

Office of Institutional Equity

UPSTATE
MEDICAL UNIVERSITY

THE OFFICE OF
INSTITUTIONAL EQUITY

Title IX Grievance Procedure

August 2020

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1. **Introduction**

Title IX of the Educational Amendments of 1972 (“Title IX”) prohibits any person in the United States from being discriminated against on the basis of sex in seeking access to any educational program or activity receiving federal financial assistance. The following procedure has been adopted by SUNY Upstate Medical University (“SUNY Upstate”) to investigate claims of sexual harassment and sexual violence in SUNY Upstate’s educational programs or activities, which are prohibited under Title IX and SUNY Upstate’s policies.

These procedures provide a supportive process for individuals who report sexual harassment and sexual violence and a fair process for individuals who are accused of sexual harassment or violence in SUNY Upstate’s educational programs or activities. These procedures describe SUNY Upstate’s efforts to conduct prompt, thorough, and fair investigations as required by law, and to ensure that SUNY Upstate meets its commitment to an open and inclusive educational environment.

2. **Application of the Title IX Grievance Procedure**

a. Effective Date

This Title IX Grievance Procedure is effective August 14, 2020, and will be followed only with respect to complaints of sexual misconduct in SUNY Upstate’s education programs and activities brought on or after August 14, 2020. Complaints of sexual harassment and sexual misconduct brought prior to August 14, 2020 will be investigated and adjudicated according to SUNY Upstate’s Procedure for Investigating Complaints of Discrimination, Harassment, Sexual Assault, and/or Sexual Violence, if the investigation is not complete by that date.¹

b. Non-Discrimination in Application

The requirements and protections of this policy apply equally regardless of sex, sexual orientation, gender identity, gender expression, or other protected classes covered by federal or state law. All requirements and protections are equitably provided to individuals regardless of such status or status as a Complainant, Respondent, or Witness. Individuals who wish to file a complaint about the institution’s policy or process may contact the Department of Education’s Office for Civil Rights using contact information available at <https://ocrcas.ed.gov/contact-ocr>.

¹ This Title IX Grievance Procedure has been put in place to comply with the new Title IX regulations that were established by the U.S. Department of Education on May 19, 2020 and went into effect on August 14, 2020 (“Title IX Final Rule”). A number of lawsuits have been filed to challenge the Title IX Final Rule, which are still ongoing. Should any portion of the Title IX Final Rule, 85 Fed. Reg. 30026 (May 19, 2020), be stayed or held invalid by a court of law, or should the Title IX Final Rule be withdrawn or modified to not require the elements of this procedure, this procedure, or the invalidated elements of this procedure, will be deemed revoked as of the publication date of the opinion or order and for all reports after that date, as well as any elements of the process that occur after that date if a case is not complete by that date of opinion or order publication. Should the Title IX Grievance Procedure be revoked in this manner, any conduct covered under the Title IX Grievance Procedure shall be investigated and adjudicated under SUNY Upstate’s existing Procedure for Investigating Complaints of Discrimination, Harassment, Sexual Assault and/or Sexual Violence.

c. Definitions for purposes of this Title IX Grievance Procedure

All definitions set forth below are applicable to these Title IX Grievance Procedures.

Complainant means any individual who has reported being or is alleged to be the victim of conduct that could constitute Covered Sexual Harassment as defined in this policy.

Confidential Resource is a professional counselor, pastoral counselor or a health care provider serving in their capacity as a counselor or health care provider and any employee so designated as a confidential resource by the SUNY Upstate President or their designee.

Education Program or Activity means any program or activity offered at SUNY Upstate or by SUNY Upstate employees in the scope of their duties that is educational in nature beyond on-the-job training, general interest, or routine education programs. Factors in determining whether a program or activity is educational include whether it is structured through a particular course of study; whether participants earn academic credit toward a degree or certificate, or qualify to sit for professional exams; or whether a program provides instructors, exams or other evaluation process. Educational programs and activities include, without limitations, degree- or certificate-granting programs offered by SUNY Upstate and affiliated colleges and universities; clinical rotations for degree- or certificate-granting programs; medical and other residency programs; research and medical fellowships; internships; and educational programs offered to high school, college and university students.

Formal Complaint means a document, including an electronic submission, filed by a Complainant with a signature or other indication that the Complainant is the person filing the formal complaint, or signed by the Title IX Coordinator, alleging sexual harassment or sexual violence against a Respondent about conduct within a SUNY Upstate education program or activity and requesting initiation of the Title IX Grievance Procedure to investigate the allegation(s) of sexual harassment or sexual violence.

Participant means any person participating in SUNY Upstate's education programs or activities, as defined herein. The term includes, but is not limited to, staff and faculty, preceptors, medical and other residents, research and other fellows, visiting scholars, interns, students and patients participating in educational programs and activities.

Preponderance of the Evidence is the standard of proof used to determine if the Respondent has engaged in Sexual Harassment or Sexual Violence, as defined herein. To meet this standard, the evidence must show that the conduct considered Sexual Harassment or Sexual Violence is more likely than not to have occurred, and fits within the definitions of Sexual Harassment and/or Sexual Violence herein.

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 Procedure:

- Evidence and questions about the complainant’s sexual predisposition or prior sexual behavior unless:
 - They are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
 - They concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent.²
- 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.³

Respondent means any individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment under this Procedure.

Official with Authority means an employee who has the authority to address reports of Sexual Harassment or Sexual Violence as defined herein. Program directors, administrators, supervisors, program and project managers, coordinators, clinical instructors, clinical educators, principal investigators, mentors, research laboratory preceptors and faculty members are Officials with Authority, unless they are considered or have been designated a confidential resource.

Sexual Harassment that falls within this Title IX Grievance Procedure is any conduct on the basis of sex, including gender, gender identity, gender expression or sexual orientation, when:

1. Submission to such conduct is made either explicitly or implicitly a condition of an individual’s participation in SUNY Upstate’s educational programs or activities by an employee of SUNY Upstate;
2. Submission to or rejection of such conduct is used as the basis for educational evaluation, grades, or advancement by an employee of SUNY Upstate; or
3. Such conduct is unwelcome and would be determined by a reasonable person to be so severe, pervasive and objectively offensive that it effectively denies a person equal access to SUNY Upstate’s educational programs or activities; or
4. Such conduct constitutes **Sexual Violence**, which includes sexual assault, relationship violence, and stalking.

Sexual assault is sexual contact or sexual intercourse without consent, through threat or use of force, or when an individual is incapacitated. Sexual contact is intentional contact, directly, over clothing or with an object, however slight, with the breasts, buttocks, groin or genitals of another, touching another with any of these body parts, or compelling another to touch his or her own body parts or the body parts of another in a sexual manner. Sexual intercourse is sexual penetration, however slight, with any body part or object, by an individual upon another.

² 34 C.F.R. § 106.45(6)(i).

³ 85 Fed. Reg. 30026, 30294 (May 19, 2020).

Relationship Violence is physical, sexual, or psychological violence or abuse, including acts of intimidation and coercion, by a current or former partner in an intimate relationship upon the other partner. Relationship violence may be referred to as domestic violence when it involves current or former spouses, individuals who are or were cohabitating or individuals who share a child in common. Relationship violence may be referred to as dating violence when it involves another form of intimate relationship. The existence of an intimate relationship will be evaluated considering the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

Stalking is a course of conduct or repeated acts directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or to suffer substantial emotional distress. Stalking may include repeatedly following, harassing, threatening, or intimidating another by telephone, mail, electronic communication, social media, or by any other action, device or method.

Note that conduct that does not meet one or more of these criteria may still be prohibited under SUNY Upstate's Employee or Student Codes of Conduct, Harassment Prevention Policy, Non-Discrimination and Equal Opportunity Policy, or other relevant policies in place, and may warrant an investigation pursuant to Upstate's more broadly encompassing Procedure for Investigating Complaints of Discrimination, Harassment, Sexual Assault and/or Sexual Violence.

3. **Reporting Incidents of Sexual Harassment and / or Sexual Violence**

All reports of emergency situations should be made to 911 or to the appropriate emergency numbers on campus.

a. Reporting Options

Any person may report actual or suspected Sexual Harassment or Sexual Violence in SUNY Upstate's educational programs or activities.

All participants in, or applicants to, SUNY Upstate's educational programs and activities who believe that they have been subjected to Sexual Harassment or Sexual Violence as defined in this Procedure are strongly encouraged to make a report. Prompt reporting allows SUNY Upstate to provide resources to the participant and facilitates an appropriate response. Reports may be made at any time, but delayed reports may limit the availability of evidence and witnesses, and make it difficult for SUNY Upstate to respond in an effective and fair matter.

Reports of Sexual Harassment or Sexual Violence under this Procedure may be made to:

- SUNY Upstate's Title IX Coordinator:
Katie King, JD
Jacobsen Hall

7th Floor
315-464-9590
titleix@upstate.edu

- University Police Department: Incidents of prohibited conduct that also constitute criminal conduct (generally, sexual violence) may be reported to the University Police Department or other law enforcement agency. A decision whether to report to law enforcement is left to the complainant except in rare circumstances in which there is an on-going threat to the SUNY Upstate community. When a report is made to both the Title IX Coordinator and a law enforcement agency, the Title IX Coordinator will coordinate with law enforcement, as needed, to preserve evidence and achieve other shared goals. At the request of a law enforcement agency, SUNY Upstate may temporarily delay an investigation while the law enforcement agency gathers evidence; however, SUNY Upstate is required to pursue an administrative response to a report regardless of whether a law enforcement investigation is also pursued. Notwithstanding any temporary delay of the investigation, SUNY Upstate will provide resources to the Complainant and Respondent and will implement supportive measures deemed necessary to protect the parties and the SUNY Upstate community.
- Confidential Resources: SUNY Upstate employees who are professional counselors, pastoral counselors or health care providers are considered confidential resources when they are serving in their capacities as counselors or health care providers, as are any employees designated as confidential resources. Confidential resources are not required to make reports to the Title IX Coordinator. They are available to provide advice, support, and guidance about how to manage an incident of prohibited conduct without initiating a response by SUNY Upstate. A report to a confidential resource is not considered a report to SUNY Upstate.
- Anonymous Reporting: Reports of Sexual Harassment that fall under this Procedure may be made anonymously through University Police Department's anonymous tip line at <http://www.upstate.edu/victimresources/intra/tip-form.php>. Reports made through the anonymous tip line will be sent directly to the Title IX Coordinator or their designee. The Title IX Coordinator will address the report to the extent possible with the information provided.
- Outside Agencies: Complaints of Title IX violations may be made to the U.S. Department of Education Office of Civil Rights (OCR) or other state or federal agency with jurisdiction over the relevant educational program or activity. Information on how to file a complaint with OCR is available on its website: <https://www2.ed.gov/about/offices/list/ocr/docs/howto.html?src=rt>.

b. Duty to Report

All Officials with Authority who become aware of information that leads them to reasonably believe that a participant in an educational program or activity has been subject to Sexual Harassment or Sexual Violence must promptly make a report to the Title IX Coordinator.

Employees with a duty to report must provide as much information as they have regarding the incident and may not report anonymously. All other SUNY Upstate employees, except confidential resources, are strongly encouraged to make such a report.

Employees of schools, colleges and universities whose students participate in SUNY Upstate's educational programs and activities are encouraged, and in some cases required by agreement, to report to SUNY Upstate's Title IX Coordinator any information that leads them to reasonably believe that a participant in a SUNY Upstate educational program or activity has been subject to Sexual Harassment or Sexual Violence as defined by this Procedure.

c. Confidentiality

Unless they are considered a Confidential Resource under this Procedure, SUNY Upstate's offices and employees 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 Upstate will limit the disclosure as much as practicable, even if the Title IX Coordinator determines that the request for confidentiality cannot be honored.

All individuals involved in the investigation and resolution of a report under this Procedure are expected to treat all related information as confidentially as possible. The parties may share information related to a report or investigation with their respective support people, advisors and others providing support or assistance to the extent necessary to enable those individuals to provide effective support, advice and assistance.

d. Disability Accommodations

The 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.

e. SUNY Upstate's Amnesty policy

SUNY Upstate's Amnesty Policy applies to all cases involving Sexual Harassment and Title IX and applies to Complainants who are students, a bystander or a reporting individual acting in good faith who disclosed any incident of domestic violence, dating violence, stalking, or sexual assault to SUNY Upstate officials or law enforcement. Any such individuals will not be subject to a Code of Student 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.

4. Supportive Measures

Supportive measures are non-disciplinary, non-punitive individualized services that are available to all parties regardless of whether a complainant pursues an informal or formal resolution

of the report. Supportive measures may be imposed or changed at any point during the resolution of a report in order to protect the interests of the parties and SUNY Upstate. Supportive measures will be determined on a case-by-case basis considering all relevant circumstances, including, but not limited to, specific requests by the parties, the severity of the allegations, and whether the parties are in the same educational program or share a job location.

Supportive measures may include, but are not limited to:

- Counseling;
- Extensions of deadlines or other course-related adjustments;
- Modifications of work or class schedules;
- Institutional escort services;
- Separating individuals (no contact orders);
- Changes in work or housing locations-when possible;
- leaves of absence; or
- other safety measures.⁴

5. **Emergency Removal**

SUNY Upstate may remove a Respondent from SUNY Upstate’s education program or activity on an emergency basis, where it: (1) undertakes an individualized safety and risk analysis and (2) determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of covered sexual harassment justifies a removal. When a removal is considered, the Title IX Coordinator will work with University Police, the Office of General Counsel and the relevant program to conduct an individualized safety and risk analysis to decide whether removal is appropriate. Any individual removed from a program or activity under this provision shall be provided notice and an opportunity to immediately challenge the decision to an appropriate decision-maker based on the status of the individual.

6. **Administrative Leave**

SUNY Upstate may place a non-student employee Respondent on administrative leave during the Title IX Grievance Process, consistent with the disciplinary provisions of the applicable collective bargaining agreements.

7. **Process for Resolving Reports of Sexual Harassment and/or Sexual Violence**

a. Timeframe for Completing the Title IX Grievance Procedure

The timeframe for the Title IX Grievance Procedure begins with the filing of a Formal Complaint. The Grievance Procedure 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

⁴ See 85 Fed. Reg. 30401.

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.

b. Informal Resolution

Reports of Sexual Harassment or Sexual Violence under this Procedure may be resolved through an informal resolution process. SUNY Upstate encourages informal resolution of complaints when the parties wish to resolve a report cooperatively, whether or not the conduct in question rises to the level of a Policy violation. Informal resolution may include an inquiry into the facts, but typically does not involve an investigation and will not result in a determination whether the Policy has been violated unless agreed by both parties. Informal resolution may not be used when the Complainant is a student and the Respondent is an employee who is not also a student or trainee.

Participation in an informal resolution process is voluntary and the parties must agree in writing to participate. Any party may end the informal resolution process at any time before it concludes. Informal resolution may include joint or separate mediation discussions, separation of the parties, referral to counseling programs, targeted education and training programs, or any other steps agreed by the parties. An informal resolution process is expected to take no more than 30 days.

If the parties agree to informally resolve the complaint, the matter will be considered closed. The Title IX Coordinator will maintain a record of the resolution, will inform relevant offices or institutes of the outcome, and will monitor implementation of the resolution as appropriate.

c. Filing a Formal Complaint

If the parties may not or do not choose to pursue an informal resolution process, the complaint may be resolved through an investigation under this Procedure upon the filing of a Formal Complaint. To file a Formal Complaint, a Complainant must provide the Title IX Coordinator with a written, signed complaint describing the facts alleged. Complainants are only able to file a Formal Complaint under this Procedure if they are currently participating in, or attempting to participate in, the education programs or activities of SUNY Upstate, including as an employee. For Complainants who are not participating in a SUNY Upstate education program or activity, SUNY Upstate will follow its non-Title IX Procedure for Investigating Complaints of Discrimination, Harassment, Sexual Assault and / or Sexual Violence.

In the absence of a formal complaint from the complainant, the Title IX Coordinator may sign a formal complaint to initiate an investigation when there is a health or safety risk to either the complainant or to SUNY Upstate. A determination whether such a health or safety risk exists shall be made in conjunction with University Police, the Office of General Counsel and the relevant program. SUNY Upstate 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 Procedure. Nothing in the Title IX Grievance Policy prevents a Complainant from seeking the assistance of state or local law enforcement alongside the appropriate institutional process.

d. Multiple Complainants or Respondents

The institution may consolidate Formal Complaints alleging covered sexual harassment or violence 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.

e. Notice of Complaint

Upon receipt of a Formal Complaint, the Title IX Coordinator shall provide notice to all parties that includes:

- Notice of the institution’s Title IX Grievance Procedure and a copy of it;
- 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 institution does not intend to rely in reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a party or other source;
- A statement that the respondent is presumed not responsible for the alleged conduct, that a determination regarding responsibility is made at the conclusion of any investigation, and that knowingly making false statements or submitting false information is a violation of SUNY Upstate policy.

f. Determining Jurisdiction

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

- The conduct is alleged to have occurred on or after August 14, 2020;
- The conduct is alleged to have occurred in the United States;
- The conduct is alleged to have occurred in Upstate’s education program or activity; and
- The alleged conduct, if true, would constitute covered sexual harassment or sexual violence as defined in this procedure and Title IX.

This determination may be based on information provided by the Complainant or may

include a meeting with the Respondent and review of any initial information provided by the parties. The determination is expected to be made no more than 15 days from the date of the Formal Complaint, the end of an informal resolution process, or the Complainant's request for an investigation, whichever is latest.

If all of the elements are met, SUNY Upstate will investigate the allegations according to this Title IX Grievance Procedure.

If the alleged conduct, if true, includes conduct that does fall within this Title IX Grievance Procedure and also does not fall under this Procedure, the Title IX Grievance Procedure will be applied in the investigation of all of the allegations.

g. Dismissal of the Formal Complaint

If any one of the above jurisdictional elements in Paragraph 7(f) are not met, the Title IX Coordinator or designee will notify the parties that the Formal Complaint is being dismissed from investigation or review under the Title IX Grievance Procedure. Each party may appeal this dismissal using the procedure outlined in "Appeals," below. If the allegations may constitute a violation of another SUNY Upstate policy, the Complaint will be referred to the appropriate office or a different procedure will be followed for resolution.

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

- A Complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any allegations raised in the Formal Complaint;
- The Respondent is no longer enrolled or employed by SUNY Upstate; or
- Specific circumstances prevent SUNY Upstate 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.

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

h. Notice of Meetings and Interviews

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

i. Notice of additional allegations

If, in the course of an investigation, SUNY Upstate decides to investigate allegations about the Complainant or Respondent that are not included in the Notice of Complaint, but are considered Sexual Harassment or Sexual Violence under the Title IX Grievance Procedure, SUNY Upstate will notify the parties whose identities are known of the additional allegations by their SUNY Upstate 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.

j. Delays

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

k. Investigation

If the elements in paragraph 7(g) are met, and the parties are not interested in the informal resolution process, the Title IX Coordinator will so inform the parties and assign one or more investigators.

The Title IX Coordinator may serve as the investigator or may appoint an investigator, who may be a SUNY Upstate employee or an external investigator. All investigators shall have sufficient training and experience to conduct a prompt, thorough and impartial investigation.

All parties shall have the opportunity to present statements, provide witness names and submit physical, documentary or other evidence to the investigator. Each party may submit questions to the investigator to be asked of another party. The investigator shall also gather and consider any additional evidence the investigator deems relevant.

SUNY Upstate 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 Upstate 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.

SUNY Upstate, and not the parties, has the burden of proof and the burden of gathering evidence to determine whether a violation of the Sexual Misconduct in Education Policy has occurred. This burden does not rest with either party, and either party may decide not to share their account of what occurred or may decide not to participate in an investigation or hearing. This does not shift the burden of proof away from SUNY Upstate and does not indicate responsibility.

If, in the course of the investigation, the investigator determines that a Complainant submitted a report that the Complainant knew was false, the investigator shall so determine and the report shall be referred to the appropriate conduct process. Good faith reports, even if they are ultimately unsubstantiated, are not considered false reports. If the investigator determines that the conduct investigated may violate another policy in addition to, or instead of, the Policy, the investigator shall follow the appropriate procedure for investigation or forward the investigation report to the appropriate office for appropriate response.

l. Inspection and Review of the Evidence

When the investigator has finished gathering evidence, the investigator will make the evidence obtained through the investigation that is directly related to the allegations raised in the Formal Complaint available to the parties and their advisors, if any, to inspect and review. This includes evidence that is relevant, even though it does not end up being relied upon, and evidence that tends to prove or disprove the allegations. 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.⁵

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.⁶

The parties shall have ten (10) days to review the evidence and respond to it with comments, additional information or a request that additional investigation be conducted. If the investigator receives significant additional information after the evidence has been made available to the parties for review, that information will also be shared with the parties for their review and response.

The parties and their advisors are prohibited by law from disseminating, photographing, or copying any of the evidence subject to inspection and review, or from using such evidence for any purpose unrelated to the Title IX grievance process. The parties will be required to sign an agreement that they will comply with this legal obligation prior to any evidence being made available for review.⁷

m. Investigative Report

Once the evidence has been reviewed by the parties and their feedback has been incorporated, the investigator shall have 10 days to prepare a final investigative report that includes a summary of evidence and a recommended determination of whether the allegation of Sexual Harassment or Violence has been substantiated and the conduct is in violation of the Sexual Misconduct in Education Policy. The recommendations shall be made on the basis of a preponderance of the

⁵ See, 85 Fed. Reg. 30026, 30307 (May 19, 2020).

⁶ See, 85 Fed. Reg. 30026, 30438 (May 19, 2020).

⁷ See, 85 Fed. Reg. 30026, 30435 (May 19, 2020).

evidence standard. The basis for any recommended determinations shall be set forth in the final investigative report. The investigator may provide the parties with written notice extending the investigation for 10 additional days and explaining the reason for the extension.

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

The Respondent may, at any time prior to the issuance of the final investigative report, accept responsibility for the conduct being investigated. If the Respondent does so, the Title IX Coordinator will refer the report to the appropriate disciplinary official for imposition of any appropriate sanction.

n. Determination Regarding Responsibility

Upon completion of the final investigation report, the Title IX Coordinator will provide the report to the parties and designate an individual employee or third party trained investigator to make a determination. The parties shall be given five (5) days to submit written questions to the decision maker to ask of any party or witness, including the investigator. The decision maker shall review submitted questions either in a meeting or through email or other electronic platform. If the questions are relevant and not otherwise prohibited, they will be forwarded to the appropriate party or witness for response within five (5) days. Responses will be shared with the party who submitted the question, who will be given an additional two (2) days for follow up.

This process will continue until all questions have been answered or the decision maker determines that submitted questions are irrelevant, duplicate or otherwise prohibited. If the decision maker decides that a question is irrelevant, duplicative or otherwise prohibited, it will provide an explanation for that decision to the party who submitted the question. If the decision maker decides, based on the volume or nature of the questions submitted, that it would be more efficient or appropriate to meet with the parties rather than forward the questions, it may schedule separate meetings with each party and/or with any of the witnesses. In such circumstances, the decision maker will provide a written summary of responses to the party who asked the questions.

When all responses to questions have been received, the decision maker shall make a final determination whether the Policy has been violated. Throughout the investigation, the Respondent shall be presumed "not responsible" unless or until the decision maker makes such a final determination. The final determination shall be based on all relevant information available to the decision maker, including the investigation report and subsequent questions and answers.

The decision maker shall issue a written determination regarding responsibility simultaneously to all parties through their institution email account, or other reasonable means as necessary. The Determination will include:

- Identification of the allegations potentially constituting Sexual Harassment or Sexual Violence hereunder;

- 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;
- Findings of fact supporting the determination;
- Conclusions regarding which section of the Code of Conduct, if any, the Respondent has or has not violated.
- For each allegation:
 - A statement of, and rationale for, a determination regarding responsibility;
 - A statement of, and rationale for, any disciplinary sanctions the recipient imposes on the Respondent; and
 - A statement of, and rationale for, whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant; and
- SUNY Upstate's procedures and the permitted reasons for the Complainant and Respondent to appeal (described below in "Appeal").

If no appeal is filed, this determination shall become effective within five (5) days of its submission to the parties.

If the decision maker determines that the Respondent has engaged in Sexual Harassment or Sexual Violence as defined herein, it may consult with the Respondent's department or program as to appropriate remedies and sanctions. In fulfilling any of its responsibilities pursuant to this procedure, the decision maker may consult with the Office of General Counsel for guidance.

Sanctions that may be implemented for engaging in Sexual Harassment or Sexual Violence as defined under this Procedure include expulsion, dismissal or termination of appointment; suspension; disciplinary probation; reprimand; restitution; restrictions on contact with other parties; restrictions on access to facilities, services or programs; community service; specified training or education; or alternative sanctions, such as completing anger management or batterer intervention courses, performing volunteer work, writing essays, completing a 12-step or other addiction program, completing a sex offender rehabilitation program, issuing a sincere apology, and any other remedy appropriate for the circumstances.

8. Appeals

Either party may appeal the decision maker's decision or the dismissal of a Formal Complaint filed under this Title IX Grievance Procedure. The appeal must be filed with the Title IX Coordinator within five (5) business days of being notified of the written determination. Upon receipt of appeal, the Title IX Coordinator will provide the appeal to the SUNY Upstate official designated to handle appeals under this procedure. The limited grounds for appeal are:

- a. That these Procedures were not followed and the failure to follow the Procedures materially adversely affected the outcome;
- b. That new evidence exists that was not reasonably available at the time the determination regarding responsibility was made and the new evidence could materially affect the outcome; or

- c. The Title IX Coordinator, investigators, or decision maker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that materially adversely affected the outcome.

The submission of appeal stays any sanctions for the pendency of an appeal. Supportive measures and remote learning opportunities remain available during the pendency of the appeal. If an appeal is filed, the Title IX Coordinator will provide the other party with a copy of the appeal. The other party may submit a response to the appeal within five (5) business days of receipt. The Appeals designee will conduct a review of the investigative record, the appeal and the response, if any, and issue a final decision. The Appeals designee may uphold the decision maker's determination, may reverse the determination, or may require additional investigation. In fulfilling their responsibility, the Appeals designee may consult with the Office of General Counsel for guidance.

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

9. **Retaliation**

SUNY Upstate will keep the identity of any individual who has made a report or complaint of sex discrimination confidential, including the identity of any individual who has made a report or filed a Formal Complaint of sexual harassment under this Title IX Grievance Procedure, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding under this Title IX Grievance Policy.

No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX of the Education Amendments of 1972 or its implementing regulations.

No person may intimidate, threaten, coerce, or discriminate against any individual because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing under this Title IX Grievance Policy.

Any intimidation, threats, coercion, or discrimination, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations constitutes retaliation. This includes any charges filed against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but that arise from the same facts or circumstances as a report or complaint of sex discrimination or a report or Formal Complaint of sexual harassment. Complaints alleging retaliation may be filed with the Title IX Coordinator.

