



Grievance Procedure for Sex-Based Harassment Complaints for Students

Last Updated: **August 2024**

**GRIEVANCE PROCEDURE FOR SEX-BASED HARASSMENT
COMPLAINTS FOR STUDENTS**

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SECTION I

Effective Date and Changes to Procedure

This Grievance Procedure applies to incidents that occur on or after August 1, 2024. Any incidents reported under this Grievance Procedure that occurred on or before July 31, 2024, will be processed through the institution's Title IX Grievance Policy or the Sexual Violence Response Policy.

Should any portion of the 2024 Title IX Final Rule (89 Fed. Reg. 33474 (Apr. 29, 2024)), be stayed or held invalid by a court of law, or if the 2024 Title IX Final Rule is withdrawn or modified to not require elements of this Procedure, the Procedure in its entirety, or the invalidated elements of this Procedure, they will be deemed revoked as of the publication date of the opinion or order from the Court 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 the date of the opinion or order publication by the Court. If this Procedure is revoked in this manner, any conduct covered under this Procedure shall be investigated and adjudicated under the previous 2020 Title IX Grievance Policy or the Sexual Violence Response Policy. SUNY WCC will update this Procedure as soon as practicable to reflect any court rulings or changes that invalidate parts of the Procedure, if applicable.

SECTION II

Scope of Procedure

Sex-Based Harassment is considered discrimination on the basis of sex if it includes harassment due to actual or perceived sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and/or gender identity.

SECTION III

Jurisdiction of Procedure

The Title IX Coordinator will determine if this Grievance Procedure applies to a Complaint. This Grievance Procedure will apply when the following elements are met, in the reasonable determination of the Title IX Coordinator:

- The conduct alleged occurred on or after August 1, 2024
- The conduct alleged occurred in the United States
- The conduct alleged occurred on campus, off campus, or while studying abroad
- The conduct alleged occurred in SUNY WCC's Education Program or Activity; and
- The conduct alleged, if true, would constitute Sex-Based Harassment as defined in this Grievance Procedure.

NOTE: SUNY WCC has an obligation to address a sex-based hostile environment under its Education Program or Activity, even when some conduct alleged to be contributing to the Hostile Environment occurred outside SUNY WCC's Education Program or Activity, or outside of the United States. SUNY WCC's Title IX Coordinator will work with all Complainants to assess such complaints that may fall under these criteria, and direct to appropriate College Policies and Procedures that may apply if this Grievance Procedure does not. SUNY WCC will communicate all such decisions in writing to the Complainant. Any dismissals are subject to appropriate appeals under this Grievance Procedure as outlined in *Dismissals*.

Conduct that occurs under SUNY WCC's Education Program or Activity includes but is not limited to conduct that occurs in a building owned or controlled by a student organization that is officially recognized by SUNY WCC and conduct that is subject to SUNY WCC's disciplinary authority under The Student Code of Conduct.

If all elements of jurisdiction are met, SUNY WCC will investigate the allegations according to this Grievance Procedure as appropriate, unless informal resolution is pursued or there are grounds for dismissal of the complaint.

SECTION IV

Non-Discrimination in Application

The requirements and protections of this policy apply equally regardless of sex, sexual orientation, gender identity, gender expression, race, color, national origin, religion, creed, age, disability, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, criminal conviction, or other protected classes covered by applicable federal, state, or local law. All requirements and protections are equitably provided to individuals regardless of such protected status(es) 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 using contact information available at <https://ocrcas.ed.gov/contact-ocr>. Individuals may also file complaints with the New York State Division of Human Rights (DHR), using contact information available at <https://dhr.ny.gov/complaint>.

SECTION V

Students' Bill of Rights

All Students have the right to:

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

SECTION VI Definitions

1. **Accused** means a person accused of a violation who has not yet officially entered the grievance process.
2. **Admission** means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an Education Program or Activity operated by SUNY WCC.
3. **Advisor or Advisor of Choice** means any person who may be, but is not required to be, an attorney who accompanies a Party to any meeting or hearing the Party is eligible to attend. The advisor may accompany the Parties but may not speak for the Party. An advisor of choice is not prohibited from being a witness in a hearing. The Advisor may not directly address Hearing Officers, Investigators, question witnesses, or otherwise actively participate in the grievance procedures, but may speak privately with the advisee during the proceedings.
4. **Bystander** means a person who observes a crime, impending crime, conflict, potentially violent or violent behavior, or conduct that is in violation of the rules or policies of an institution.
5. **Code of Conduct or Student Code of Conduct** means the written policies adopted by an institution governing student behavior, rights, and responsibilities.
6. **College or SUNY WCC or WCC** means SUNY Westchester Community College.
7. **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.
 - (1) 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.
 - (2) Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
 - (3) Consent may be initially given but withdrawn at any time.
 - (4) 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.
 - (5) Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
 - (6) When consent is withdrawn or can no longer be given, sexual activity must stop."Consent" and "affirmative consent" may be used interchangeably under this Grievance Procedure.
8. **Complainant** means:
 - (1) a student or employee who is alleged to have been subjected to conduct that could constitute Sex-Based Harassment as defined in these procedures and who was participating or attempting to participate in SUNY WCC's Education Program or Activity;
 - (2) a person other than a student or employee who is alleged to have been subjected to conduct that could constitute Sex-Based Harassment under this grievance procedure and who was participating or attempting to participate in WCC's Education Program or Activity at the time of the alleged Sex-Based Harassment; or

- (3) A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a Complainant.

A Complainant may also be referred to as a Reporting Individual in this Grievance Procedure, in alignment with New York State Education Law Article 129-B.

9. **Complaint** means an oral or written request to SUNY WCC that objectively can be understood as a request for SUNY WCC to investigate and make a determination about alleged Sex-Based Harassment at the institution.
10. **Confidential Employee** means:
 - (1) an employee of SUNY WCC whose communications are privileged under Federal or State law. The employee's confidential status is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies;
 - (2) an employee of SUNY WCC whom the recipient has designated as confidential for the purpose of providing services to persons related to Sex-Based Harassment. If the employee also has a duty not associated with providing those services, the employee's confidential status is only with respect to information received about Sex-Based Harassment in connection with providing those services; or
 - (3) an employee of SUNY WCC who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about Sex-Based Harassment. The employee's confidential status is only with respect to information received while conducting the study.
11. **Director of Student Support Services** is the person who oversees student conduct proceedings or their designee.
12. **Disciplinary Sanctions or Sanctions** means consequences imposed on a Respondent following a determination under this grievance procedure that the Respondent violated SUNY WCC's prohibition Sex-Based Harassment.
13. **Education Program or Activity** means any academic, extracurricular, research, occupational training or other Education Program or Activity operated by SUNY WCC that receives Federal financial assistance.
14. **Hearing Chair** is an individual employed by the Westchester Community College, the WCC Faculty Student Association, or WCC Foundation who is authorized to lead or facilitate the proceedings of a Hearing. Subject to the provisions in these procedures, a Hearing Officer is vested with the authority to, among other duties, conduct a hearing; remove participants from a Hearing; etc.
15. **Hearing Officers or Hearing Body** is an individual or group of individuals employed by the Westchester Community College, the WCC Faculty Student Association, or WCC Foundation who is authorized to determine the appropriate resolution of the grievance, and/or to recommend sanctions or affect other remedies as appropriate. Subject to the provision in this policy, a Hearing Officer is vested with the authority to, among other duties, conduct and/or participate in a hearing; determine outcomes to charges; and recommend sanctions.
16. **Party** means Complainant or Respondent.
17. **Peer Retaliation** means Retaliation by a Student against another Student.
18. **Relevant** means related to the allegations of Sex-Based Harassment under investigation as part of this Grievance Procedure. Questions are Relevant when they seek evidence that may aid in showing whether the alleged Sex-Based Harassment occurred, and evidence is Relevant when it may aid a decisionmaker in determining whether the alleged Sex-Based Harassment occurred.
19. **Remedies** means measures provided, as appropriate, to a Complainant or any other person SUNY WCC identifies as having had their equal access to SUNY WCC's Education Program or Activity limited or denied by Sex-Based Harassment. These measures are provided to restore or preserve that person's access to SUNY WCC's Education Program or Activity after SUNY WCC determines that Sex-Based Harassment occurred.

20. **Respondent** means a person who is alleged to have violated SUNY WCC’s prohibition on Sex-Based Harassment.
21. **Retaliation** means intimidation, threats, coercion, or discrimination by any person by SUNY WCC, a Student, or an employee or other person authorized by SUNY WCC to provide aid, benefit, or service under SUNY WCC’s Education Program or Activity, for the purpose of interfering with any right or privileged secured by Title IX, or because the person has reported information, made a complaint, testified, assisted or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this grievance procedure including an informal resolution process.
22. **Sex-Based Harassment** means sexual harassment and other harassment on the basis of sex, including harassment because of gender identity, sexual orientation, sex characteristics, sex stereotypes, and/or pregnancy and other conditions, that is:

- (1) Quid pro quo harassment. An employee, agent or other person authorized by SUNY WCC’s Education Program or Activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person’s participation in unwelcome sexual conduct;
- (2) Hostile Environment harassment. Conduct that is, based on the totality of the circumstances:
 - a. Unwelcome;
 - b. sex-based;
 - c. is subjectively and objectively offensive;
 - d. so severe or pervasive;
 - e. that it limits or denies a person’s ability to participate in or benefit from SUNY WCC’s Education Program or Activity (i.e., creates a hostile environment).

Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

- a. the degree to which the conduct affected the Complainant’s ability to access SUNY WCC’s Education Program or Activity;
 - b. the type, frequency, and duration of the conduct;
 - c. the Parties’ ages, roles within SUNY WCC’s Education Program or Activity, previous interactions and other factors about each Party that may be Relevant to evaluating the effects of the conduct;
 - d. the location of the conduct and the context in which the conduct occurred; and
 - e. other Sex-Based Harassment in SUNY WCC’s Education Program or Activity;
- B. Sexual Assault (as defined in the Clery Act, 20 U.S.C. 1092(f)) means any sexual act directed against another person, without the Consent of the victim, including instances where the victim is incapable of giving Consent, sexual assault can include, but is not limited to:
- a. Sexual Assault I
Sexual intercourse or any sexual penetration, no matter how slight, of another person’s oral, anal, or genital opening with any object (an object includes but is not limited to parts of a person’s body) without the active consent of the victim.
 - b. Sexual Assault II
Touching a person’s intimate parts (defined as genitalia, groin, breast, or buttocks) for the purpose of sexual gratification, whether directly or through clothing, without the active consent of the victim. Sexual Assault II also includes forcing an unwilling person to touch another’s intimate parts.

c. Sexual Exploitation

Intentionally engaging in or attempting to engage in abusive sexual behavior without affirmative consent that does not otherwise constitute Sexual Assault I or Sexual Assault II. Examples include, but are not limited to:

- i. intentional, nonconsensual tampering with or removal of condoms or other methods of birth control and STI prevention prior to or during sexual contact in a manner that significantly increases the likelihood of STI contraction and/or pregnancy by the non-consenting party;
- ii. nonconsensual video or audio recording of sexual activity;
- iii. sharing and/or allowing others to watch consensual or nonconsensual sexual activity without the consent of a sexual partner;
- iv. observing others engaged in dressing/undressing or in sexual acts without their knowledge or consent; trafficking people to be sold for sex;
- v. inducing incapacitation with the intent to sexually assault another person;
- vi. creating, possessing or distributing the sexual performance of a child; and
- vii. aiding, abetting, or otherwise facilitating sexual activity between persons without the affirmative consent of one or more party

C. Dating Violence (as defined in the Violence Against Women Act (VAWA) Reauthorization of 2022 and the VAWA Amendments to the Clery Act) means 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.

D. Domestic Violence means any felony or misdemeanor crimes committed by a person who: (A) is a current or former partner of the victim under the family or domestic violence laws of New York, or a person similarly situated to a spouse of the victim; (B) is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner; (C) shared 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; or

2. Stalking means engaging in a course of conduct, directed at a specific person, which is likely to cause a reasonable person to:

- a. fear for their safety or the safety of others; or
- b. cause that person to suffer substantial emotional distress.

Stalking does not require direct contact between parties and can be accomplished in many ways, including through the use of electronic media such as the internet, pagers, cell phones, or other similar devices. Tactics used may include, but are not limited to: watching, following, using a tracking device, monitoring online activity, unwanted contact, property invasion or damage, hacking accounts, threats, violence, sabotage, or attacks.

Whether stalking has occurred is a fact-specific inquiry that includes consideration of the following:

- a. Duration
- b. Frequency
- c. Intensity

23. **Student** means any person registered for courses, either full time or part time, pursuing undergraduate studies as well as non-degree seeking students; individuals who are term active but are between academic terms or not enrolled at the College; individuals taking online classes; individuals auditing classes; and individuals that were enrolled on the date of an alleged incident.
24. **Supportive Measures** means individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a Complainant or Respondent, not for punitive or disciplinary reasons, and without fee or charge to the Complainant or Respondent to: (1) restore or preserve that Party's access to SUNY WCC's Education Program or Activity, including measures that are designed to protect the safety of the Parties or SUNY WCC's educational environment; or (2) provide support during SUNY WCC's grievance procedures for Sex-Based Harassment or during the informal resolution process.
25. **Title IX Coordinator** means the SUNY WCC Title IX Coordinator and/or their designee.
26. **Vice President of Student Affairs or VPSA** is the Chief Student Affairs Officer of the College and/or their designee.

SECTION VII

Disability Accommodations

This procedure does not alter any institutional obligations under applicable federal state, and/or local disability laws, including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973, among others. Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point before or during the Title IX Grievance Procedure that do not fundamentally alter the Procedures. 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.

Requests for Reasonable Accommodations During the Title IX Grievance Procedure

If the Complainant or Respondent discloses a disability, the Title IX Coordinator may consult, as appropriate, with the Office of Accessibility Services to provide support to students with disabilities to determine how to comply with applicable law including, without limitation, Section 504 of the Rehabilitation Act of 1973 in the implementation of any Supportive Measures, or any other reasonable accommodations requested during the Grievance Procedure.

SECTION VIII

Policy for Alcohol and/or Drug Amnesty

The health and safety of every student at SUNY WCC is of utmost importance. SUNY WCC 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 WCC strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to institution officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to SUNY WCC's officials or law enforcement will not be subject to SUNY WCC'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.

SECTION IX

Basic Requirements of the Grievance Procedure

SUNY WCC is required to:

- Treat Complainants and Respondents equitably;
- Ensure that any person designated by SUNY WCC as a Title IX Coordinator, investigator, or decisionmaker does not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent;
- Establish reasonably prompt timeframes for the major stages of this Grievance Procedure, including a process that allows for the reasonable extension of timeframes on a case-by-case basis for good cause with notice to the Parties that includes the reason for the delay;
- Ensure that reasonable steps to protect the privacy of the Parties and witnesses during the pendency of the Grievance Procedure are taken, 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;
- Ensure an objective evaluation of all evidence that is Relevant and not otherwise impermissible under this Procedure, including both inculpatory and exculpatory evidence, and provide that credibility determinations must not be based on a person's status as a Complainant, Respondent or Witness;
- Exclude impermissible evidence from consideration as defined in the Grievance Procedure; and
- Clearly articulate principles for how SUNY WCC will determine which policies and procedures apply if not all such complaints are handled under this institutional Grievance Procedure.

NOTE: The decisionmaker may be the same person as the Title IX Coordinator or investigator as allowed by the 2024 Title IX Regulations; no inference of bias or conflict of interest can be drawn solely because the decisionmaker is the same person as the Title IX Coordinator or investigator in a case.

Per New York State Law, SUNY WCC is required to additionally ensure that Complainants are advised of their right to:

- Notify SUNY WCC Security Office, local law enforcement, and/or state police;
- Have emergency access to a Title IX Coordinator or other appropriate official trained in interviewing victims of sexual assault who shall be available upon the first instance of disclosure by a Complainant to provide information regarding options to proceed, and, where applicable, the importance of preserving evidence and obtaining a sexual assault forensic examination as soon as possible, and detailing that the criminal justice process utilizes different standards of proof and evidence and that any questions about whether a specific incident violated New York Penal Law should be addressed to law enforcement or to the district attorney, who shall also explain whether he or she is authorized to offer the reporting individual confidentiality or privacy, and shall inform the Complainant of other reporting options;
- Disclose confidentially the incident to institution representatives, who may offer confidentiality pursuant to applicable laws and can assist in obtaining services for Complainants;
- Disclose confidentially the incident and obtain services from the state or local government;
- Disclose the incident to institution representatives who can offer privacy or confidentiality, as appropriate, and can assist in obtaining resources for reporting individuals;

- File a report of sexual assault, domestic violence, dating violence, and/or stalking and the right to consult the Title IX Coordinator and other appropriate institution representatives for information and assistance, ensure that Complainants know that reports shall be investigated in accordance with this Grievance Procedure and/or any other institutional policies that may be applicable, and ensure that a Complainant's identity will remain private at all times if said Complainant wishes to maintain privacy;
- Disclose, if the accused is an employee of SUNY WCC, the incident to SUNY WCC's Human Resources Department or the right to request that a confidential or private employee assist in reporting to the appropriate representative for the Human Resources Department, at which point, such referral shall be handled according to the appropriate policies and procedures related to employee complaints;
- Receive assistance from appropriate SUNY WCC representatives in initiating legal proceedings in family court or civil court; and
- Withdraw a complaint or involvement from SUNY WCC's Grievance Procedure at any time.

SECTION X

Reporting Sex-Based Harassment Occurring Between Students to the Institution

Non-Confidential Reports

Any person may report sex discrimination, including Sex-Based Harassment (whether or not the person reporting is the person alleged to be the victim of the conduct that may constitute sex discrimination or Sex-Based Harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed below for the Title IX Coordinator. There are other ways in which an employee may notify the Title IX Coordinator, including completing a Sexual Violence/Sexual Misconduct Incident Report which can be found at www.sunywcc.edu/incidentreport. A person can submit a verbal or written report to the Title IX Coordinator.

Contact Information for the Title IX Coordinator at SUNY WCC

Name: Dr. Rinardo Reddick
Title: Chief Diversity Officer/Title IX Coordinator
Office: Academic Arts Building, Room 302
Email Address: rinardo.reddick@sunywcc.edu
Telephone Number: 914-606-6313

The following officials at SUNY WCC will provide privacy, but not confidentiality, upon receiving a report of conduct prohibited by Title IX:

- Title IX Coordinator or designee(s);
- All other employees at SUNY WCC that are not designated as confidential resources.

Mandatory Employee Reporting

SUNY WCC requires that any employee, who is not a Confidential Employee (see *Confidential Reports* below for more), who has information about conduct that reasonably may constitute Sex Discrimination, including Sex-Based Harassment, report that information to the Title IX Coordinator, whose contact information is listed above. There are other ways in which an employee may notify the Title IX Coordinator, including completing a Sexual Violence/Sexual Misconduct Incident Report which can be found at www.sunywcc.edu/incidentreport.

At the first instance of disclosure by a Complainant to a SUNY WCC representative, the following information shall be presented to the Complainant:

“You have the right to make a report to university police or campus security, local law enforcement, and/or state police or choose not to report; to report the incident to your institution; to be protected by the institution from Retaliation for reporting an incident; and to receive assistance and resources from your institution.”

NOTE: If an employee has personally been subject to conduct that reasonably may constitute Sex Discrimination, including Sex-Based Harassment, under Title IX or any institutional policy or this Grievance Procedure, these requirements do not apply to an employee reporting a personal Complaint.

Confidential Reports

On-Campus Confidential Reporters

The following officials at SUNY WCC may provide confidentiality:

- Licensed Mental Health Counselors in the Department of Mental Health & Counseling Services
- Registered Nurses in the Health Services Office

Off-Campus Confidential Reporters

There are other confidential options available for crisis intervention, resources and referrals, but these are not reporting mechanisms to the institution, meaning disclosure to these entities does not provide information to WCC.

Complainants are encouraged to additionally contact a campus confidential or private resource so that SUNY WCC can take appropriate action in these cases. Some resources for confidential disclosure **NOT** to the institution are:

- The New York State Office for the Prevention of Domestic Violence: www.opdv.ny.gov/help/dvhotlines.html. Additional disclosure and assistance (presented in several languages): <http://www.opdv.ny.gov/help/index.html> (or by calling 1-800-942-6906).
- SurvJustice: <http://survjustice.org/our-services/civil-rights-complaints/>;
- Legal Momentum: <https://www.legalmomentum.org/>;
- NYSCASA: <https://nyscasa.org/responding>;
- NYSCADV: <http://www.nyscadv.org/>;
- Pandora's Project: <http://www.pandys.org/lgbtsurvivors.html>;
- GLBTQ Domestic Violence Project: <http://glbtqdv.org/>;
- RAINN: <https://www.rainn.org/get-help>; and
- Safe Horizons: <http://www.safehorizon.org/>

Privacy vs. Confidentiality

References made to confidentiality refer to the ability of identified confidential resources to not report crimes and violations to law enforcement or college officials without permission, except for extreme circumstances, such as a health and/or safety emergency or child abuse.

References made to privacy mean SUNY WCC 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 WCC will limit the disclosure as much as practicable, even if the Title IX Coordinator determines that the request for confidentiality cannot be honored.

Public Awareness Events

When SUNY Westchester Community College 's Title IX Coordinator is notified of information about conduct that reasonably may constitute sex-based harassment under Title IX or this policy that was provided by a person during a public event to raise awareness about sex-based harassment that was held on SUNY Westchester Community College 's campus or through an online platform sponsored by it, SUNY Westchester Community College is not obligated to act in response to the information, unless it indicates an imminent and serious threat to the health or safety of a Complainant, any students, employees, or other persons.

However, in all cases SUNY Westchester Community College must use this information to inform its efforts to prevent sex-based harassment, including by providing tailored training to address alleged sex-based harassment in a particular part of its Education Program or Activity or at a specific location when information indicates there may be multiple incidents of sex-based harassment.

Nothing in Title IX or this policy obligates SUNY Westchester Community College to require its Title IX Coordinator or any other employee to attend such public awareness events.

SECTION XI Supportive & Interim Measures

Providing Supportive Measures

Complainants who report allegations of Sex-Based Harassment have the right to receive supportive measures from SUNY WCC regardless of whether they file a complaint. Supportive measures are reasonable and available interim measures and accommodations that effect a change in academic, housing, employment, transportation, or other applicable arrangements in order to help ensure safety, prevent retaliation and avoid an ongoing hostile environment, consistent with the institution's policies and procedures. Supportive measures are non-disciplinary and non-punitive. Supportive measures may vary depending upon what is reasonably available at SUNY WCC.

Both the accused or respondent and the reporting individual shall, upon request and consistent with the institution's policies and procedures, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of any such interim measure and accommodation that directly affects them and shall be allowed to submit evidence in support of his or her request.

As appropriate, supportive measures may include without limitation:

- Counseling services
- Extensions of deadlines or other course-related adjustments
- Modifications of work or class schedules
- Campus escort services, as available
- Restrictions on contact applied to one or more Parties, which can include:
 - **No Contact Order:** an official notification to the accused/Respondent that they must no longer contact another person(s), referred to as the protected individual/person. Continuing to contact the protected individual/person is a violation of college policy subject to conduct charges. If the accused/Respondent and the protected individual/person observe each other in a public place, it is the responsibility of the accused/Respondent to leave the area immediately and without directly contacting the protected person. The College may establish an appropriate schedule for the accused/Respondent to access applicable institution buildings and property at a time when such buildings and property are not being accessed by the Reporting Individual.
 - **Cease & Desist Directive:** a written directive to multiple parties prohibiting contact with each other, either directly or through a third party for a temporary duration of time, such as, until one party is no longer a student at the College.
- Changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative
- Increased security and monitoring of certain areas of the campus
- Training and education programs related to Sex-Based Harassment
- Assistance by SUNY WCC's Department of Security, if applicable, or other officials in obtaining an order of protection or, if outside of New York state, an equivalent protective or restraining order

Supportive measures must not unreasonably burden either Party and must be designed to protect the safety of the Parties or SUNY WCC's educational environment, or to provide support during SUNY WCC's Sex-Based Harassment grievance procedures under this policy or during informal resolution under this procedure.

SUNY WCC may modify or terminate supportive measures at the conclusion of the grievance procedures or at the conclusion of the informal resolution process, or may continue them beyond that point within SUNY WCC's discretion.

NOTE: A No Contact Order will cease at the conclusion of the grievance procedures or at the conclusion of the informal resolution process unless imposed as a sanction at the conclusion of a hearing or agreed to as part of the informal resolution process.

SUNY WCC will not disclose information about any supportive measures to persons other than the person to whom they apply, including informing one Party of supportive measures provided to another Party, unless necessary to provide the supportive measure or restore or preserve a Party's access to SUNY WCC's Education Program or Activity, or there is an exception that applies, such as:

- SUNY WCC has obtained prior written consent from a person with the legal right to consent to the disclosure;
- When the information is disclosed to an appropriate third Party with the legal right to receive disclosures on behalf of the person whose personally identifiable information is at issue;
- To carry out the purpose of the policy when it is necessary to address conduct that reasonably may constitute Sex-Based Harassment under Title IX in SUNY WCC's Education Program or Activity;
- As required by Federal law, federal regulations, or the terms and conditions of a federal award; or
- To the extent such disclosures are not otherwise in conflict with Title IX, when required by State or local law or when permitted under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g, or its implementing regulations, 34 CFR Part 99).

Note on Orders of Protection and their equivalent: SUNY WCC must provide a copy of the order of protection or equivalent when it is received by SUNY WCC, and Parties shall have the opportunity to meet or speak with the Title IX Coordinator, who can explain the order and answer questions about it, including information from the order about the Accused's/Respondent's responsibility to stay away from the protected person or persons. Parties are entitled to an explanation of the consequences for violating these orders, including without limitation, arrest, additional conduct charges, and interim suspension or emergency removal, as applicable. A Complainant is also entitled to receive assistance from the SUNY WCC Security Department in effecting an arrest when an individual violates an order of protection or, if the SUNY WCC Security Department does not possess arresting powers, then to call on and assist local law enforcement in effecting an arrest for violating such order, in accordance with limits on current law enforcement jurisdiction and procedures.

Process for Review of Supportive Measures

SUNY WCC provides for a Complainant or Respondent to seek modification or reversal of SUNY WCC's decision to provide, deny, modify or terminate a supportive measure. Grounds for challenge of supportive measures include, but are not limited to:

- Whether a supportive measure is reasonably burdensome;
- Whether a supportive measure is reasonably available;
- Whether a supportive measure is being imposed for punitive or disciplinary reasons;
- Whether the supportive measure is being imposed without fee or charge; and
- Whether the supportive measure is effective in meeting the purposes for which it is intended, including to restore or preserve access to the Education Program or Activity, provide safety, or provide support during the Grievance Procedure.

Both the accused or respondent and the reporting individual shall be afforded a prompt review, reasonable under the circumstances, of the need for and terms of any such interim measure and accommodation that directly affects them and shall be allowed to submit evidence in support of their request. Parties are only allowed to challenge their own individual supportive measures. Challenges by one Party will not be heard to supportive measures afforded to the opposite Party, unless that supportive measure directly impacts the Party making such challenge (i.e., two-way no contact orders).

Requests for a modification or reversal of a supportive measure must be timely and should be submitted within three (3) calendar days. Such requests must be sent to studentlifedean@sunywcc.edu and SUNY WCC will conduct a fact specific inquiry into timeliness. Such requests may be no longer than 5 pages (including attachments). Such requests should be submitted in electronic form using CALIBRI or TIMES NEW ROMAN, 12-point font, and single-spaced. Such requests should use footnotes, not endnotes.

This review will be conducted by the Vice President of Student Affairs (VPSA). The VPSA will have the authority to modify or reverse the decision if the VPSA determines that the decision to provide, deny, modify, or terminate the supportive measure was inconsistent with the procedures as outlined above for providing supportive measures in accordance with the Title IX regulations.

Emergency Removal

SUNY WCC retains the authority to remove a Respondent from all or part of SUNY WCC's Education Program or Activity on an emergency basis, where SUNY WCC (1) undertakes an individualized safety and risk analysis, and (2) determines that an imminent and serious threat to the health or safety of a Complainant or any students, employees, or other persons arising from the allegations of Sex-Based Harassment justifies removal.

SUNY WCC will provide the Respondent with notice and an opportunity to challenge the decision immediately following the removal. SUNY WCC will provide the Respondent with notice and an opportunity to challenge the decision immediately following the removal. Students who have Emergency Removal imposed onto them shall be able to appeal or request a modification to the parameters of the imposed actions. Students must submit, in writing, to studentlifedean@sunywcc.edu, their specific request and provide any information, documentation or further evidence to support their request within three (3) calendar days from the date they are notified of the imposed actions. The request will be reviewed by the Vice President of Student Affairs; their decision will be final. The decisionmaker who hears a challenge to an emergency removal must not be involved in any decision regarding responsibility or appeal of a determination.

Emergency removals will not be considered Relevant evidence that can be considered in reaching a determination of whether Sex-Based Harassment occurred.

Administrative Leave

SUNY WCC retains the authority to place an employee Respondent on administrative leave during the Grievance Procedure, consistent with relevant employee handbook/collective bargaining agreements.

NOTE: when a Complainant or Respondent is both a student and an employee of SUNY WCC, SUNY WCC must make a fact-specific inquiry to determine whether this procedure applies to that student employee. SUNY WCC will consider if the Complainant or Respondent's primary relationship with SUNY WCC is to receive an education and whether the alleged Sex-Based Harassment occurred while the Party was performing employment-related work.

SECTION XII

Title IX Grievance Procedures for Sex-Based Harassment Occurring Between Students

Filing a Complaint

The following individual can file a Complaint:

- A Complainant (as defined in Section VI.8. of this Grievance Procedure); or
- The Title IX Coordinator, per the following:
 - In the absence of a Complaint or the withdrawal of any or all of the allegations in a Complaint, and in the absence or termination of an Informal Resolution process, the Title IX Coordinator must determine whether to initiate a Complaint of Sex-Based Harassment. This determination is fact-specific, and the Title IX Coordinator must consider:
 - The Complainant's request not to proceed with the initiation of a Complaint;
 - The Complainant's reasonable safety concerns regarding initiation of a Complaint;
 - The risk that additional acts of Sex-Based Harassment would occur if a complaint is not initiated;
 - The severity of the alleged Sex-Based Harassment, including whether the Sex-Based Harassment, if established, would require the removal of a Respondent from campus or imposition of another Disciplinary Sanction to end the Sex-Based Harassment and prevent its recurrence;
 - The age and relationship of the Parties, including whether the Respondent is an employee of SUNY WCC;
 - The scope of the alleged Sex-Based Harassment, including information suggesting a pattern, ongoing Sex-Based Harassment, or Sex-Based Harassment alleged to have impacted multiple individuals;
 - The availability of evidence to assist a decisionmaker in determining whether Sex-Based Harassment occurred; and
 - Whether SUNY WCC could end the alleged Sex-Based Harassment and prevent its recurrence without initiating this Grievance Procedure
 - If after considering these and other Relevant factors, the Title IX Coordinator determines that the conduct as alleged present as an imminent and serious threat to the health or safety of the Complainant or other person, or that the conduct as alleged prevents SUNY WCC from ensuring equal access on the basis of sex to its Education Program or Activity, the Title IX Coordinator may initiate a Complaint.
 - If the Title IX Coordinator does initiate the Complaint after making this determination, the Title IX Coordinator must notify the Complainant prior to doing so and appropriately address reasonable concerns about the Complainant's safety or the safety of others, including by providing Supportive Measures as listed in Section VI of this Grievance Procedure.

As defined in VI.8. of this Grievance Procedure, a Complaint can be an oral or written request to SUNY WCC that objectively can be understood as a request for SUNY WCC to investigate and make a determination about alleged Sex-Based Harassment at the institution.

Who Can Individuals Report A Complaint To?

Any reports of Sex-Based Harassment may be made directly to the Title IX Coordinator, whose contact information is listed in Section X of these procedures. There are other ways in which a Party may report a Complaint, including completing a Sexual Violence/Sexual Misconduct Incident Report which can be found at www.sunywcc.edu/incidentreport.

Individuals can also report to any employee at SUNY WCC. See *Section X. Mandatory Employee Reporting* and *Section X. Confidential Reports* of these procedures for more information.

Timeframe For SUNY WCC To Evaluate If the Title IX Coordinator Is Initiating An Investigation

The Title IX Coordinator must evaluate whether the Complaint falls under this Grievance Procedure 10 calendar days after the Complaint is made and must issue the Notice of Allegations as soon as practicable after the Complaint is evaluated. If there are any delays or extensions, the Title IX Coordinator must appropriately notice the Parties in writing, on a case-by-case basis, with good cause and the rationale for the extension or delay.

Making A Complaint, Requesting Initiation of Grievance Procedure & Filing A Complaint to Law Enforcement

SUNY WCC has an obligation to appropriately evaluate all Complaints, regardless of whether there is a concurrent complaint before law enforcement. This process is an administrative process that is different from the criminal justice process. Per New York state law, it is required that SUNY WCC's process run concurrently with a criminal justice investigation and proceeding, however, temporary delays are allowed as requested by external municipal entities while law enforcement gathers evidence. Temporary delays should not last more than ten days except when law enforcement specifically requests and justifies a longer delay.

Multi-Party Situations and Consolidation of Complaints

SUNY WCC may consolidate complaints alleging Sex-Based 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 Sex-Based Harassment arise out of the same facts or circumstances.

WCC can consider factors when making this fact-specific determination, which include, but are not limited to:

- The facts and circumstances of the particular complaints when deciding whether to consolidate, including the toll of separate proceedings on the Parties; and
- Any risks to the fairness of the investigation or outcome.

Allegations Potentially Falling Under Two Policies

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

Advisors Of Choice and Participation of Advisors of Choice

SUNY WCC will provide the Parties with the same opportunities to be accompanied to any meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of the advisor for the Complainant or Respondent in any meeting or proceeding unless such advisor does not follow SUNY WCC's established rules of decorum and rules around participation. The advisor shall not represent or speak for the student and shall not participate directly in any meeting or proceeding. The advisor may be present and speak privately with the student during any meeting. It is responsibility of the student to find their own advisor.

Dismissal of a Complaint

Grounds For Dismissal

SUNY WCC may dismiss a complaint of Sex-Based Harassment for any of the following reasons:

- SUNY WCC is unable to identify the Respondent after taking reasonable steps to do so;
- The Respondent is not participating in SUNY WCC's Education Program or Activity and is not employed by SUNY WCC;
- The Complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint of these procedures, and SUNY WCC determines that, without the Complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute Sex-Based Harassment under Title IX or this grievance procedure even if proven; or
- SUNY WCC determines that the conduct alleged in the complaint, even if proven, would not constitute Sex-Based Harassment under Title IX or these procedures. Note: SUNY WCC must make reasonable efforts to clarify the allegations with the Complainant before dismissing under this basis.

Notice Of Dismissal

If SUNY WCC dismisses a complaint, SUNY WCC is required to promptly notify the Complainant of the basis for dismissal.

If the dismissal of the complaint occurs before a Notice of Allegations is issued to the Respondent, the Title IX Coordinator does not need to notify the Respondent at that time. However, if the Complainant appeals the dismissal, the Respondent will need to be notified of the complaint allegations and given an opportunity to respond to the dismissal. If the dismissal occurs after the Respondent has been notified of the allegations, then SUNY WCC must notify the Respondent and Complainant of the dismissal and the basis for the dismissal simultaneously in writing.

Appeal rights must also be outlined in any notification of dismissal of a complaint, as included below under *Appeal of Dismissals*.

Appeals Of Dismissals

SUNY WCC must notify the Complainant that a dismissal may be appealed and provide the Complainant with an opportunity to appeal the dismissal of a complaint on the following grounds:

- **Procedural Irregularity**: Procedural irregularity that affected the outcome of the matter (i.e., a failure to follow SUNY WCC's own policy to a degree that had material effect on the outcome of the matter);
- **New Evidence**: New evidence that would change the outcome and that was not reasonably available when the determination whether Sex-Based Harassment occurred, or dismissal of the complaint was made; and
- **Conflict Of Interest or Bias**: The Title IX Coordinator, investigator(s), or decisionmaker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that would change the outcome of the matter.

If the dismissal occurs after the Respondent has been notified of the allegations, then SUNY WCC must also notify the Respondent that the dismissal may be appealed on the grounds set out above.

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

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

Appeals may be no longer than 5 pages (including attachments). Appeals must be submitted to studentlifedean@sunywcc.edu, within three (3) calendar days from the date they are notified of the dismissal. Appeal should be submitted in electronic form using CALIBRI or TIMES NEW ROMAN, 12-point font, and single-spaced. Appeals should use footnotes, not endnotes. Appeals that do not meet these standards may be returned to the Party for correction, but the time for appeal will not be extended unless there is evidence that technical malfunction caused the appeal document not to meet these standards.

Appeals will be decided by a three-member appeal panel consisting of Dean of Student Life or designee and two other designated College officials of the Dean's choice, who will be free of conflict of interest and bias, and will not serve as investigator, Title IX Coordinator, or hearing decisionmaker in the same matter.

Outcome of appeal will be provided in writing simultaneously to both Parties and include rationale for the decision.

Notice of Allegations

Upon initiating SUNY WCC's Grievance Procedures, the Title IX Coordinator shall provide a notice of allegations in writing to the Parties whose identities are known. Such notice will occur as soon as practicable after SUNY WCC receives a complaint if there are no extenuating circumstances. SUNY WCC will provide the Notice of Allegations within 10 calendar days after receiving a complaint.

What Does the Notice Of Allegations Include?

The written Notice of Allegations must include:

- SUNY WCC's Grievance Procedures and SUNY WCC's Informal Resolution process;
- Sufficient information available at the time of the issuance of the Notice of Allegations to allow the Parties to respond to the allegations, which includes the identities of the Parties involved in the incident(s), the conduct alleged to constitute Sex-Based Harassment under the Grievance Procedures, and the date(s) and location(s) of the alleged incident(s), to the extent that information is available to SUNY WCC;
- A statement that the Parties are entitled to:
 - an accurate description of the Relevant and not otherwise impermissible evidence, with an equal opportunity for the Parties to access the underlying Relevant and not otherwise impermissible evidence upon request of any Party;
- A statement that the Respondent is presumed not responsible for the alleged Sex-Based Harassment until a determination is made at the conclusion of SUNY WCC's Grievance Procedure and that prior to the determination, the Parties will have an opportunity to present Relevant and not otherwise impermissible evidence to a trained, impartial decisionmaker;
- Parties may have an advisor of their choice, and that the advisor may be, but is not required to be, an attorney;
- SUNY WCC's Student Code of Conduct prohibits knowingly making false statements or knowingly submitting false information during SUNY WCC's Grievance Procedures; and
- If, in the course of an investigation, SUNY WCC decides to investigate additional allegations of Sex-Based Harassment by the Respondent toward the Complainant that are not included in the original written Notice of Allegations provided, SUNY WCC is required to provide written notice of any additional allegations to the Parties whose identities are known.

Investigating Additional Allegations of Sex-Based Harassment

If, in the course of an investigation, SUNY WCC decides to investigate additional allegations of Sex-Based Harassment by the Respondent toward the Complainant that are not included in the original issued written Notice of Allegations, or that are included in a complaint that is consolidated under this Grievance Procedure, SUNY WCC shall provide notice of the additional allegations to the Parties whose identities are known.

Complainant Safety Concerns About a Notice of Allegations Being Issued to a Respondent

To the extent that SUNY WCC has reasonable concerns for the safety of any person as a result of providing a written Notice of Allegations, SUNY WCC through the Title IX Coordinator, may reasonably delay providing the written Notice of Allegations in order to address the safety concern appropriately. Reasonable concerns must be based on individualized safety and risk analysis and not on mere speculation or stereotypes.

Investigation

General Rules of Investigations

The Title IX Coordinator and/or an investigator designated by the Title IX Coordinator will perform an investigation of the conduct alleged to constitute Sex-Based Harassment in a reasonably prompt timeframe, after issuing the Notice of Allegations.

SUNY WCC, and not the Parties, have the burden to conduct an investigation that gathers sufficient evidence to determine whether Sex-Based Harassment occurred under this Grievance Procedure. 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 the investigation or hearing. This does not shift the burden of proof away from SUNY WCC and does not indicate responsibility.

SUNY WCC cannot access, consider, or disclose medical records without a waiver from the Party (or parent, if applicable) to whom the records belong, or of whom the records include information. SUNY WCC will provide an equal opportunity for the Parties to present witnesses, including other inculpatory or exculpatory evidence, as described below.

Notice Of Participation

SUNY WCC will provide written notice of the date, time, location, participants, and purpose of all meetings or proceedings with sufficient time for the Party to prepare to participate, if a Party is invited or expected to participate in any such meeting or proceeding.

Advisors Of Choice and Participation of Advisors of Choice

SUNY WCC will provide the Parties with the same opportunities to be accompanied to any meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of the advisor for the Complainant or Respondent in any meeting or proceeding unless such advisor does not follow SUNY WCC's established rules of decorum and rules around participation. The advisor shall not represent or speak for the student and shall not participate directly in any meeting or proceeding. The advisor may be present and speak privately with the student during any meeting. It is responsibility of the student to find their own advisor.

Access to and Review of The Investigative Report

The Title IX Coordinator and/or investigator designated by the Title IX Coordinator will provide each Party and their advisors of choice with an equal opportunity to access and review an accurate description of the Relevant evidence collected throughout the investigation that is not otherwise impermissible in the form of an investigative report.

The Parties and their advisors of choice will also have an equal opportunity to access and review the underlying Relevant and not otherwise impermissible evidence summarized in the investigative report upon the request of any Party.

The Title IX Coordinator and/or investigator designated by the Title IX Coordinator will provide each Party and their advisors of choice with a reasonable opportunity to respond to the investigative report. Both Parties will have the opportunity to respond to the investigative report prior to the live hearing.

SUNY WCC will take reasonable steps to prevent and address the Parties' and their advisors of choice's unauthorized disclosure of information and evidence obtained solely through this Grievance Procedure.

Participating individuals who engage in the unauthorized disclosure of information and evidence obtained solely through this Grievance Procedure may be subject to the Student Code of Conduct and other College policies and/or procedures that may apply.

NOTE: Disclosures of information and evidence for purposes of administrative proceedings or litigation related to the complaint of Sex-Based Harassment are authorized and not considered unauthorized disclosures potentially subject to other disciplinary action.

Review and Access to Relevant and Not Otherwise Impermissible Evidence

Each Party will have an equal opportunity to present fact witnesses and other inculpatory and exculpatory evidence that are Relevant and not otherwise impermissible, to the Title IX Coordinator and/or an investigator designated by the Title IX Coordinator. The Title IX Coordinator and/or investigator designated by the Title IX Coordinator will review all evidence gathered through the investigation and determine what evidence is Relevant and what evidence is impermissible regardless of relevance, consistent with this Grievance Procedure.

Each Party and their advisors of choice will have an equal opportunity to review and access the evidence that is Relevant to the allegations of sex-based discrimination and not otherwise impermissible regardless of relevance prior to the conclusion of the investigation. The Title IX Coordinator and/or investigator designated by the Title IX Coordinator will provide each Party with a reasonable opportunity to respond to the evidence. Both Parties will have the opportunity to respond to the evidence prior to the live hearing.

SUNY WCC will take reasonable steps to prevent and address the Parties' unauthorized disclosure of information and evidence obtained solely through this Grievance Procedure. Participating individuals who engage in the unauthorized disclosure of information and evidence obtained solely through this Grievance Procedure may be subject to procedures found in the Student Code of Conduct and other College policies and/or procedures that may apply.

NOTE: Disclosures of information and evidence for purposes of administrative proceedings or litigation related to the complaint of Sex-Based Harassment are authorized and not considered unauthorized disclosures potentially subject to other disciplinary action.

Relevant Evidence

Evidence is Relevant when it is related to the allegations of Sex-Based Harassment under investigation as part of this grievance procedure. Relevance determinations are made throughout an investigation. To avoid inadvertently excluding relevant evidence, SUNY WCC may need to revisit an earlier relevance determination and reconsider a witness or a piece of evidence that the recipient had previously excluded.

Questions are Relevant when they seek evidence that may aid in showing whether the alleged Sex-Based Harassment occurred, and evidence is Relevant when it may aid a decisionmaker in determining whether the alleged Sex-Based Harassment occurred.

Impermissible Evidence

The following types of evidence, and questions seeking that evidence, are excluded as impermissible (i.e., must not be accessed or considered, except by SUNY WCC to determine whether an exception applies, must not be disclosed, and must not otherwise be used) regardless of whether they are Relevant:

- Evidence that is protected under a privileged as recognized by Federal or State law or evidence provided to a Confidential Employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- A Party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the Party or witness, unless SUNY WCC obtains that Party's or witness's voluntary, written consent for use in SUNY WCC's Grievance Procedures; and
- Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove Consent to the alleged Sex-Based Harassment. Note: the fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's Consent to the alleged Sex-Based Harassment or preclude determination that Sex-Based Harassment occurred.

SUNY WCC does not permit character and expert witnesses.

Timeframes

An investigation shall take no longer than 45 business days to complete. If there are any delays or extensions, the Title IX Coordinator must appropriately notify the Parties in writing, as detailed below.

Extensions and Delays

SUNY WCC allows for the reasonable extension of timeframes on a case-by-case basis for good cause with written notice to the Parties that includes the reason for the extension or delay.

Live Hearing

General Rules for Live Hearings

SUNY WCC will not issue a finding or disciplinary sanction arising from an allegation of Sex-Based Harassment without holding a live hearing unless otherwise resolved through an informal resolution process as outlined in this Grievance Procedure.

The live hearing (also referred to as a hearing) may be conducted with the Parties physically present in the same geographic location. SUNY WCC has the discretion to conduct the live hearing with the Parties physically present in separate locations, with technology enabling the decisionmaker and Parties to simultaneously see and hear the Party or the witness while that person is speaking. A Party may also request this option prior to the hearing.

SUNY WCC shall create an audio or audiovisual recording or transcript of any live hearing and make it available to the Parties for inspection and review.

Participants In the Live Hearing

Live hearings are not public. All participants are subject to the SUNY WCC Rules of Decorum. The Hearing Chair shall have sole discretion to determine if the Rules of Decorum have been violated and sole discretion to remove the offending person. The Hearing Chairperson will notify the offending person of any violation of the Rules.

Only the individuals permitted to participate in the hearing are as follows:

(1) Complainant and Respondent (The Parties)

If a Party chooses not to participate in the process or the hearing, the live hearing may still proceed in the absence of a Party, and SUNY WCC may reach a determination of responsibility in their absence, including through any evidence gathered and other witness statements. SUNY WCC will not threaten, coerce, intimidate or discriminate against any Party in an attempt to secure the Party's participation. The decisionmaker cannot draw an inference about the determination regarding responsibility based solely on a Party's absence from the live hearing, or a refusal to answer questions.

(2) The Hearing Chair.

The Director of Student Support Services or designee will assign one Hearing Chair will for each Hearing. The Hearing Chair leads the Hearing and ensures all proper procedures are followed. The Hearing Chair does not participate in certain aspects of the Hearing including the private deliberations of the Hearing Officers where a determination is made about the outcome of the charges and sanctions are recommended. The Director of Student Support Services may serve as a Hearing Chair.

Determinations of any actual or perceived conflicts of interest or bias will be made by the Hearing Chair.

(3) Hearing Officers/The Decisionmakers

The hearing body will consist of a panel of three decisionmakers also known as Hearing Officers. No member of the hearing body will 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. 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. The hearing body will be trained prior to serving during any hearing. The Parties will have an opportunity to raise any objections regarding a decisionmaker's actual or perceived conflicts of

interest or bias at the commencement of the live hearing. The Director of Student Support Services or designee will assign three Hearing Officers for each Hearing.

(4) Advisor of Choice.

The Parties have the right to select an advisor of their choice, who may be, but is not required 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. An advisor of choice is not prohibited from being a witness in the hearing. The Advisor may not directly address the Hearing Officers, question witnesses, or otherwise actively participate in the student conduct process, but may speak privately with the advisee during the proceedings.

(5) Witnesses.

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

Rights Of Parties

Throughout the Live Hearing, both the Complainant and the Respondent, shall have the right to:

- A. Receive advance notice of at least five (5) calendar days of the date, time and location of any hearing they are eligible to attend. This written notification will also include the date(s) and location(s) of the alleged incident(s), the identities of the Parties involved in the incident(s), the conduct alleged to constitute Sex-Based Harassment under the Grievance Procedures and notice about the sanction(s) that may be imposed on the Respondent based upon the outcome of the Live Hearing.

Proper written notification shall be defined as hand-delivery by campus staff, delivery of information via electronic message to a student's assigned campus e-mail account, or delivery by the U.S. Post Office to a student's local off-campus address. Students shall be held responsible for the contents of mail for which they have refused receipt.
- B. A prompt and impartial hearing.
- C. Raise any objections regarding a Hearing Officers actual or perceived conflicts of interest or bias at the commencement of the live hearing. Determinations of any actual or perceived conflicts of interest or bias will be made by the Hearing Chair.
- D. An adjudication process conducted in a manner that recognizes the legal and policy requirements of due process (including fairness, impartiality, and a meaningful opportunity to be heard) and is not conducted by individuals with a conflict of interest.
- E. Request a delay of a hearing date of up to five (5) calendar days reasonable under the circumstance(s). The Director of Student Support Services or designee will determine the validity of the request and if the delay will be granted.
- F. Be notified of the proposed evidence and information to be presented and to know the identity of witnesses who have been called to speak at the hearing or provide written testimony for the hearing when such information is known by the Director of Student Support Services or designee prior to the hearing.
- G. One advisor of their choosing, who may be, but is not required 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. An advisor of choice is not prohibited from being a witness in the hearing. The Advisor may not directly address the Hearing Officers, question witnesses, or otherwise actively participate in the student conduct process, but may speak privately with the advisee during the proceedings.

- H. Ask questions of the Hearing Chair and via the Hearing Chair indirectly request responses from other parties and any other witnesses present. This method is used to preserve the educational tone of the hearing and to avoid creation of an adversarial environment. It will be left to the discretion of the Hearing Officers whether or not to ask requested questions of other parties.
- I. A range of options for providing testimony via alternative arrangements, including telephone/videoconferencing, or testifying with a room partition, if available.
- J. Present a written impact statement to the Hearing Officers to review if a finding of “responsible” is made. Impact statements are only reviewed by the Hearing Officers when deliberating sanctions. Impact statements outline the student’s reasoning for what may constitute an appropriate sanction. The Hearing Officers are not bound by these statements when recommending sanctions.
- K. Be present at the pertinent stages of the live hearing process. The deliberations of the Hearing Officers are private.
- L. Be truthful & accurate when presenting statements and other information.
- M. Have access to a full and fair record of a student conduct hearing, which shall be preserved and maintained for at least five years.
- N. A written notification of the outcome of the hearing and a description of the appeal procedure no later than ten (10) calendar days after the hearing.
- O. Have a live hearing concurrently with a criminal justice investigation and proceeding, except for temporary delays as requested by external municipal entities while law enforcement gathers evidence. Temporary delays should not last more than ten (10) calendar days except when law enforcement specifically requests and justifies a longer delay.
- P. The right to exclude prior sexual history with persons other than the other party in the conduct process or their own mental health diagnosis or treatment from admittance in college disciplinary stage that determines responsibility. Past findings of domestic violence, dating violence, stalking, or sexual assault may be admissible in the disciplinary stage that determines sanction.
- Q. To simultaneous (among the parties) written or electronic notification of the outcome of the Live Hearing, including the decision, any sanctions, and the rationale for the decision and any sanctions.
- R. Choose whether to disclose or discuss the outcome of a conduct hearing.
- S. Access to one level of appeal before a panel that is fair and impartial and does not include individuals with a conflict of interest.
- T. Have all information obtained during the course of the conduct or judicial process be protected from public release until the appeals panel makes a final determination, unless otherwise required by law.

Hearing Procedures

For all live hearings conducted, the Hearing Chair will open and establish rules and expectations for the hearing. All procedural questions are subject to the final decision of the Hearing Chair. Procedural questions may be asked at any point while the hearing by either party. Procedures may be modified by the Hearing Chair so long as it does not restrict or deny a party of their rights.

If the Respondent or Complainant, after receiving proper written notification, does not appear for a hearing, the hearing will proceed without the absent party and a finding will be made, including sanctions (if appropriate),

based on the information available. Parties or other participants who arrive after a hearing has officially begun will be denied entry to the hearing.

A hearing is conducted differently from legal proceedings and shall generally be conducted in accordance with the procedures listed below:

- i. The Hearing Chair will open establish rules and expectations for the hearing, including reading the Rules of Decorum.
- ii. The Hearing Chair will ask the parties if they have any objections regarding any Hearing Officers actual or perceived conflicts of interest or bias. Determinations of any actual or perceived conflicts of interest or bias will be made by the Hearing Chair.
- iii. The Complainant and Respondent shall each have the opportunity to present opening statements, present evidence, and ask relevant questions of the opposite party – see *Questioning Parties and Witnesses and Evidence* below for more information.
- iv. The Respondent and Complainant will answer questions from the Hearing Officers in a manner prescribed by the Hearing Chair.
- v. The Complainant & Respondent may arrange for witnesses to present pertinent information. Hearing Officers, the Respondent, and Complainant reserve the right to question witnesses - see *Questioning Parties and Witnesses* below for more information.
- vi. After the portion of the hearing concludes in which all pertinent information has been received, the Hearing Officers shall deliberate in private whether the Respondent is Responsible for the allegation of sex-based harassment. The Hearing Chair will not participate in these deliberations. Hearing Officers will make their decision by majority vote.
- vii. When a student Respondent is found “responsible” for a violation(s), the Hearing Officers shall continue private deliberations to recommend appropriate sanction(s). The Hearing Officers may review written impact statements from both parties. Hearing Officers may also consider additional relevant mitigating and aggravating factors to help make their recommendation on appropriate sanctions. Hearing Officers will make their decision about recommended sanctions by majority vote. The Hearing Chair will not participate in these deliberations.
- viii. The Hearing Officers will send their findings and recommendations to the Director of Student Support Services. The Director of Student Support Services may confirm, amend, add, or remove sanctions from those recommended by the Hearing Officers, but may not alter other outcomes made by the Hearing Officers. The Director of Student Support Services may review both the Respondent and Complainant’s impact statements, as well as the Respondent’s academic record, prior conduct history, and other relevant mitigating and aggravating factors to make their determination on appropriate sanctions.
- ix. The Director of Student Support Services will create the Hearing Outcome letter and send it to the both the Respondent and Complainant within ten (10) calendar days of the Hearing’s conclusion. Proper written notification shall be defined as hand-delivery by campus staff, delivery of information via electronic message to a student’s assigned campus e-mail account, or delivery by the U.S. Post Office to a student's local off-campus address. Students shall be held responsible for the contents of mail for which they have refused receipt.

Questioning Parties and Witnesses

During a live hearing, each Party is allowed to ask Relevant and not otherwise impermissible questions and follow-up questions of the Parties and witnesses through the Hearing Officers. No questioning to another Party or witness will be conducted by a Party personally. This method is used to preserve the educational tone of the hearing and to avoid creation of an adversarial environment.

Procedures For Hearing Officer's Evaluation of Questions And Limitation On Questions

The Hearing Officers will determine whether a proposed question is Relevant and not otherwise impermissible as described in this Grievance Procedure, prior to the question being posed, and will explain any decision to exclude a question as not Relevant or otherwise impermissible.

If the Hearing Officers determine that a Party's question is Relevant and not otherwise impermissible, then the question must be asked unless such question is unclear or harassing of the Party or witness being questioned. The Hearing Officers must give a Party an opportunity to clarify or revise a question that the Hearing Officers have determined is unclear or harassing and, if the Party sufficiently clarifies or revises a question so that it is no longer unclear or harassing, the question must be asked.

Refusal To Respond to Questions and Inferences Based On Refusal To Respond To Questions

The Hearing Officers may choose to place less or no weight upon statements by a Party or witness who refuses to respond to questions deemed Relevant and not impermissible.

The Hearing Officers must not draw an inference about whether Sex-Based Harassment occurred based solely on a Party's or witness's refusal to respond to such questions.

Continuances or Granting Extensions

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

Evidence

- A. Evidence will be limited to what is submitted as part of the investigation process, including the investigative report. For more information about relevant and impermissible evidence, please see *Investigations*.
- B. SUNY WCC does not permit character or expert witnesses.
- C. New 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 Officers 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 Officers 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 of the witness.

Determination Regarding Responsibility and Sanctioning

Standard of Proof

SUNY WCC uses the preponderance of the evidence standard of proof to determine whether or not Sex-Based Harassment occurred. This means that the investigation and hearing determine whether it is more likely than not that a violation of the Grievance Procedures occurred.

General Considerations for Evaluating Evidence and Testimony

Hearing Officers are required to evaluate Relevant and not otherwise impermissible evidence for its persuasiveness. If the Hearing Officers are not persuaded under the applicable standard by the evidence that Sex-Based Harassment occurred, whatever the quantity of the evidence is, the Hearing Officers must not determine that Sex-Based Harassment occurred.

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 Officers. Hearing Officers 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. However, 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.

Hearing Officers 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.

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.

Sanctions

Below are the minimum sanctions a student found responsible for allegations of sex-based harassment must receive:

- Quid Pro Quo Harassment: College Probation
- Hostile Environment Harassment: College Probation
- Stalking: College Probation
- Dating Violence: Suspension
- Domestic Violence: Suspension
- Sexual Assault: Suspension

A complete range of sanctions for Sex-Based Harassment can be found in the SUNY WCC Sanctioning Guide which can be found at www.sunywcc.edu/codeofconduct.

The following are sanctions that may be imposed on individuals found Responsible for allegations of sex-based harassment:

- A. **College Probation:** is for a designated period of time and includes the probability of more severe disciplinary sanctions if the student commits another violation to College policy during the probationary period. During the probation period, a student may be excluded from some programs and curricular or extra-curricular activities.
- B. **Suspension:** is an involuntary separation of the student from the College for a definite period of time and/or until certain conditions for readmission are met. A student who is suspended is unable to register for and attend classes, participate in any College activities, or be present on College property. Suspension is a severe sanction and the student forfeits tuition and fees and does not receive academic credit for the semester in which the suspension occurred. A student may be assigned conditions for reinstatement. These conditions may include actions that must be completed, in full, before a student is eligible for reinstatement.

The student is not guaranteed reinstatement at the end of the designated period, but a review regarding eligibility for reinstatement is guaranteed if a student submits the necessary information. The student must apply in writing for reinstatement to the Dean of Student Life. The student must provide evidence that all conditions for reinstatement are complete at the time of the request for reinstatement. The Dean may also request additional information they believe will aid them in assessing the student's readiness for reinstatement. The Dean shall determine if the student is ready for reinstatement. If reinstatement is granted, the student may reenroll for courses beginning the next academic term. The Dean may also impose conditions on the student that must be adhered to if they are granted reinstatement to the college following the period of suspension. If reinstatement is denied, the student will remain suspended for another definite period, determined by the Dean, at which time they may reapply for reinstatement again at the close of that next period of time. The decision of the Dean is final.

Students can submit requests for reinstatement by visiting www.sunywcc.edu/disciplinaryreinstatement and clicking on the link to complete the form.

- C. **Expulsion:** is an involuntary and permanent separation from the College. A student who is expelled is permanently prohibited from being on any property of the College, attend any events/activities of the College, and shall not be readmitted to the institution. The student forfeits tuition and fees and does not receive academic credit for the semester in which they were expelled.
- D. **Secondary Sanctions:** promote principles of restorative justice and may encourage restitution, reflection, or other aspects of student development. Secondary sanctions can include, but are not limited to:
 - i. **Restitution:** may be assigned when College property is damaged. An assessment of the damage will be made by the appropriate College department and/or personnel. The responsible student(s) may be billed as appropriate. Restitution for personal property cannot be resolved via the conduct process.
 - ii. **Educational/ Restorative Activities:** Work assignments, community services and other related sanctions, which can include, but are not limited to:
 - a. Reflection or research paper on assigned topic
 - b. letter of apology
 - c. program presentations
 - d. substance abuse education

- e. attendance at educational or other community programs, including participation in the Viking Navigator Program
 - f. Virtual trainings, modules, or workshops (i.e. Therapy Assistant Online modules)
- iii. **Restrictions/Loss of Privileges**: denial of a specified privilege for a designated period of time. These restrictions can include, but are not limited to:
- a. A restriction from possessing particular items on-campus
 - b. A restriction from being in a particular college building(s) or specific rooms/locations on-campus
 - c. Restriction from attending a specific event or event(s)
 - d. Restriction from participating in specific co- or extra-curricular programs/activities/groups
 - e. Other restrictions as deemed appropriate
- iv. **Mandated Counseling Assessments**: a student must attend an assessment and/or session with the Office of Mental Health and Counseling Services or other college or community group by a specified date. Unless otherwise stated, the student is required to complete the recommendations of the assessment.
- v. **No Contact Order**: is a written directive prohibiting contact with a protected individual, either directly or through a third party. If the accused or Respondent and a protected person observe each other in a public place, it is the responsibility of the accused or Respondent to leave the area immediately and without directly contacting the protected person.
- vi. **Parental Notification**: occurs when, in accordance with the Federal Educational Rights and Privacy Act (FERPA), students are under the age of 21 and found responsible for violations of the College's alcohol or drug policies. This notification will typically be in writing.

Communication of the Determination in Writing

All determinations on whether Sex-Based Harassment occurred will be communicated to the Parties in writing, simultaneously.

The written determination will include:

- A description of the alleged Sex-Based Harassment;
- Information about the policies and procedures that SUNY WCC used to evaluate the allegations;
- The decisionmaker's evaluation of the Relevant evidence and determination on whether Sex-Based Harassment occurred;
- Any Disciplinary Sanctions SUNY WCC will impose on the Respondent, whether Remedies other than the imposition of Disciplinary Sanctions will be provided by SUNY WCC to the Complainant, and, to the extent appropriate, other students identified by SUNY WCC to be experiencing the effects of Sex-Based Harassment, if there is a finding that Sex-Based Harassment occurred; and
- SUNY WCC's procedures for Complainant and Respondent to appeal.

Timeline Of Determination Regarding Responsibility

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

Determination of Disciplinary Sanctions After a Finding of Responsibility

Per New York state law, past findings of domestic violence, dating violence, stalking, or sexual assault may be admissible in the disciplinary stage that determines sanction. However, it is not admissible prior to determination of responsibility.

In addition, the Respondent & Complainant will have an opportunity to submit written impact statements which will be read during the point of the proceeding where the decisionmaker is deliberating on appropriate sanctions.

Finality of Determination

The determination regarding responsibility becomes final either on the date that SUNY WCC provides the Parties with the written determination of the result of any appeal, or, if no Party appeals, the date on which an appeal would no longer be considered timely.

Disclosures of Outcome by The Parties

The Complainant and Respondent have the right to choose whether to disclose or discuss the outcome of a conduct or judicial process related to sexual assault, dating violence, domestic violence, sex-based harassment, or stalking.

The Complainant and Respondent have the right to have all information obtained during the course of the conduct or judicial process be protected from public release until the appeals panel makes a final determination unless otherwise required by law.

Appeals

Each Party may appeal a determination regarding responsibility. To appeal, a Party must submit their written appeal within five (5) calendar days of being notified of the decision, indicating the grounds for appeal. For appeals resulting from dismissal of a complaint, please see the section on *Dismissal of Complaints*.

Grounds For Appeal

The limited grounds for appeal available are as follows:

- **Procedural Error/Irregularity**: is when the hearing was not conducted in conformity with the policies and procedures detailed in this policy that would change the outcome. A procedural error and its impact on the case must be clearly described in the appeal.
- **Sanction Severity**: is when a sanction(s) was not appropriate for the outcome. Evidence must show that the sanction is inappropriate based on the infraction.
- **New Evidence**: refers to new evidence that was not reasonably available during the original when the determination whether Sex-Based Harassment occurred, or dismissal was made and could change the outcome. This does not include information available but not disclosed by choice (i.e. opting not to disclose, not attend a meeting or participate in the process).
- **Bias or Conflict of Interest**: The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that would change the outcome.

Additional Procedures for Appeal Process

SUNY WCC will notify the Parties of any appeal, provide the Parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome, and will notify the Parties of the result of the appeal and the rationale for the result.

The submission of an appeal stays (or pauses) any sanctions for the period during which an appeal determination is being assessed. Supportive measures and remote learning opportunities remain available while an appeal is being deliberated and before a final decision has been made.

If a Party appeals, the institution will as soon as practicable notify the other Party in writing of the appeal. The other party may then submit a written response to the requesting party's appeal within five (5) calendar days of the notification, 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. If both parties appeal, the appeals will be considered concurrently.

Appeals must be submitted, in writing, via the [Student Conduct Appeals Form](#) found on the SUNY WCC website, within (5) calendar days of the decision. Appeals may not be submitted by third parties. Appeals may be no longer than 10 pages (including attachments). Appeals should be submitted in electronic form using CALIBRI or TIMES NEW ROMAN, 12-point font, and single-spaced. Appeals should use footnotes, not endnotes. Appeals that do not meet these standards may be returned to the Party for correction, but the time for appeal will not be extended unless there is evidence that technical malfunction caused the appeal document not to meet these standards.

Appeals will be decided by a three-member appeal panel consisting of Dean of Student Life or designee and two other designated College officials of the Dean's choice, who will be free of conflict of interest and bias, and will not serve as investigator, Title IX Coordinator, or Hearing Officer in the same matter.

The Appeals Panel, using the preponderance of evidence standard, shall determine if the appeal is timely and meets the ground for appeal. The review of the appeal shall be limited to a review of the case file and supporting information provided in the appeal application(s). Any audio recordings shall be available to the Appeal Panel for review as necessary.

- i. If the appeal is not timely and/or does not meet the grounds for appeal, the original decision and sanction will stand and be final.
- ii. If the appeal is timely and meets the grounds for an appeal, the Appeals Panel may: (a) uphold the original decision; (b) reverse the decision; (c) add, remove or amend sanctions; (d) remand the matter back to the original Hearing Officers who heard the case for a specific reconsideration or for the case to be reheard; and/or (e) remand the matter to a new Hearing with new Hearing Officers for the case to be reheard.

If the original decision is upheld, reversed, or if sanctions are added or removed, the decision will be final and binding upon all parties.

The outcome of the appeal will be provided in writing simultaneously to both Parties and include rationale for the decision. The determination of the Appeal Panel is final.

INFORMAL RESOLUTION

Procedures for Entering and Exiting Informal Resolution Process

At any time prior to determining whether Sex-Based Harassment occurred under this Grievance Procedure, including prior to making a Complaint, Parties may instead seek SUNY Westchester Community College's assistance to resolve allegations of Sex Discrimination, and may elect to enter the informal resolution process.

The Parties may voluntarily elect to enter the SUNY Westchester Community College's informal resolution process at any time through an informed written Consent. This informed written Consent will include all terms of the elected informal process, including a statement that any agreement reached through the process is binding on the Parties.

No Party may be required to participate in informal resolution, and SUNY Westchester Community College may never condition enrollment, employment, or enjoyment of any other right or privilege upon agreeing to informal resolution.

The Parties may elect to leave the informal resolution process at any point until the informal resolution process is concluded. If a Party elects to leave the informal resolution process, the Grievance Procedure that the Parties paused will continue. In participating in the informal resolution process, the Parties understand that the timeframes governing the Grievance Procedure will temporarily cease, and only reinstate upon reentry into the Grievance Procedure.

Supportive Measures will be available, or continue to be available if already provided, during an informal resolution process, if elected to proceed. The Title IX Coordinator will also, to the extent necessary, take other appropriate prompt and effective steps to ensure that Sex Discrimination does not continue or recur within SUNY Westchester Community College's Education Program or Activity.

Notice Prior to Entry Into Informal Resolution Process

Before the initiation of an informal resolution process, the Title IX Coordinator must provide to the Parties a written notice that explains:

- The allegations;
- The requirements of the informal resolution process;
- That, prior to agreeing to a resolution, any Party has the right to withdraw from the informal resolution process and to initiate or resume SUNY Westchester Community College's Grievance Procedure;
- That the Parties' agreement to a resolution at the conclusion of the informal resolution process would preclude the Parties from initiating or resuming SUNY Westchester Community College's Grievance Procedure arising from the same allegations;
- The potential terms that may be requested or offered in an informal resolution agreement, including notice that an informal resolution agreement is binding only on the Parties; and
- What information SUNY Westchester Community College will maintain and whether and how SUNY Westchester Community College could disclose such information for use in its Grievance Procedure if they are initiated or resumed.

Determination to Approve Entry into Informal Resolution Process

Even where the Parties agree to submit a matter to informal resolution, the Title IX Coordinator or other designated official **must** approve the decision to move the matter to the informal resolution process and may determine that informal resolution is not appropriate under the circumstances.

Factors that the Title IX Coordinator or other designated official may weigh in considering the appropriateness of the informal resolution process include, but are not limited to, the gravity of the allegations, whether there is an ongoing threat of harm or safety to the campus, whether the Respondent is a repeat offender, whether the alleged conduct would present a future risk of harm to others, and whether the Parties are participating in good faith. This determination is not subject to appeal. Informal resolution may be available to address allegations of Student-on-Student and is not allowed to address allegations of employee-on-Student Sex-Based Harassment.

At any time after the commencement of the informal resolution process, the Title IX Coordinator or other designated official may determine that the informal resolution process is not an appropriate method for resolving the matter, and may require that the matter be resolved through the Grievance Procedure. This determination is not subject to appeal.

If informal resolution is approved or denied, SUNY Westchester Community College will provide the outcome in writing simultaneously to the Parties. If informal resolution is approved, the Title IX Coordinator shall also provide the information of the facilitator in writing to the Parties in a reasonable timeframe once the facilitator is assigned.

Role of the Facilitator

Informal resolution processes are managed by trained facilitators. All facilitators must not be the same person as the investigator or the/a decisionmaker(s) in SUNY Westchester Community College's Grievance Procedure. Any person designated to facilitate informal resolution must not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. The Title IX Coordinator may serve as the facilitator, subject to these restrictions.

All facilitators must have specialized training, required by law and regulation. Such training includes:

- SUNY Westchester Community College's obligation to address sex discrimination, including Sex-Based Harassment, in its Education Program or Activity;
- The scope of conduct that constitutes sex discrimination, including Sex-Based Harassment, under Title IX, including the definition of Sex-Based Harassment;
- All applicable notification and information requirements related to parental, family, or marital status, including pregnancy and related conditions, and SUNY Westchester Community College's response to sex discrimination;
- The rules and practices associated with SUNY Westchester Community College's informal resolution process; and
- How to serve impartially, including by avoiding conflicts of interest and bias.

Contents of Informal Resolution Agreements

Potential terms that may be included in an informal resolution agreement between the Parties include but are not limited to:

- Restrictions on contact; and
- Restrictions on the Respondent's participation in one or more of SUNY Westchester Community College's education programs or activities or attendance at specific events, including restrictions SUNY Westchester Community College could have imposed as Remedies or Disciplinary Sanctions had SUNY Westchester Community College determined at the conclusion of the Grievance Procedure that Sex-Based Harassment occurred.

Breach of Informal Resolution Agreements

If a Party breaches the resolution or if SUNY Westchester Community College has other compelling reasons, such as if it learns of any fraud by a Party in entering into the agreement, SUNY Westchester Community College may void the agreement and initiate or resume the Grievance Procedure.

In entering the informal resolution process, the Parties agree that any testimony and evidence (including admissions of responsibility) they share or receive during the informal resolution process concerning the allegations of the Complaint is confidential. No evidence concerning the allegations obtained within the informal resolution process may be disseminated to any person, provided that any Party to the informal resolution process may generally discuss the allegations under investigation with a parent, friend, advisor, or other source of emotional support, or with an advocacy organization. As a condition of entering the informal resolution process, any evidence shared or received during the informal resolution process may not be used in any subsequent Grievance Procedure or institutional appeal.

Informal Resolution Option

SUNY Westchester Community College offers the following informal resolution procedures for addressing Complaints of Sex-Based Harassment described under this Grievance Procedure:

Administrative Resolution

Should the Parties mutually determine to enter the informal resolution process, and the Respondent elects to accept responsibility for the allegations of the Complaint at any point during the informal resolution process, the institution may administratively resolve the Complaint.

Where the Respondent admits responsibility, the Parties will receive simultaneous written notification of the acceptance of responsibility, and a decision-maker(s) will convene to determine the Respondent's sanction and other Remedies, as appropriate and consistent with institutional policy. The Parties will be given an opportunity to be heard at the sanctions hearing, including without limitation, the submission of impact statements, and the Parties may be accompanied by their Advisor, but questioning of Parties or witnesses will not be permitted. The Parties will receive simultaneous written notification of the decision regarding sanctions and Remedies, which may be appealed according to the process described in the Grievance Procedures.

SECTION XIII 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 WCC is required to make a notation on the transcript of a student found responsible for suspension or expulsion, per SUNY WCC's Transcript Notation Policy found in the Student Code of Conduct.

SECTION XIV Retaliation

When SUNY WCC has information about conduct that reasonably may constitute Retaliation under Title IX or its Grievance Procedures, SUNY WCC is obligated to initiate its Grievance Procedures or, as appropriate, SUNY WCC's informal resolution process.

SUNY WCC 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 complaint of Sex-Based Harassment or sex discrimination under SUNY WCC's Title IX Grievance Procedures, 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 SUNY WCC's Title IX Grievance Procedures.

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 SUNY WCC's Grievance Procedures.

Any intimidation, threats, coercion, or discrimination, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations constitutes Retaliation. This includes any charges filed against an individual for code of conduct violations that do not involve sex discrimination or Sex-Based Harassment, but that arise from the same facts or circumstances as a report or complaint of sex discrimination or a report or complaint of Sex-Based Harassment.

Complaints alleging Retaliation may be filed according to the Grievance Procedure for Complaints of Sex Discrimination.