grounds identified above and will issue a Notice of Dismissal.[66] If such a determination is made, any Party identified in the Formal Complaint will receive the Notice of Dismissal in conjunction with, or in separate correspondence after, the Notice of Allegations.

[63] 34 C.F.R. § 106.45(b)(3)(iii).
[64] *See* 34 C.F.R. § 106.45(b)(3)(iii).
[65] 34 C.F.R. § 106.45(b)(2).
[66] 34 C.F.R. § 106.45(3)(iii).

Contents of Notice[67]

The Notice of Allegations will include the following:

- Notice of the institution's Title IX Grievance Procedure and a hyperlink to a copy of the process.[68]
- 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.[69]
- A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of this grievance procedure.[70]
- A statement that the Parties may have an advisor of their choice, who may be, but is not required to be, an attorney;[71]
- 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 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;[72]
- Students are prohibited from knowingly making false statements or knowingly submitting false information during the grievance process as is provided in the Student Code of Conduct.[73]

Ongoing Notice[74]

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

Advisors of Choice[75]

[67] 34 C.F.R. § 106.45(b)(2).
[68] 34 C.F.R. § 106.45(b)(2)(i)(A).
[69] 34 C.F.R. § 106.45(b)(2)(i)(B).
[70] 34 C.F.R. § 106.45(b)(2)(i)(B).
[71] 34 C.F.R. § 106.45(b)(2)(i)(B); 34 C.F.R. § 106.45(b)(5)(iv).
[72] 34 C.F.R. § 106.45(b)(2)(i)(B); 34 C.F.R. § 106.45(b)(5)(vi).
[73] 34 C.F.R. § 106.45(b)(2)(i)(B).
[74] 34 C.F.R. § 106.45(b)(2)(ii).
[75] 34 C.F.R. § 106.45(b)(5)(iv).

SUNY Polytechnic Institute will provide the Parties equal access to advisors and support persons and will not limit the choice or presence of advisor for either Party. Any restrictions on advisor participation will be applied equally.[76]

Individuals participating as a Complainant or Respondent in this process may be accompanied by an advisor of choice to any meeting or hearing they are required or are eligible to attend. The advisor of choice is not an advocate. Except where explicitly stated by this procedure, advisors of choice shall not participate directly in the process, consistent with standard policy and practice of SUNY Polytechnic Institute, except for required cross-examination by such advisor during a live hearing. SUNY Polytechnic Institute may establish Rules of Decorum and otherwise establish restrictions regarding the extent to which advisors may participate in the proceedings.[77]

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

SUNY Polytechnic Institute's obligations to investigate and adjudicate in a prompt timeframe under Title IX and other SUNY Polytechnic Institute policies apply to matters governed under this procedure, and SUNY Polytechnic Institute 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 Polytechnic Institute 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 Polytechnic Institute.[78]

Notice of Meetings and Interviews[79]

SUNY Polytechnic Institute 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.

Investigation

General Rules of Investigations[80]

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 in a reasonably prompt

[76] 34 C.F.R. § 106.45(b)(5)(iv).
[77] 34 C.F.R. § 106.45(b)(5)(iv).
[78] 34 C.F.R. § 106.45(b)(1)(v).
[79] 34 C.F.R. § 106.45(b)(5)(v).
[80] 34 C.F.R. § 106.45(b)(5).

timeframe after issuing the Notice of Allegations.[81] The investigation will generally include individual interviews of the Complainant/Reporting Individual, the Respondent, and relevant witnesses. The Parties may submit in writing the names of witnesses they would like the investigator to interview and proposed questions or topics for the investigator to address with witnesses, themselves, and the other Party.[82] The investigator has the discretion to determine the relevance of any proffered witnesses and, accordingly, will determine which witnesses to interview.[83]

SUNY Polytechnic Institute and not the Parties, has the burden of proof and the burden of gathering evidence sufficient to reach a determination, i.e., the responsibility of showing that a violation of this procedure has occurred. This burden does not rest with either Party, and either Party may decide not to share their account of what occurred or may decide not to participate in an investigation or hearing. This does not shift the burden of proof away SUNY Polytechnic Institute and does not indicate responsibility.[84]

SUNY Polytechnic Institute cannot access, consider, disclose, or otherwise use a Party's medical records without a voluntary, written consent from the Party to whom the records belong or about whom the records contain information.[85] SUNY Polytechnic Institute 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.[86]

All deadlines and time requirements in this procedure may be extended for good cause as determined by SUNY Polytechnic Institute.[87] The Respondent and the Complainant, as well as their advisors, will be notified in writing of the delay, the reason for the delay, and the date of the new deadline or event. Extensions requested by one Party will not typically be longer than five (5) business days.

Inspection and Review of Evidence

Prior to the completion of the investigation, the Parties will have an equal opportunity to inspect and review the evidence obtained through the investigation in an electronic format or a hard copy.[88] The purpose of the inspection and review process is to allow each Party an equal opportunity to respond meaningfully to the evidence prior to the conclusion of the investigation.[89] The Parties will have at least ten (10) business days to submit a written response, which the investigator will consider prior to completion of the investigative report.[90]

Evidence available for inspection and review by the Parties will include any evidence that is Relevant or directly related to the allegations raised in the Formal Complaint,[91] including:

[81] 34 C.F.R. § 106.45(b)(1)(v).
[82] 34 C.F.R. § 106.45(b)(5)(ii) & (iii); 34 C.F.R. § 106.45(b)(6)(i).
[83] 34 C.F.R. § 106.45(b)(6)(i).
[84] 34 C.F.R. § 106.45(b)(5)(i).
[85] 34 C.F.R. § 106.45(b)(5)(i).
[86] 34 C.F.R. § 106.45(b)(5)(ii).
[87] 34 C.F.R. § 106.45(b)(1)(v).
[88] 34 C.F.R. § 106.45(b)(5)(vi).
[89] 34 C.F.R. § 106.45(b)(5)(vi).
[90] 34 C.F.R. § 106.45(b)(5)(vi).
[91] 34 C.F.R. § 106.45(b)(5)(vi).

1. Evidence that is related, even if that evidence does not end up being relied upon by SUNY Polytechnic Institute 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.[92]

All Parties must submit any evidence they would like the investigator to consider before the Parties' time to inspect and review evidence begins.[93]

SUNY Polytechnic Institute will provide each Party and each Party's advisor, if any, with the evidence made available for inspection and review.[94] SUNY Polytechnic Institute is not obligated to use any specific process or technology to provide the evidence and has sole discretion to determine the format and any restrictions or limitations on access.[95]

Any evidence deemed Relevant after inspection and review will be available at any hearing, including for purposes of cross-examination.[96]

The Parties and their advisors must sign an agreement not to disseminate any of the evidence subject to inspection and review or use such evidence for any purpose unrelated to this Title IX grievance procedure.[97]

The Parties and their advisors agree not to photograph or otherwise copy the evidence.[98]

[92] 34 C.F.R. § 106.45(b)(5)(vi).
[93] *See* 85 Fed. Reg. 30026, 30307 (May 19, 2020).
[94] 34 C.F.R. § 106.45(b)(5)(vi).
[95] *See* 85 Fed. Reg. at 30422.
[96] 34 C.F.R. § 106.45(b)(5)(vi).
[97] *See* 85 Fed. Reg. 30026, 30435 (May 19, 2020).
[98] *See* 85 Fed. Reg. 30026, 30435 (May 19, 2020).

Inclusion of Evidence Not Directly Related to the Allegations[99]

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

Investigative Report[100]

The Title IX Coordinator or their designee will create an investigative report that fairly summarizes Relevant evidence and, at least ten (10) business days prior to a hearing, will send the investigative report, in electronic format or hard copy format, to each Party and the Party's advisor.[101] The investigative report is not intended to catalog all evidence obtained by the Title IX Coordinator or their designee, but only to provide a fair summary of that evidence.[102] Only Relevant evidence (including both inculpatory and exculpatory, i.e., tending to prove and disprove the allegations) will be referenced in the investigative report.[103] The Title IX Coordinator or their designee may redact irrelevant information from the investigative report when that information is contained in documents or evidence that are otherwise Relevant.[104]

Hearing

General Rules of Hearings[105]

SUNY Polytechnic Institute will not issue a disciplinary sanction arising from an allegation of Covered Sexual Harassment without holding a live hearing.[106]

The live hearing may be conducted with all Parties physically present in the same geographic location, or, at the request of either Party, SUNY Polytechnic Institute will provide for the live hearing to occur with the Parties located in separate rooms with technology enabling the Decision-maker(s) and Parties to simultaneously see and hear the Parties or the witnesses answering questions.[107] At the discretion of SUNY Polytechnic Institute, any or all witnesses and other participants may appear at the live hearing virtually.[108] At its discretion, SUNY Polytechnic Institute may delay or adjourn a hearing based on technological errors not within a Party's control.[109]

[99] 34 C.F.R. § 106.45(b)(5)(vi).
[100] 34 C.F.R. § 106.45(b)(5)(vii).
[101] 34 C.F.R. § 106.45(b)(5)(vii).
[102] 34 C.F.R. § 106.45(b)(5)(vii).
[103] 34 C.F.R. § 106.45(b)(5)(vii).
[104] See 85 Fed. Reg. 30026, 30304 (May 19, 2020).
[105] 34 C.F.R. § 106.45(b)(6).
[106] 34 C.F.R. § 106.45(b)(6)(i); *see* 34 C.F.R. § 106.45(b)(9).
[107] 34 C.F.R. § 106.45(b)(6)(i).
[108] 34 C.F.R. § 106.45(b)(6)(i); *see* 85 Fed. Reg. at 30332.
[109] 34 C.F.R. § 106.45(b)(1)(v).

Prior to obtaining access to any evidence, the Parties and their advisors must sign an agreement not to disseminate any of the testimony heard or evidence obtained in the hearing or use such testimony or evidence for any purpose unrelated to this Title IX grievance procedure. Once signed, this agreement may not be withdrawn.[110]

Continuances or Granting Extensions

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

Newly Discovered Evidence[111]

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

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

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

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

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

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

Participants in the Live Hearing

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

Complainant and Respondent (the Parties)

- The Parties cannot waive the right to a live hearing,[112] though they are not required to participate.[113]
- SUNY Polytechnic Institute may still proceed with the live hearing in the absence of a Party and may reach a determination of responsibility in their absence.[114]

[110] *See* 85 Fed. Reg. 30026, 30435 (May 19, 2020).
[111] *See* 85 Fed. Reg. at 30294-95.
[112] 85 Fed. Reg. at 30361.
[113] 85 Fed. Reg. at 30430.
[114] *See* 34 C.F.R. § 106.71.

- The SUNY Polytechnic Institute will not threaten, coerce, intimidate or discriminate against the Party in an attempt to secure the Party's participation.[115]
- 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.[116]
- The Parties shall be subject to SUNY Polytechnic Institute's Rules of Decorum, which can be found on SUNY Polytechnic Institute's website and will be provided in advance of any live hearing.[117]

The Decision-maker

- The Decision-maker will consist of the Vice-President for Student Affairs.[118]
- No member of the hearing body 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 body serve on the appeals body in the case.[119]
- No member of the hearing body will have a conflict of interest or bias in favor of or against Complainants or Respondents generally, or in favor of or against the Parties to the particular case.[120]
- The hearing body 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.[121]
- The Parties will have an opportunity to raise any objections regarding a Decision-maker's actual or perceived conflicts of interest or bias at the commencement of the live hearing.[122]

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.[123] If a Party does not have an advisor present at the live hearing, SUNY Polytechnic Institute will provide, without fee or charge to that Party, an advisor of SUNY Polytechnic Institute]'s choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that Party.[124]
- The advisor of choice may accompany the Parties to any meeting or hearing they are permitted to attend, but may not speak for the Party, except for the purpose of cross-examination at a live hearing.[125]

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[115] *See* 34 C.F.R. § 106.71; *see also* 85 Fed. Reg. 30026, 30216 (May 19, 2020).

[116] *See* 34 C.F.R. §106.45(b)(6)(i).
[117] *See* 85 Fed. Reg. at 30319.
[118] *See* 85 Fed. Reg. at 30248.
[119] 34 C.F.R. §106.45(b)(7)(i).
[120] 34 C.F.R. §106.45(b)(1)(iii).
[121] 34 C.F.R. §106.45(b)(1)(iii).
[122] *See* 85 Fed. Reg. 30026, 30250 (May 19, 2020).
[123] 34 C.F.R. §106.45(b)(5)(iv).
[124] 34 C.F.R. §106.45(b)(6)(i).
[125] 34 C.F.R. §106.45(b)(5)(iv).

- 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 Polytechnic Institute 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.[126]
- If a Party does not attend the live hearing, the Party's advisor may appear and conduct cross-examination on their behalf.[127]
- If neither a Party nor their advisor appear at the hearing SUNY Polytechnic Institute will provide an advisor to appear on behalf of the non-appearing Party.[128]
- Advisors must follow SUNY Polytechnic Institute's Rules of Decorum applicable to advisors, which are available on SUNY Polytechnic Institute's website and will be provided to all advisors prior to the live hearing.[129]

Witnesses

- Witnesses cannot be compelled to participate in the live hearing and have the right not to participate in the hearing free from retaliation.[130]

Hearing Procedures

Title IX hearings are not civil or criminal proceedings and are not designed to mimic formal trial proceedings.[131] They are primarily educational in nature, and SUNY Polytechnic Institute will not permit any advisor or Decision-maker to question witnesses or Parties in an abusive, intimidating, or disrespectful manner.[132] All Parties, advisors of choice, institutional staff, and witnesses must treat others who are engaged in the process with respect.[133] These standards apply equally to all Parties and their advisors regardless of sex, gender, or other protected class, and regardless of whether they are in the role of Complainant or Respondent.[134]

For all live hearings conducted, the Decision-maker will open and establish rules and expectations for the hearing.[135] The Parties will each be given an opportunity to provide opening statements. Questioning of the Parties and witnesses will occur according to the procedures below.

Live Cross-Examination Procedure

Each Party's advisor will conduct live cross-examination of the other Party or Parties and witnesses.[136] During this live cross-examination the advisor will ask the other Party or Parties and witnesses Relevant

[126] 34 C.F.R. §106.45(b)(6)(i).
[127] 85 Fed. Reg. 30026, 30340 (May 19, 2020).
[128] See 85 Fed. Reg. at 30339-40.
[129] See 85 Fed. Reg. at 30319.
[130] See 85 Fed. Reg.at 30360.
[131] See 85 Fed. Reg. at 30097.
[132] 85 Fed. Reg. at 30319.
[133] *See* 85 Fed. Reg. 30026, 30319 (May 19, 2020).
[134] See 85 Fed. Reg. at 30532.
[135] 85 Fed. Reg. at 30347.
[136] 34 C.F.R. §106.45(b)(6)(i).

questions and follow-up questions, including those challenging credibility directly, orally, and in real time.[137] Before any cross-examination question is answered, the Decision-maker will determine if the question is Relevant and explain any decision to exclude a question as not Relevant.[138] 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.[139]

If the Decision-maker determines that an advisor's question is Relevant and not otherwise impermissible, then the question will be asked unless such question is unclear or harassing of the Party or witness being questioned.[140]

The Decision-maker must give an advisor an opportunity to clarify or revise a question that the Decision-maker has determined is unclear or harassing and, if the advisor sufficiently clarifies or revises a question so that it is no longer unclear or harassing, the question will be asked.[141]

Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not Relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.[142]

Rules of Decorum

When a Party's advisor is removed from a hearing due to violation(s) of the Rules of Decorum, the hearing will continue in the absence of that advisor.[143] The Party may select a different advisor of their choice, or accept an advisor provided by SUNY Polytechnic Institute for the limited purpose of cross-examination at the hearing.[144] Reasonable delays, including the temporary adjournment of the hearing, may be anticipated should an advisor be removed.[145] A Party cannot serve as their own advisor in this circumstance.[146]

Where an advisor asks a relevant question in a manner that violates the Rules, such as yelling, screaming, badgering, or leaning-in to the witness or Party's personal space, the question may not be deemed irrelevant by the Decision-maker simply because of the manner it was delivered.[147] Under that circumstance, the Decision-maker will notify the advisor of the violation of the Rules, and, if the question is Relevant, will allow the question to be re-asked in a respectful, non-abusive manner by the advisor (or a replacement advisor, should the advisor be removed for violation of the Rules).[148]

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[137] 34 C.F.R. §106.45(b)(6)(i).
[138] 34 C.F.R. §106.45(b)(6)(i).
[139] *See* 85 Fed. Reg. 30026, 30361 (May 19, 2020).
[140] 34 C.F.R. §106.45(b)(6)(i); 85 Fed. Reg. at 30331.
[141] *See* 85 Fed. Reg. at 30331.
[142] 34 C.F.R. §106.45(b)(6)(i).
[143] 85 Fed. Reg. at 30320.
[144] 85 Fed. Reg. 30026, 30320 (May 19, 2020).
[145] 34 C.F.R. §106.45(b)(1)(v).
[146] 34 C.F.R. §106.45(b)(6)(i).
[147] *See* 85 Fed. Reg. at 30331.
[148] *See* 85 Fed. Reg. at 30331.

Review of Transcript/Recording

The institution will create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the Parties for inspection and review.[149]

Determination Regarding Responsibility

Standard of Proof

SUNY Polytechnic Institute presumes that the Respondent is not responsible for the alleged Covered Sexual Harassment until a determination is made at the end of this Procedure.[150] SUNY Polytechnic Institute uses the preponderance of the evidence standard for investigations and determinations of responsibility for Formal Complaints covered under the Title IX Grievance Procedure.[151] This means that the investigation and hearing determine whether it is more likely than not that a violation of the Procedure occurred.[152]

General Considerations for Evaluating Testimony and Evidence

While the opportunity for cross-examination is required in all Title IX hearings,[153] 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.[154]

The Decision-maker shall not draw inferences regarding a Party's or witness's credibility based on the Party's or witness's status as a Complainant, Respondent, or witness, nor shall the Decision-maker base their judgments in stereotypes about how a Party or witness would or should act under the circumstances.[155]

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.[156]

Still, credibility judgments should not rest on whether a Party's or witness's testimony is non-linear or incomplete, or whether the Party or witness is displaying stress or anxiety.[157]

The Decision-maker will afford the highest weight relative to other testimony to first-hand testimony by Parties and witnesses regarding their own memory of specific facts that occurred.[158] Both inculpatory

[149] 34 C.F.R. §106.45(b)(6)(i).
[150] 34 C.F.R. §106.45(b)(1)(iv).
[151] 34 C.F.R. §106.45(b)(1)(vii).
[152] *See* 85 Fed. Reg. 30026, 30385 (May 19, 2020).
[153] 34 C.F.R. §106.45(b)(6)(i).
[154] *See* 85 Fed. Reg. at 30349.
[155] 34 C.F.R. §106.45(b)(1)(ii) & (iii); *See* 85 Fed. Reg. 30026, 30238 (May 19, 2020).
[156] 85 Fed. Reg. at 30321.
[157] *See* 85 Fed. Reg. at 30321.
[158] *See* 85 Fed. Reg. at 30221.

and exculpatory (i.e., tending to prove and disprove the allegations) evidence will be weighed in equal fashion.[159]

Except where specifically barred by the Title IX Final Rule, a witness's 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.[160]

The Decision-maker cannot draw an inference about the determination regarding responsibility based solely on a Party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.[161]

The Final Rule requires that SUNY Polytechnic Institute allow Parties to call expert witnesses and character witnesses and present testimony regarding polygraph tests and other procedures that are outside of standard use in academic and non-academic conduct processes.[162] While these witnesses, testimony, and evidence are allowed by the Title IX Final Rule, the Decision-maker will be instructed to afford lower weight to such evidence relative to the testimony of fact witnesses.[163]

Where a Party's or witness's 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's or witness's credibility.[164]

Components of the Determination Regarding Responsibility

The written Determination Regarding Responsibility will be issued simultaneously to all Parties through their institutional email accounts or other reasonable means, as necessary.[165] The Determination will include:

1. Identification of the allegations potentially constituting Covered Sexual Harassment;[166]
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;[167]
3. Findings of fact supporting the determination;[168]
4. Conclusions regarding the application of the Code of Conduct or other applicable policy to the facts;[169]
5. For each allegation:
    i. A statement of, and rationale for, a determination regarding responsibility;

[159] *See* 85 Fed. Reg. at 30221.
[160] *See* 85 Fed. Reg. 30026, 30347 (May 19, 2020).
[161] 34 C.F.R. §106.45(b)(6)(i).
[162] 34 C.F.R. §106.45(b)(5)(iI).
[163] *See* 85 Fed. Reg. at 30221.
[164] 34 C.F.R. §106.71; *see* 85 Fed. Reg. 30026, 30296 (May 19, 2020).
[165] 34 C.F.R. §106.45(b)(7)(iii).
[166] 34 C.F.R. §106.45(b)(7)(ii)(A).
[167] 34 C.F.R. §106.45(b)(7)(ii)(B).
[168] 34 C.F.R. §106.45(b)(7)(ii)(C).
[169] 34 C.F.R. §106.45(b)(7)(ii)(D).

ii. A statement of, and rationale for, any disciplinary sanctions from the Student Code of Conduct the recipient imposes on the Respondent; and

iii. A statement of, and rationale for, whether remedies designed to restore or preserve equal access to SUNY Polytechnic Institute's Education Program or Activity will be provided by SUNY Polytechnic Institute to the Complainant/Reporting Individual;[170] and

6. SUNY Polytechnic Institute's procedures and the permitted reasons for the Complainant and Respondent to appeal (described below in "Appeals").[171]

Timeline of Determination Regarding Responsibility

For cases involving student Respondents, if there are no extenuating circumstances, the determination regarding responsibility will be issued by SUNY Polytechnic Institute within five (5) business days of the completion of the hearing.

Sanctions for Students

For cases with a student Respondent who was determined to be responsible, the written Determination Regarding Responsibility will also include a statement of the sanctions.[172] In determining sanctions, the Panel will consider the severity of the prohibited conduct; the circumstances of the prohibited conduct; the impact of the prohibited conduct and sanctions on the Complainant and remedies for the Complainant; the impact of the prohibited conduct and sanctions and remedies on the community; the impact of the prohibited conduct and sanctions and remedies on the Respondent; prior misconduct by the Respondent, including the Respondent's previous school disciplinary record, both at the institution and elsewhere, and any criminal convictions; the goals of this policy and procedure; and any other mitigating, aggravating, or compelling factors.

The possible sanctions for student Respondents are as follows, in accordance with SUNY Polytechnic Institute's Student Code of Conduct:

Sexual Harassment

- Quid pro quo harassment

  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;

[170] 34 C.F.R. §106.45(b)(7)(ii)(E).
[171] 34 C.F.R. §106.45(b)(7)(ii)(F).
[172] 34 C.F.R. §106.45(b)(7)(ii)(E).

- 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.

The possible sanctions for student Respondents are as follows, in accordance with SUNY Polytechnic's Student Code of Conduct. 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.

- **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.

A. **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.

B. **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.

C. **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.

D. **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.

E. **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.

F. **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 workshop.

G. **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 student's account.

Any student who has been found responsible through this procedure or the student conduct process for committing the act of Rape shall be issued the sanction of suspension or expulsion from SUNY Polytechnic Institute. For any such Respondent, if the Rape was forcible, meaning that the Rape was accomplished by physical force, threat, or drugging by the Respondent, the Respondent shall be issued the sanction of expulsion from SUNY Polytechnic Institute. All decisions must be in writing and must include the rationale for findings of responsibility and sanctions imposed in accordance with this procedure.

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

• 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)	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: • 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
• 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,	A respondent who is placed on suspension, final probation, and/or disciplinary probation/warning, may also receive one or more of the following
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)	Additional sanctions: • 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
*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.	

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
• 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)	A respondent who is placed on suspension and/or final probation, the following additional sanctions are available: • 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
• 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)	A respondent who is placed on suspension, final probation, and/or disciplinary probation the following additional sanctions are available: • 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

Any student who has been found responsible through this procedure or the student conduct process for committing the act of Rape shall be issued the sanction of suspension or expulsion from SUNY Polytechnic Institute. For any such Respondent, if the Rape was forcible, meaning that the Rape was accomplished by physical force, threat, or drugging by the Respondent, the Respondent shall be issued the sanction of expulsion from SUNY Polytechnic Institute All decisions must be in writing and must include the rationale for findings of responsibility and sanctions imposed in accordance with this procedure.

Appeals

Parties may appeal a dismissal of a Formal Complaint, any included allegations and/or a determination regarding responsibility by submitting a written appeal to Director of Community Standards within five (5) business days after receiving the written decision.[173] For student Respondents, appeals will be heard by the Title IX Appeals Panel. Except as required to explain the basis of new evidence, an appeal shall be limited to review of the verbatim record of the proceedings and/or supporting documents. Such

[173] *See* 34 C.F.R. §106.45(b)(8).

appeals shall be in writing and shall be delivered to the [Vice President of Student Affairs/ Title IX Coordinator/ Office of Student Conduct, or designee]. Each Party may appeal the dismissal of a Formal Complaint or any included allegations and/or a determination regarding responsibility on the following bases:

(A) Procedural irregularity that affected the outcome of the matter;[174]
(B) 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;[175] and
(C) The Title IX Coordinator, investigator(s), or decision-maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.[176]

The other Party will be notified in writing when an appeal is filed, and SUNY Polytechnic Institute will implement appeal procedures equally for both Parties.[177]

The Director of Community Standards will administer the appeal process, including notifying the Parties, transmitting the appeal materials to the Appeals Panel, and coordinating applicable deadlines. The Decision-maker for the appeal will not be the same person as the Decision-maker that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator.[178] Both Parties will be provided a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome.[179]

Within six (6) business calendar days of receipt of all appeal materials, the institution will issue a written decision describing the result of the appeal and the rationale for the result and provide the written decision simultaneously to both Parties.[180]

The filing of an appeal stays any sanctions during the pendency of an appeal. Supportive Measures and remote learning opportunities remain available during the pendency of the appeal.

Composition of Panel

The Title IX Appeals Panel will review all student appeals brought forward by either Party in cases involving Title IX. It shall be composed of at least two individuals appointed by the Vice President for Student Affairs who have been trained in accordance with state and federal law. The Panel shall be trained annually on Title IX processes and decision-making.

In the event that a member of the Title IX Appeals Panel cannot hear the case or must recuse themselves, the Vice President for Student Affairs may appoint another panel member to review the case.

[174] 34 C.F.R. §106.45(b)(8)(i)(A).
[175] *34* C.F.R. §106.45(b)(8)(i)(B).
[176] *34* C.F.R. §106.45(b)(8)(i)(C).
[177] *34* C.F.R. §106.45(b)(8)(iii)(A).
[178] *34* C.F.R. §106.45(b)(8)(iii)(B).
[179] *34* C.F.R. §106.45(b)(8)(iii)(D).
[180] *34* C.F.R. §106.45(b)(8)(iii)(E) & (F).

Finality

The determination regarding responsibility becomes final either on the date that SUNY Polytechnic Institute 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" above, or if an appeal is not filed, the date on which the opportunity to appeal expires.[181]

Transcript Notations

For crimes of violence, including, without limitation, sexual violence, defined as crimes that meet the reporting requirements pursuant to the Clery Act (20 U.S.C. 1092(f)(1)(F)(i)(I)-(VIII)), SUNY Polytechnic Institute is required to make a notation on the transcript of a student found responsible for suspension or expulsion, per SUNY Polytechnic Institute's Title IX Grievance Policy .[182]

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.

Retaliation[183]

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

[181] *34* C.F.R. §106.45(b)(7)(iii).
[182] 20 U.S.C. 1092(f)(1)(F)(i)(I)-(VIII); N.Y. Ed. L. § 6444(6) (2015).
[183] *34* C.F.R. §106.71.