



Procedure Title **Title IX Grievance Procedure for Addressing Formal Complaints of Sexual Harassment**

Procedure Number	2110.1-P
Category	Administration & Community Relations, Student, Human Resources
Applicability	College-wide
Responsible Office	Office of Legal Affairs, Chief Diversity Officer/Title IX Coordinator
Effective Date	October 31, 2023

I. Reason for Procedure

Consistent with the College’s Title IX Grievance Policy for Addressing Formal Complaints of Sexual Harassment, this Procedure outlines a grievance process consistent with Title IX of the Educational Amendments of 1972 (Title IX) and the U.S. Department of Education’s current regulations implementing Title IX (also referred to within this procedure as the “Final Rule”).

II. Definitions

In addition to those definitions outlined in the College’s Title IX Grievance Policy for Addressing Formal Complaints of Sexual Harassment, the following definitions shall apply for purposes of the College’s Title IX Grievance Policy/Procedure:

Relevant Evidence and Questions: “Relevant” evidence and questions refer to any questions and evidence that tend to make an allegation of sexual harassment more or less likely to be true. “Relevant” evidence and questions do not include the following types of evidence and questions, which are deemed “irrelevant” at all stages of the Title IX Grievance Process:

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

Privacy vs. Confidentiality: Consistent with the Student Code of Conduct and the [Options for Confidentially Disclosing Sexual Violence Policy](#), 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 Suffolk County Community College 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. The College will limit the disclosure as much as practicable, even if the Title IX Coordinator determines that the request for confidentiality cannot be honored.

Disability Accommodations: The College's Title IX Grievance Policy/Procedure does not alter any institutional obligations under federal disability laws including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point before or during the Title IX Grievance Process that do not fundamentally alter the Process. The Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the Parties, even where the Parties may be receiving accommodations in other institutional programs and activities.

III. Title IX Grievance Process

A. Filing a Formal Complaint

The timeframe for the Title IX Grievance Process begins with the filing of a Formal Complaint. The Grievance Process will be concluded within a reasonably prompt manner, and no longer than ninety (90) business days after the filing of the Formal Complaint, provided that the Process may be extended for a good reason, including but not limited to the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. The procedure for applying for extensions is described below.

To file a Formal Complaint, a complainant must provide the Title IX Coordinator a written, signed complaint describing the facts alleged. Complainants are only able to file a Formal Complaint under this Policy if they are currently participating in, or attempting to participate in, the education programs or activities of Suffolk County Community College, including as an employee. For complainants who do not meet this criteria, the College will utilize existing policy in the [Student Code of Conduct](#), the [Equal Opportunity and Anti-Discrimination Policy](#) or the Sexual Harassment Policy and Grievance procedures for [Employees](#) and [Students](#).

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

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

Informal Resolution: A complainant who files a Formal Complaint may elect, at any time, to address the matter through the College's Informal Resolution Process, except that an Informal Resolution Process will not be available for student complaints of sexual harassment by a College employee. All Parties to a Formal Complaint must agree to enter the Informal Resolution Process through an informed written consent. Information about this Process is outlined in Appendix B.

B. Multi-Party Situations

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

C. Determining Jurisdiction

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

1. The conduct is alleged to have occurred on or after August 14, 2020;
2. The conduct is alleged to have occurred in the United States;
3. The conduct is alleged to have occurred in the College's education program or activity; and
4. The alleged conduct, if true, would constitute covered sexual harassment as defined in the College's Title IX Grievance Policy/Procedure.

If all of the elements are met, the College will investigate the allegations according to the Title IX Grievance Process.

1. 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.

2. Mandatory Dismissal

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

3. Discretionary Dismissal

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

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

Any party may appeal a dismissal determination using the process set forth in “Appeals,” below.

4. Notice of Dismissal

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

5. Notice of Removal

Upon dismissal for the purposes of Title IX, the College retains discretion to utilize [Student Code of Conduct](#) or the [Equal Opportunity Anti-Discrimination Policy](#) to determine if a violation of such policies has occurred. If so, the College will promptly send written notice of the dismissal of the Formal Complaint under the Title IX Grievance Process and removal of the allegations to the appropriate investigatory and conduct process.

D. Notice of Allegations

The Title IX Coordinator or Deputy Title IX Coordinator will draft and provide the Notice of Allegations to any party to the allegations of sexual harassment. Such notice will occur as soon as practicable, but no more than ten (10) business days after the College receives a Formal Complaint of the allegations, if there are no extenuating circumstances.

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

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

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

1. Contents of Notice

The Notice of Allegations will include the following:

- Notice of the College’s Title IX Grievance Process, including any informal resolution process, and a hyperlink to a copy of the process.
- Notice of the allegations potentially constituting covered sexual harassment, and sufficient details known at the time the Notice is issued, such as the identities of the parties involved in the incident, if known, including the complainant; the conduct allegedly constituting covered sexual harassment; and the date and location of the alleged incident, if known.

- A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- A statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney.
- A statement that before the conclusion of the investigation, the parties may inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which the College does not intend to rely in reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a party or other source.
- A statement that College policies prohibit bringing frivolous charges, knowingly making false statements or knowingly submitting false information during the grievance process.

2. *Ongoing Notice*

If, in the course of an investigation, the College decides to investigate allegations about the complainant or respondent that are not included in the Notice of Allegations and are otherwise covered “sexual harassment” falling within the Title IX Grievance Policy/Procedure, the College will notify the parties whose identities are known of the additional allegations by their College email accounts or other reasonable means.

The parties will be provided sufficient time to review the additional allegations to prepare a response before any initial interview regarding those additional charges.

E. Advisor of Choice and Participation of Advisor of Choice

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

The College has a long-standing practice of requiring students to participate in the process directly and not through an advocate or representative. Students participating as complainant or respondent in this process may be accompanied by an advisor of their choice (Advisor of Choice) to any meeting or hearing to which they are required or are eligible to attend. Except where explicitly stated by the College’s Title IX Grievance Policy/Procedure, as consistent with the Final Rule, Advisors of Choice shall not participate directly in the process as per standard policy and practice of the College.

The College will not intentionally schedule meetings or hearings on dates where the Advisors of Choice for all parties are not available, provided that the Advisors act reasonably in providing available dates and work collegially to find dates and times that meet all schedules.

The College’s obligations to investigate and adjudicate in a prompt timeframe under Title IX and other College policies apply to matters governed under the College’s Title IX Grievance Policy/Procedure, and the College cannot agree to extensive delays solely to accommodate the schedule of an Advisor of Choice. The determination of what is reasonable shall be made by the Title IX Coordinator or designee. The College will not be obligated to delay a meeting or hearing under this process more than five (5) calendar days due to the unavailability of an Advisor of

Choice, and may offer the party the opportunity to obtain a different Advisor of Choice or utilize one provided by the College.

F. Notice of Meetings and Interviews

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

1. Delays

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

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

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

G. Investigation

1. General Rules of Investigations

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

The College, and not the parties, has the burden of proof and the burden of gathering evidence, i.e. the responsibility of showing a violation of the College's Title IX Grievance Policy/Procedure has occurred. This burden does not rest with either party, and either party may decide not to share their account of what occurred or may decide not to participate in an investigation or hearing. This does not shift the burden of proof away from the College and does not indicate responsibility.

The College cannot access, consider, or disclose medical records without a waiver from the party (or parent, if applicable) to whom the records belong or of whom the records include information. The College will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence, (i.e., evidence that tends to prove and disprove the allegations) as described below.

2. Inspection and Review of Evidence

Prior to the completion of the investigation, the parties will have an equal opportunity to inspect and review the evidence obtained through the investigation. The purpose of the inspection and review process is to allow each party the equal opportunity to meaningfully respond to the evidence prior to conclusion of the investigation.

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

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

All parties must submit any evidence they would like the investigator to consider prior to when the parties' time to inspect and review evidence begins.

The College will make the evidence available for each party and each party's advisor, if any, to inspect and review through an electronic format or a hard copy. The College is not under an obligation to use any specific process or technology to provide the evidence and shall have the sole discretion in terms of determining format and any restrictions or limitations on access.

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

The College will provide copies of the parties' written responses to the investigator to all parties and their advisors, if any.

The College will provide the parties up to ten (10) calendar days to provide a response, after which the investigator will not be required to accept a late submission. The investigator has ten (10) calendar days after receiving the parties' response to the evidence to generate a report or, alternatively, may provide the parties with written notice extending the investigation for a specified number of days as may be required, and explaining the reason for the extension.

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

The parties and their advisors must sign an agreement not to disseminate any of the evidence subject to inspection and review to third parties, or use such evidence for any purpose unrelated to the Title IX grievance process. Violation of this agreement may result in appropriate disciplinary action.

3. Inclusion of Evidence Not Directly Related to the Allegations

Evidence obtained in the investigation that is determined in the reasoned judgment of the investigator not to be directly related to the allegations in the Formal Complaint will not be disclosed, or may be appropriately redacted before the parties' inspection to avoid disclosure of personally identifiable information of a student. Any evidence obtained in the investigation that is kept from disclosure or appropriately redacted will be documented in a "privilege log" that may be reviewed by the parties and their advisors, if any.

H. Investigative Report

The Title IX Coordinator and/or an investigator designated by the Title IX Coordinator will create an Investigative Report that fairly summarizes relevant evidence, and will provide that Report to the parties at least ten (10) business days prior the hearing in an electronic format or via a hard copy. The Investigative Report is not intended to catalog all evidence obtained by the investigator, but only to provide a fair summary of that evidence. Only relevant evidence (including both inculpatory and exculpatory – i.e. tending to prove and disprove the allegations - relevant evidence) will be referenced in the Investigative Report. The investigator may redact irrelevant information from the Investigative Report when that information is contained in documents or is contained alongside evidence that is otherwise relevant.

I. Hearing

1. General Rules of Hearings

The College will not issue a disciplinary sanction arising from an allegation of covered sexual harassment without holding a live hearing, unless the Complaint is otherwise resolved through an informal resolution process.

The live hearing may be conducted with all parties physically present in the same geographic location, or, at the College's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually through the College's video conference options (for example, Microsoft Teams or Zoom). At the request of either party, the College will provide for a live hearing to occur with the parties located in separate rooms with this same technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or witness answering questions. At its discretion, the College may delay or adjourn a hearing based on technological errors not within a party's control.

All proceedings will be recorded through audio recording; or audiovisual recording; or written transcript. That recording or transcript will be made available to the parties for inspection and review.

Prior to obtaining access to any evidence, including the hearing recording or transcript, the parties and their advisors must sign an agreement not to disseminate any of the testimony heard or evidence obtained in the hearing or use such testimony or evidence for any purpose unrelated to the Title IX Grievance Process. Once signed, this Agreement may not be withdrawn.

2. *Continuances or Granting Extensions*

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

3. *Newly Discovered Evidence*

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

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

The Hearing Officer 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 Officer 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.

4. *Participants in Live Hearing*

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

Complainant and Respondent (the Parties)

- The parties cannot waive the right to a live hearing.
- The College may still proceed with the live hearing in the absence of a party, and may reach a determination of responsibility in their absence, including through any evidence gathered that does not constitute a "statement" by that party.
- The College will not threaten, coerce, intimidate or discriminate against the party in an attempt to secure the party's participation.
- If a party does not submit to cross-examination, the decision-maker cannot rely on any prior statements made by that party in reaching a determination regarding responsibility, but may reach a determination regarding responsibility based on evidence that does not constitute a "statement" by that party.
- The decision-maker cannot draw an inference about the determination regarding responsibility based solely on a party's absence from the live hearing or refusal to answer cross examination or other questions.
- The parties shall be subject to the College's Rules of Decorum.

The Decision-Maker

- The hearing body will consist of either a single decision-maker, or a Panel of three decision-makers, as may be determined by the College (hereinafter referred to interchangeably as the Hearing Officer).
- The Hearing Officer will not serve as the Title IX Coordinator, Title IX investigator, or advisor to any party in the case, nor may the Hearing Officer serve on the appeals body in the case.
- The hearing Officer will not have a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.
- The Hearing Officer will be trained on topics including how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for complainants, and any technology to be used at the hearing.
- The parties will have an opportunity to raise any objections regarding the Hearing Officer's actual or perceived conflicts of interest or bias at the commencement of the live hearing.

Advisor of Choice

- The parties have the right to select an advisor of their choice, who may be, but does not have to be, an attorney.
- The advisor of choice may accompany the parties to any meeting or hearing they are permitted to attend, but may not speak for the party, except for the purpose of cross-examination.
- The parties are not permitted to conduct cross-examination; it must be conducted by the advisor. As a result, if a party does not select an advisor, the College will select an advisor to serve in this role for the limited purpose of conducting the cross-examination at no fee or charge to the party.
- The advisor is not prohibited from having a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.
- The advisor is not prohibited from being a witness in the matter.
- If a party does not attend the live hearing, the party's advisor may appear and conduct cross-examination on their behalf.
- If neither a party nor their advisor appear at the hearing, the College will provide an advisor to appear on behalf of the non-appearing party.
- Advisors shall be subject to the College's Rules of Decorum, and may be removed upon violation of those Rules.

Witnesses

- Witnesses cannot be compelled to participate in the live hearing, and have the right not to participate in the hearing free from retaliation.
- If a witness does not submit to cross-examination, as described below, the Hearing Officer cannot rely on any statements made by that witness in reaching a determination regarding

responsibility, including any statement relayed by the absent witness to a witness or party who testifies at the live hearing.

- Witnesses shall be subject to the College's Rules of Decorum.

5. Hearing Procedures

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

- The Hearing Officer will open and establish rules and expectations for the hearing;
- The parties will each be given the opportunity to provide opening statements;
- The Hearing Officer will ask questions of the parties and witnesses;
- Parties will be given the opportunity for live cross-examination after the Hearing Officer conducts the initial round of questioning;
- During the parties' cross-examination, the Hearing Officer will have the authority to pause cross-examination at any time for the purposes of asking the Panel's own follow up questions and at any time necessary in order to enforce the established rules of decorum.

Should a party or the party's advisor choose not to cross-examine a party or witness, the party shall affirmatively waive cross-examination through a written or oral statement to the Hearing Officer. A party's waiver of cross-examination does not eliminate the ability of the Hearing Officer to use statements made by the party.

6. Live Cross-Examination Procedure

Each party's advisor will conduct live cross-examination of the other party or parties and witnesses. During this live-cross examination the advisor will ask the other party or parties and witnesses relevant questions and follow-up questions, including those challenging credibility directly, orally, and in real time.

Before any cross-examination question is answered, Hearing Officer will determine if the question is relevant and explain any decision to exclude a question as not relevant. Cross-examination questions that are duplicative of those already asked, including by the Hearing Officer may be deemed irrelevant if they have been asked and answered.

7. Review of Recording/Transcript

The recording/transcript of the hearing will be available for review by the parties within ten (10) business days, unless there are extenuating circumstances. The recording/transcript of the hearing will not be provided to parties or Advisors of Choice.

J. Determination Regarding Responsibility

1. Standard of Proof

The College uses the preponderance of the evidence standard for investigations and determinations regarding responsibility of Formal Complaints covered under the Title IX Grievance Policy/Procedure. This means that the investigation and hearing determine whether it is more likely than not that a violation of the policy occurred.

2. General Considerations for Evaluating Testimony and Evidence

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

The Hearing Officer shall not draw inferences regarding a party or witness's credibility based on the party or witness's status as a complainant, respondent, or witness; nor shall it base its judgments in stereotypes about how a party or witness would or should act under the circumstances. Generally, credibility judgments should rest on the demeanor of the party or witness, the plausibility of their testimony, the consistency of their testimony, and its reliability in light of corroborating or conflicting testimony or evidence. Still, credibility judgments should not rest on whether a party or witness's testimony is non-linear or incomplete, or if the party or witness is displaying stress or anxiety.

The Hearing Officer will afford the highest weight relative to other testimony to first-hand testimony by parties and witnesses regarding their own memory of specific facts that occurred. Both inculpatory and exculpatory (i.e. tending to prove and disprove the allegations) evidence will be weighed in equal fashion. Except where specifically barred by the Title IX Final Rule, a witness's testimony regarding third-party knowledge of the facts at issue will be allowed, but will generally be accorded lower weight than testimony regarding direct knowledge of specific facts that occurred.

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

The Final Rule requires that the College allow parties to call character witnesses to testify. The College does not provide for character witnesses in other proceedings. While the character witnesses will be allowed to testify and be crossed as required by the Final Rule, the Hearing Officer will be instructed to afford very low weight to any non-factual character testimony of any witness.

The Final Rule also requires that the College admit and allow testimony regarding polygraph tests (“lie detector tests”) and other procedures that are outside of standard use in academic and non-academic conduct processes. While testimony about such procedures will be allowed as required by the Final Rule, the Hearing Officer will be instructed to afford lower weight to such processes relative to the testimony of fact witnesses.

Where a party or witness’s conduct or statements demonstrate that the party or witness is engaging in retaliatory conduct, including but not limited to witness tampering and intimidation, the Hearing Officer may draw an adverse inference as to that party or witness’s credibility.

3. Components of the Determination Regarding Responsibility

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

- A. Identification of the allegations potentially constituting covered sexual harassment;
- B. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- C. Findings of fact supporting the determination;
- D. Conclusions regarding which College policy, if any, the respondent has or has not violated.
- E. For each allegation:
 - i. A statement of, and rationale for, a determination regarding responsibility;
 - ii. A statement of, and rationale for, any disciplinary sanctions the College imposes on the respondent; and
 - iii. A statement of, and rationale for, whether remedies designed to restore or preserve equal access to the College’s education program or activity will be provided by the College to the complainant; and
- F. The College’s procedures and the permitted reasons for the complainant and respondent to appeal (described below in “Appeal”).

4. Timeline of Determination Regarding Responsibility

If there are no extenuating circumstances, the Determination Regarding Responsibility will be issued by the College within ten (10) business days of the completion of the hearing.

5. Finality

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

K. Appeals

Each party may appeal: (1) the dismissal of a Formal Complaint or any included allegations; and/or (2) a Determination Regarding Responsibility. To appeal, a party must submit their written appeal within five (5) business days of being notified of the decision, indicating the grounds for the appeal.

The limited grounds for appeal available are as follows:

- Procedural irregularity that affected the outcome of the matter (i.e., a failure to follow the College's own procedures);
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against an individual party, or for or against complainants or respondents in general, that affected the outcome of the matter.

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

If a party appeals, the College 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 should be submitted in electronic form.

Appeals will be decided by a panel convened by the respective Vice President or Campus Executive Dean/CEO, who will convene a panel to conduct this review. The panel will be comprised of two members of the faculty and staff, with the Vice President or Campus Executive Dean/CEO serving as chair. Members of the appeal panel 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.

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

L. Retaliation

Refer to the College's Title IX Grievance Policy for Addressing Formal Complaints of Sexual Harassment for a recitation of the College's prohibition on retaliation for purposes of this Procedure.

IV. Related Documents

- Appendix A: Rules of Decorum for Title IX Grievance Process Hearings
- Appendix B: Title IX Informal Resolution Process

V. Cross-References

- Title IX Grievance Policy for Addressing Formal Complaints of Sexual Harassment
- [Sexual and Romantic Relationships Policy](#)
- [SUNY Sexual Harassment Response & Prevention Policy Statement](#)
- [Student Code of Conduct](#)
- [Equal Opportunity and Anti-Discrimination Policy](#)
- [Sexual Harassment Policy and Grievance Procedures for Employees](#)
- [Sexual Harassment Policy and Grievance Procedures for Students](#)

VI. References

- Middle States Commission on Higher Education (MSCHE) [Standard II](#)
- Title IX of the Education Amendments of 1972
- 34 CFR Part 106 (Title IX implementing regulations and Final Rule)
- Violence Against Women Act (VAWA)
- Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act)
- NYS Education Law Article 129-B

VII. History/Revision Dates

Approved: October __, 2023



Appendix A:
Rules of Decorum for Title IX Grievance Process Hearings

Purpose of the Rules of Decorum

Title IX hearings are not civil or criminal proceedings, and are not designed to mimic formal trial proceedings. They are primarily educational in nature. These Rules of Decorum require that all parties, advisors of choice, and institutional staff treat others who are engaged in the Title IX grievance process with respect. The rules and standards apply equally to all Parties and their Advisors regardless of sex, gender, or other protected class, and regardless of whether they are in the role of Complainant or Respondent.

Rules of Decorum

The following Rules of Decorum are to be observed in the hearing and applied equally to all parties (meaning the complainant and respondent) and advisors:

1. Questions must be conveyed in a neutral tone.
2. Parties and advisors will refer to other parties, witnesses, advisors, and institutional staff using the name and gender used by the person and shall not intentionally mis-name or mis-gender that person in communication or questioning.
3. No party may act abusively or disrespectfully during the hearing toward any other party or to witnesses, advisors, or decision-makers.
4. Parties may not yell, scream, badger, or physically “lean in” to a party or witness’s personal space. Parties and advisors may not approach the other party or witnesses without obtaining permission from the Hearing Officer(s).
5. Hearing participants may not use profanity or make irrelevant *ad hominem* attacks upon a party or witness. Questions are meant to be interrogative statements used to test knowledge or understand a fact; they may not include accusations within the text of the question.
6. Hearing participants may not ask repetitive questions. When the Hearing Officer(s) determine a question has been “asked and answered” or is otherwise not relevant, the advisor must move on.
7. Hearing participants may take no action at the hearing that a reasonable person in the shoes of the affected party would see as intended to intimidate that person (whether party, witness, or official) into not participating in the process or meaningfully modifying their participation in the process.

Warning and Removal Process

The Hearing Officer(s) shall have sole discretion to determine if the Rules of Decorum have been violated. The Hearing Officer(s) will notify the offending person of any violation of the Rules.

Upon a second or further violation of the Rules, the Hearing Officer(s) shall have discretion to remove the offending person or allow them to continue participating in the hearing or other part of the process.

Where the Hearing Officer(s) remove a party's advisor, the party may select a different advisor of their choice, or accept an advisor provided by the College for the limited purpose of cross-examination at the hearing. Reasonable delays, including the temporary adjournment of the hearing, may be anticipated should an advisor be removed. A party cannot serve as their own advisor in this circumstance.

The Hearing Officer(s) shall document any decision to remove an advisor in the written determination regarding responsibility.

Relevant Questions Asked in Violation of the Rules of Decorum

Where a hearing participant asks a relevant question in a manner that violates the Rules, such as yelling, screaming, badgering, or leaning-in to the witness or party's personal space, the question may not be deemed irrelevant by Hearing Officer(s) simply because of the manner it was delivered. Under that circumstance, the Hearing Officer(s) will notify the party and/or advisor of the violation of the Rules, and, if the question is relevant, will allow the question to be re-asked in a respectful, non-abusive manner.



Appendix B:
Title IX Informal Resolution Process

I. Purpose

The U.S. Department of Education’s (“Department”) current regulations implementing Title IX of the Education Amendments of 1972 (referred to within this document as the “Final Rule”¹) requires that all colleges and universities hold a live hearing before making any determination regarding responsibility for covered reports of Title IX sexual harassment, including sexual violence. This hearing must provide for live cross-examination by the parties’ advisors.

However, under Section 106.45(b)(9) of the Final Rule, colleges and universities may offer and facilitate informal resolution processes, as long as each party voluntarily agrees to the process through an informed, written consent. This option is a change from long-standing Departmental guidance discouraging the use of informal procedures to address sexual harassment and prohibiting the use of mediation to address sexual assault. In the Preamble to the Final Rule, the Department states that it views informal resolutions as a way to resolve sexual harassment allegations in a less adversarial manner than the investigation and adjudication procedures that comprise the Section 106.45 grievance process.

II. Elements of an Informal Resolution Process

A. Procedures for Entering and Exiting Informal Resolution Process

Parties who do not wish to proceed with an investigation and live hearing, and instead seek Suffolk County Community College’s assistance to resolve allegations of Title IX-covered misconduct, may elect to enter the informal resolution process. Generally speaking, these resolution options are less time intensive than an investigation and live hearing, while still affording students an opportunity to actively participate in a process led by the Suffolk County Community College for resolution of their complaints.

The Parties may elect to enter the College’s informal resolution process at any time after the filing of the Formal Complaint through an informed written consent. This informed written consent will include the terms of the elected informal resolution 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 Suffolk County 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 formal resolution process recommences. In participating in the informal resolution process, the Parties

¹ The full text of the Final Rule and its extensive Preamble are available here: <http://bit.ly/TitleIXReg>.

understand that the timeframes governing the formal process temporarily cease, and only recommence upon reentry into the formal process.

B. Determination to Approve Entry into Informal Resolution Process

Even where the Parties agree to submit a matter to informal resolution, the Title IX Coordinator may determine that informal resolution is not appropriate under the circumstances.

Factors that the Title IX Coordinator 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, and whether the Parties are participating in good faith. This determination is not subject to appeal.

Informal resolution is only permitted to address allegations of student-on-student sexual harassment complaints and employee-on-employee sexual harassment complaints, and is never allowed as an option to resolve allegations that an employee sexually harassed a student.

At any time after the commencement of the informal resolution process, the Title IX Coordinator 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 formal process. This determination is not subject to appeal.

C. Role of the Facilitator

Informal resolution processes are managed by facilitators, who may not have a conflict of interest or bias in favor of or against complainants or respondents generally or regarding the specific Parties in the matter. The Title IX Coordinator, Deputy Title IX Coordinators/Associate Deans for Student Affairs, and the Affirmative Action Officer/Deputy Title IX Coordinator may serve as the facilitator, subject to these restrictions.

All facilitators must have training in the definition of sexual harassment under 34 C.F.R. § 106.30(a), the scope of the institution's education program or activity, how to conduct informal resolution processes, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, or bias.

D. Confidentiality

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 Formal 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 formal resolution process or institutional appeal.

E. Informal Resolution Options

Suffolk County Community College offers the following informal resolution procedures for addressing Formal Complaints of sexual harassment covered under the Title IX Grievance Policy/Procedure for Addressing Formal Complaints of Sexual Harassment and this document:

i. 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 Formal Complaint at any point during the informal resolution process, the institution may administratively resolve the Formal Complaint.

Where the respondent admits responsibility, the Parties will receive simultaneous written notification of the acceptance of responsibility, and a panel 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 but not limited to 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 College's Title IX Grievance Policy/Procedure for Addressing Formal Complaints of Sexual Harassment.

ii. Mediation

The purpose of mediation is for the parties who are in conflict to identify the implications of the respondent's actions and, with the assistance of a trained facilitator, identify points of agreement and appropriate remedies to address them. Either party can request mediation to seek resolution; mediation will be used only with the consent of both parties, who will be asked not to contact one another during the process. The Title IX Coordinator and Deputies will review any request for mediation, and may decline to mediate based on the facts and circumstances of the particular case. Either party has the right to terminate the mediation process and choose or resume another option for resolution at any time.

The mediation process will typically commence within 10 business days after the Title IX Coordinator or Deputy Title IX Coordinator receives consent to mediate from both parties, and will continue until concluded or terminated by either party or the Title IX Coordinator or Deputies. During mediation, any potential investigation will halt, and calculations for time frames will be stayed. If the mediation results in a resolution, the disciplinary process will be concluded and the matter will be closed. If a resolution cannot be reached, the matter will be referred to the Title IX Coordinator and Office of Legal Affairs to re-evaluate other options for resolution, including investigation.

During mediation, a facilitator will guide a discussion between the parties. In circumstances where the parties do not wish to meet face to face, either party can request "caucus" mediation, and the facilitator will conduct separate meetings. Whether or not the parties agree to meet face to face, each

party will be permitted to bring an advisor of their choice to any meetings who may be, but is not required to be, an attorney.

At the conclusion of the mediation, the facilitator will memorialize the agreement that was reached between the parties. The Title IX Coordinator and Office of Legal Affairs will monitor adherence to the proposed solution and close the matter when compliance is satisfactory.

iii. Restorative Justice

A restorative justice (“RJ”) Conference is a dialogue, facilitated by an Associate Dean of Student Affairs/Deputy Title IX Coordinator or the Title IX Coordinator or designee, intended to restore relationships and repair harm after a conflict has occurred. Both the responsible party and the individuals affected by the conflict come together to identify what harm was caused and, collaboratively, determine how conflict and trust might be, respectively, resolved and repaired.

A Party may request to engage in RJ at any stage of the disciplinary process, however, restorative justice may not be an appropriate mechanism for all conflicts. To qualify for RJ, the individual accused of wrongdoing must accept responsibility and express remorse for the harm that was caused. The harmed party must also be willing to accept an apology offered by the individual accused of wrongdoing. Additionally, all involved parties must agree to and abide by measurable and timely actions within the scope of this Informal Resolution Process and directives. The Title IX Coordinator or designee will review any request for RJ, and may decline to initiate RJ based on the facts and circumstances of the particular case.

The RJ Conference proceeds only if all parties agree to participate willingly. Upon doing so, the RJ process typically commences within ten (10) business days after the Title IX Coordinator receives written confirmation from all involved parties that they wish to participate in an RJ conference. The conference will continue until the conference is successfully concluded or until the facilitator determines that the conference will not be successful. If successful, an agreeable resolution is reached by all involved parties, at which time the process is concluded, and the matter is resolved. If a resolution cannot be reached, the matter will be referred to the Vice President for Student Affairs, or the Office of Legal Affairs to re-evaluate other options for resolution.

The Title IX Coordinator will monitor the parties’ adherence to their proposed solution and reserves the right to close the matter when compliance is satisfactory.