

# **Grievance Procedure for Sex-Based Harassment Complaints for Students including NYS 129B requirements**

## **I. Effective Date and Changes to Procedure Based on Court Rulings and Legal Challenges or Changes in Law or Regulation**

This Grievance Procedure applies to incidents that occur on or after August 1, 2024. Any incidents reported under this Grievance Procedure that occurred on or before July 31, 2024 will be processed through the institution's Grievance Policy for Addressing Formal Complaints of Sexual Harassment Under Title IX Regulations (2020 Grievance Policy).

Should any portion of the 2024 Title IX Final Rule (89 Fed. Reg. 33474 (Apr. 29, 2024)), be stayed or held invalid by a court of law, or if the 2024 Title IX Final Rule is withdrawn or modified to not require elements of this Procedure, the Procedure in its entirety, or the invalidated elements of this Procedure, they will be deemed revoked as of the publication date of the opinion or order from the Court and for all reports after that date, as well as any elements of the process that occur after that date if a case is not complete by the date of the opinion or order publication by the Court. If this Procedure is revoked in this manner, any conduct covered under this Procedure shall be investigated and adjudicated under the previous 2020 Title IX Grievance Policy and/or Student Community Rights and Responsibilities (<https://www.potsdam.edu/current/student-conduct-community-standards/student-community-rights-and-responsibilities>) and for faculty or staff defined within the policies and procedures found the Human Resources policies and procedures website (<https://www.potsdam.edu/about/offices/hr/policies-and-procedures>). SUNY Potsdam will update this Procedure as soon as practicable to reflect any court rulings or changes that invalidate parts of the Procedure, if applicable.

## **II. Scope of Procedure**

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

## **III. Jurisdiction of Procedure**

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

- The conduct alleged occurred on or after August 1, 2024;
- The conduct alleged occurred in the United States, except for cases of sexual assault, domestic violence, dating violence and stalking, in which case, if such occurred off

campus or during study abroad, will be subject to the jurisdiction of this Grievance Procedure;

- The conduct alleged occurred in SUNY Potsdam's Education Program or Activity; and
- The conduct alleged, if true, would constitute Sex-Based Harassment as defined in this Grievance Procedure.

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

Conduct that occurs under SUNY Potsdam's Education Program or Activity includes but is not limited to conduct that occurs in a building owned or controlled by a student organization that is officially recognized by SUNY Potsdam and conduct that is subject to SUNY Potsdam's disciplinary authority under the *Student Community Rights and Responsibilities* (Student Code of Conduct).

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

#### **IV. Non-Discrimination in Application**

The requirements and protections of this policy apply equally regardless of sex, sexual orientation, gender identity, gender expression, race, color, national origin, religion, creed, age, disability, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, criminal conviction, or other protected classes covered by applicable federal, state, or local law.

All requirements and protections are equitably provided to individuals regardless of such protected status(es) or status as a Complainant, Respondent, or Witness. Individuals who wish to file a complaint about the institution's policy or process may contact the U.S. Department of Education's Office for Civil Rights using contact information available at <https://ocras.ed.gov/contact-ocr>. Individuals may also file complaints with the New York State Division of Human Rights (DHR), using contact information available at <https://dhr.ny.gov/complaint>.

## V. Students' Bill of Rights

All Students have the right to:

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

## VI. Definitions

1. **Accused** means a person accused of a violation who has not yet entered an institution's judicial or conduct process.
2. **Admission** means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an Education Program or Activity operated by SUNY Potsdam.
3. **Bystander** means a person who observes a crime, impending crime, conflict, potentially violent or violent behavior, or conduct that is in violation of the rules or policies of an institution.

4. ***Code of conduct*** means the written policies adopted by an institution governing student behavior, rights, and responsibilities while such student is matriculated in the institution.
5. ***Consent*** means a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate Consent. The definition of Consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression. Consent to any sexual act or prior consensual sexual activity between or with any Party does not necessarily constitute Consent to any other sexual act. Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol. Consent may be initially given but withdrawn at any time. Consent cannot be given when a person is incapacitated. Incapacitation occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot Consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to Consent. Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm. When Consent is withdrawn or can no longer be given, sexual activity must stop. "Consent" and "affirmative consent" may be used interchangeably under this Grievance Procedure.
6. ***Complainant*** means:
  - (1) a student or employee who is alleged to have been subjected to conduct that could constitute Sex-Based Harassment as defined in these procedures and who was participating or attempting to participate in SUNY Potsdam's Education Program or Activity; or
  - (2) a person other than a student or employee who is alleged to have been subjected to conduct that could constitute Sex-Based Harassment under this grievance procedure and who was participating or attempting to participate in SUNY Potsdam's Education Program or Activity at the time of the alleged Sex-Based Harassment.

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

7. ***Complaint*** means an oral or written request to SUNY Potsdam that objectively can be understood as a request for SUNY Potsdam to investigate and make a determination about alleged Sex-Based Harassment at the institution.

8. **Confidential Employee** means:
- (1) an employee of SUNY Potsdam whose communications are privileged under Federal or State law. The employee's confidential status is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies;
  - (2) an employee of SUNY Potsdam whom the recipient has designated as confidential for the purpose of providing services to persons related to Sex-Based Harassment. If the employee also has a duty not associated with providing those services, the employee's confidential status is only with respect to information received about Sex-Based Harassment in connection with providing those services; or
  - (3) an employee of SUNY Potsdam who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about Sex-Based Harassment. The employee's confidential status is only with respect to information received while conducting the study.
9. **Disciplinary Sanctions** means consequences imposed on a Respondent following a determination under this grievance procedure that the Respondent violated SUNY Potsdam's prohibition Sex-Based Harassment.
10. **Education Program or Activity** means any academic, extracurricular, research, occupational training or other Education Program or Activity operated by SUNY Potsdam that receives Federal financial assistance.
11. **Party** means Complainant or Respondent.
12. **Peer Retaliation** means Retaliation by a Student against another Student.
13. **Relevant** means related to the allegations of Sex-Based Harassment under investigation as part of this Grievance Procedure. Questions are Relevant when they seek evidence that may aid in showing whether the alleged Sex-Based Harassment occurred, and evidence is Relevant when it may aid a decisionmaker in determining whether the alleged Sex-Based Harassment occurred.
14. **Remedies** means measures provided, as appropriate, to a Complainant or any other person SUNY Potsdam identifies as having had their equal access to SUNY Potsdam's Education Program or Activity limited or denied by Sex-Based Harassment. These measures are provided to restore or preserve that person's access to SUNY Potsdam's Education Program or Activity after determines that Sex-Based Harassment occurred.

15. **Respondent** means a person who is alleged to have violated SUNY Potsdam’s prohibition on Sex-Based Harassment.
16. **Retaliation** means intimidation, threats, coercion, or discrimination by any person by SUNY Potsdam, a Student, or an employee or other person authorized by SUNY Potsdam to provide aid, benefit, or service under SUNY Potsdam’s Education Program or Activity, for the purpose of interfering with any right or privileged secured by Title IX, or because the person has reported information, made a complaint, testified, assisted or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this grievance procedure including an informal resolution process.
17. **Sex-Based Harassment** means sexual harassment and other harassment on the basis of sex, including harassment because of gender identity, sexual orientation, sex characteristics, sex stereotypes, and/or pregnancy and other conditions, that is:
- (1) *Quid pro quo harassment*. An employee, agent or other person authorized by SUNY Potsdam’s Education Program or Activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person’s participation in unwelcome sexual conduct;
  - (2) *Hostile Environment harassment*. Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from SUNY Potsdam’s Education Program or Activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following: (i) the degree to which the conduct affected the Complainant’s ability to access SUNY Potsdam’s Education Program or Activity; (ii) the type, frequency, and duration of the conduct; (iii) the Parties’ ages, roles within SUNY Potsdam’s Education Program or Activity, previous interactions and other factors about each Party that may be Relevant to evaluating the effects of the conduct; (iv) the location of the conduct and the context in which the conduct occurred; and (v) other Sex-Based Harassment in SUNY Potsdam’s Education Program or Activity;
  - (3) *Sexual Assault* (as defined in the Clery Act, 20 U.S.C. 1092(f)) means any sexual act directed against another person, without the Consent of the victim, including instances where the victim is incapable of giving Consent;
  - (4) *Dating Violence* (as defined in the Violence Against Women Act (VAWA) Reauthorization of 2022 and the VAWA Amendments to the Clery Act) means any violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) the

length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship.

(5) *Domestic Violence* means any felony or misdemeanor crimes committed by a person who: (A) is a current or former partner of the victim under the family or domestic violence laws of New York State or a person similarly situated to a spouse of the victim; (B) is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner; (C) shared a child in common with the victim; or (D) commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of New York State or

(6) *Stalking* means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (A) fear for the person's safety or the safety of others; or (B) suffer substantial emotional distress.

18. ***Student*** means a person who has gained Admission.

19. ***Supportive Measures*** means individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a Complainant or Respondent, not for punitive or disciplinary reasons, and without fee or charge to the Complainant or Respondent to: (1) restore or preserve that Party's access to SUNY Potsdam's Education Program or Activity, including measures that are designed to protect the safety of the Parties or SUNY Potsdam's educational environment; or (2) provide support during SUNY Potsdam's grievance procedures for Sex-Based Harassment or during the informal resolution process.

## **VII. Disability Accommodations**

### *Generally*

This procedure does not alter any institutional obligations under applicable federal, state, and/or local disability laws, including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973, among others. Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator or designee at any point before or during the Title IX Grievance Procedure that do not fundamentally alter the Procedures. The Title IX Coordinator or designee will not affirmatively provide disability accommodations that have not been specifically requested by the Parties, even where the Parties may be receiving accommodations in other institutional programs and activities.

### *Requests for Reasonable Accommodations During the Title IX Grievance Procedure*

If the Complainant or Respondent discloses a disability, the Title IX Coordinator or designee may consult, as appropriate, with the Office of Accommodative Services to provide support to students with disabilities to determine how to comply with applicable law including, without

limitation, Section 504 of the Rehabilitation Act of 1973 in the implementation of any Supportive Measures, or any other reasonable accommodations requested during the Grievance Procedure.

## **VIII. Policy for Alcohol and/or Drug Use Amnesty**

The health and safety of every student at SUNY Potsdam is of utmost importance. SUNY Potsdam recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. SUNY Potsdam strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to institution officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to SUNY Potsdam's officials or law enforcement will not be subject to SUNY Potsdam's code of conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.

## **IX. Basic Requirements of the Grievance Procedure**

SUNY Potsdam is required to:

- Treat Complainants and Respondents equitably;
- Ensure that any person designated by SUNY Potsdam as a Title IX Coordinator or designee, investigator, or decisionmaker does not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent;
- Establish reasonably prompt timeframes for the major stages of this Grievance Procedure, including a process that allows for the reasonable extension of timeframes on a case-by-case basis for good cause with notice to the Parties that includes the reason for the delay;
- Ensure that reasonable steps to protect the privacy of the Parties and witnesses during the pendency of the Grievance Procedure are taken, provided that the steps do not restrict the abilities of the Parties to obtain and present evidence, including by speaking to witnesses (as long as such does not result in Retaliation), consult with their family members, confidential resources, or advisors, or otherwise prepare for or participate in this Grievance Procedure;
- Ensure an objective evaluation of all evidence that is Relevant and not otherwise impermissible under this Procedure, including both inculpatory and exculpatory evidence, and provide that credibility determinations must not be based on a person's status as a Complainant, Respondent or Witness;
- Exclude impermissible evidence from consideration as defined in the Grievance Procedure; and



- Clearly articulate principles for how SUNY Potsdam will determine which policies and procedures apply if not all such complaints are handled under this institutional Grievance Procedure.

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

- Notify University Police, local law enforcement, and/or state police;
- Have emergency access to a Title IX Coordinator or other appropriate official trained in interviewing victims of sexual assault who shall be available upon the first instance of disclosure by a Complainant to provide information regarding options to proceed, and, where applicable, the importance of preserving evidence and obtaining a sexual assault forensic examination as soon as possible, and detailing that the criminal justice process utilizes different standards of proof and evidence and that any questions about whether a specific incident violated New York Penal Law should be addressed to law enforcement or to the district attorney, who shall also explain whether he or she is authorized to offer the reporting individual confidentiality or privacy, and shall inform the Complainant of other reporting options;
- Disclose confidentially the incident to institution representatives, who may offer confidentiality pursuant to applicable laws and can assist in obtaining services for Complainants;
- Disclose confidentially the incident and obtain services from the state or local government;
- Disclose the incident to institution representatives who can offer privacy or confidentiality, as appropriate, and can assist in obtaining resources for reporting individuals;
- File a report of sexual assault, domestic violence, dating violence, and/or stalking and the right to consult the Title IX Coordinator and other appropriate institution representatives for information and assistance, ensure that Complainants know that reports shall be investigated in accordance with this Grievance Procedure and/or any other institutional policies that may be applicable, and ensure that a Complainant's identity will remain private at all times if said Complainant wishes to maintain privacy;
- Disclose, if the accused is an employee of SUNY Potsdam, the incident to SUNY Potsdam's Human Resources Department or the right to request that a confidential or private employee assist in reporting to the appropriate representative for the Human Resources Department, at which point, such referral shall be handled according to the appropriate policies and procedures related to employee complaints;
- Receive assistance from appropriate SUNY Potsdam representatives in initiating legal proceedings in family court or civil court; and
- Withdraw a complaint or involvement from SUNY Potsdam's Grievance Procedure at any time.

## **X. Reporting Sex-Based Harassment Occurring Between Students to the Institution**

### *Non-Confidential Reports*

Any person may report sex discrimination, including Sex-Based Harassment (whether or not the person reporting is the person alleged to be the victim of the conduct that may constitute sex discrimination or Sex-Based Harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator or designee, or by any other means that results in the Title IX Coordinator or designee receiving the person's verbal or written report.

#### **Contact Information for the Title IX Coordinator at SUNY Potsdam:**

Name: Andrea Waters

Title: Title IX Coordinator and ADA Compliance Officer

Office Address: Sisson Hall 244

Email Address: [titleix@potsteam.edu](mailto:titleix@potsteam.edu) or [watersal@potsteam.edu](mailto:watersal@potsteam.edu)

Telephone Number: 315-267-2224

### *Confidential Reports*

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

- Title IX Coordinator or designee(s);
- Officials with Authority to institute corrective measures under Title IX;
- All other employees at SUNY Potsdam that are not designated as confidential resources

The following officials at SUNY Potsdam and partner agency may provide confidentiality:

- College Counseling Center Staff
- Student Health Services Staff
- Renewal House Campus Advocate

There are other confidential options available for crisis intervention, resources and referrals, but these are not reporting mechanisms to the institution, meaning that disclosure on a call to one of these hotlines does not provide any information to SUNY Potsdam.

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

- The New York State Office for the Prevention of Domestic Violence hotlines: <http://www.opdv.ny.gov/help/dvhotlines.html>. Additional disclosure and assistance

options that can be found and are presented in several languages can also be found here: <http://www.opdv.ny.gov/help/index.html> (or by calling 1-800-942-6906).

- SurvJustice: <http://survjustice.org/our-services/civil-rights-complaints/>;
- Legal Momentum: <https://www.legalmomentum.org/>;
- NYSCASA: <https://nyscasa.org/responding>;
- NYSCADV: <http://www.nyscadv.org/>;
- Pandora’s Project: <http://www.pandys.org/lgbtsurvivors.html>;
- GLBTQ Domestic Violence Project: <http://glbtqdv.org/>;
- RAINN: <https://www.rainn.org/get-help>; and
- Safe Horizons: <http://www.safehorizon.org/>.

### *Privacy vs. Confidentiality*

References made to confidentiality refer to the ability of identified confidential resources to not report crimes and violations to law enforcement or college officials without permission, except for extreme circumstances, such as a health and/or safety emergency or child abuse. References made to privacy mean SUNY Potsdam offices and employees who cannot guarantee confidentiality but will maintain privacy to the greatest extent possible, and information disclosed will be relayed only as necessary to investigate and/or seek a resolution and to notify the Title IX Coordinator or designee, who is responsible for tracking patterns and spotting systemic issues. SUNY Potsdam will limit the disclosure as much as practicable, even if the Title IX Coordinator or designee determines that the request for confidentiality cannot be honored.

### *At the First Instance of Disclosure of a Report*

SUNY Potsdam shall ensure that, at a minimum, at the first instance of disclosure by a Complainant to a SUNY Potsdam representative, the following information shall be presented to the Complainant: “You have the right to make a report to university police or campus security, local law enforcement, and/or state police or choose not to report; to report the incident to your institution; to be protected by the institution from Retaliation for reporting an incident; and to receive assistance and resources from your institution.”

## **XI. Supportive and Interim Measures**

### *Providing Supportive Measures*

Complainants who report allegations of Sex-Based Harassment have the right to receive supportive measures from SUNY Potsdam regardless of whether they file a complaint. Supportive measures are non-disciplinary and non-punitive. Supportive measures may vary depending upon what is reasonably available at SUNY Potsdam.

As appropriate, supportive measures may include without limitation:

- Counseling services
- Extensions of deadlines or other course-related adjustments
- Modifications of work or class schedules
- Campus escort services, as available
- Restrictions on contact applied to one or more Parties (no contact orders)
- Changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative
- Leaves of absence
- Increased security and monitoring of certain areas of the campus
- Training and education programs related to Sex-Based Harassment
- Assistance by SUNY Potsdam's police or security forces, if applicable, or other officials in obtaining an order of protection or, if outside of New York state, an equivalent protective or restraining order

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

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

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

- SUNY Potsdam has obtained prior written consent from a person with the legal right to consent to the disclosure;
- When the information is disclosed to an appropriate third Party with the legal right to receive disclosures on behalf of the person whose personally identifiable information is at issue;
- To carry out the purpose of the policy when it is necessary to address conduct that reasonably may constitute Sex-Based Harassment under Title IX in SUNY Potsdam's Education Program or Activity;
- As required by Federal law, federal regulations, or the terms and conditions of a federal award; or

- To the extent such disclosures are not otherwise in conflict with Title IX, when required by State or local law or when permitted under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g, or its implementing regulations, 34 CFR Part 99).

***Note on Orders of Protection and their equivalent:***

SUNY Potsdam must provide a copy of the order of protection or equivalent when it is received by SUNY Potsdam, and Parties shall have the opportunity to meet or speak with the Title IX Coordinator or designee, who can explain the order and answer questions about it, including information from the order about the Accused's/Respondent's responsibility to stay away from the protected person or persons. Parties are entitled to an explanation of the consequences for violating these orders, including without limitation, arrest, additional conduct charges, and interim suspension or emergency removal, as applicable. A Complainant is also entitled to receive assistance from University Police in effecting an arrest when an individual violates an order of protection or call on and assist local law enforcement in effecting an arrest for violating such order, in accordance with limits on current law enforcement jurisdiction and procedures.

***Process for Review of Supportive Measures***

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

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

Request for a modification or reversal of a supportive measure must be timely and should be submitted within 3 business days. SUNY Potsdam will conduct a fact specific inquiry into timeliness.

This review will be conducted by an impartial employee of SUNY Potsdam who did not make the challenged decision on the original supportive measure request. The impartial employee of SUNY Potsdam who makes this determination will have the authority to modify or reverse the decision if that impartial employee determines that the decision to provide, deny, modify or terminate the supportive measure was inconsistent with the procedures as outlined above for providing supportive measures in accordance with the Title IX regulations.

Parties are only allowed to challenge their own individual supportive measures. Challenges by one Party will not be heard to supportive measures afforded to the opposite Party, unless that

supportive measure directly impacts the Party making such challenge (i.e., two-way no contact orders).

### *Emergency Removal*

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

The Director of Student Conduct & Community Standards or designee may take action immediately to suspend a student from the College and remove the student from campus, when there is reasonable belief that the continued presence of such student would constitute a danger to the safety of persons or property. If SUNY Potsdam determines such removal is necessary, the respondent will be provided notice and an opportunity to challenge the decision immediately following the removal. Any appeal must be made to the Dean of Students or designee.

The decisionmaker who hears a challenge to an emergency removal must not be involved in any decision regarding responsibility or appeal of a determination.

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

### *Administrative Leave*

SUNY Potsdam retains the authority to place a non-student employee Respondent on administrative leave during the Grievance Procedure, consistent with relevant employee handbook/collective bargaining agreements etc.

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

## **XII. The Title IX Grievance Procedure for Sex-Based Harassment Occurring Between Students**

### **A. Filing a Complaint**

*Who can make a Complaint?*

- A Complainant (as defined in Section VI(6) of this Grievance Procedure); or
- The Title IX Coordinator or designee.

*Note on Title IX Coordinator or designee initiated Complaints:* In the absence of a Complaint or the withdrawal of any or all of the allegations in a Complaint, and in the absence or termination of an Informal Resolution process, the Title IX Coordinator or designee must determine whether to initiate a Complaint of Sex-Based Harassment. This determination is fact-specific, and the Title IX Coordinator or designee must consider:

- The Complainant's request not to proceed with the initiation of a Complaint;
- The Complainant's reasonable safety concerns regarding initiation of a Complaint;
- The risk that additional acts of Sex-Based Harassment would occur if a complaint is not initiated;
- The severity of the alleged Sex-Based Harassment, including whether the Sex-Based Harassment, if established, would require the removal of a Respondent from campus or imposition of another Disciplinary Sanction to end the Sex-Based Harassment and prevent its recurrence;
- The age and relationship of the Parties, including whether the Respondent is an employee of SUNY Potsdam
- The scope of the alleged Sex-Based Harassment, including information suggesting a pattern, ongoing Sex-Based Harassment, or Sex-Based Harassment alleged to have impacted multiple individuals;
- The availability of evidence to assist a decisionmaker in determining whether Sex-Based Harassment occurred; and
- Whether SUNY Potsdam could end the alleged Sex-Based Harassment and prevent its recurrence without initiating this Grievance Procedure.

If after considering these and other Relevant factors, the Title IX Coordinator or designee determines that the conduct as alleged present as an imminent and serious threat to the health or safety of the Complainant or other person, or that the conduct as alleged prevents SUNY Potsdam from ensuring equal access on the basis of sex to its Education Program or Activity, the Title IX Coordinator or designee may initiate a Complaint.

If the Title IX Coordinator or designee does initiate the Complaint after making this determination, the Title IX Coordinator or designee must notify the Complainant prior to doing

so and appropriately address reasonable concerns about the Complainant's safety or the safety of others, including by providing Supportive Measures as listed in Section VI of this Grievance Procedure.

*Is there a particular format that the Complaint needs to be in?*

As defined in VI(6) of this Grievance Procedure, a Complaint can be an oral or written request to SUNY Potsdam that objectively can be understood as a request for SUNY Potsdam to investigate and make a determination about alleged Sex-Based Harassment at the institution.

*Who can I report a Complaint to?*

Any reports of Sex-Based Harassment may be made directly to the Title IX Coordinator or designee, whose contact information is listed at the beginning of this Grievance Procedure. There are other ways in which a Party may report a Complaint.

SUNY Potsdam requires that any employee who is not a Confidential Employee and who either has authority to institute corrective measures on behalf of SUNY Potsdam or has responsibility for administrative leadership, teaching, or advising in SUNY Potsdam's Education Program or Activity must notify the Title IX Coordinator or designee when the employee has information about conduct that reasonably may constitute Sex Discrimination, including Sex-Based Harassment.

All other employees at SUNY Potsdam who are not Confidential Employees and are not employees as identified above are required to notify the Title IX Coordinator or designee when the employee has information about conduct that reasonably may constitute Sex-Discrimination, including Sex-Based Harassment.

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

*What is the timeframe for SUNY Potsdam to evaluate if the Title IX Coordinator or designee is initiating an investigation under this Grievance Procedure?*

The Title IX Coordinator or designee must evaluate whether the Complaint falls under this Grievance Procedure 7 business days after the Complaint is made and must issue the Notice of Allegations as soon as practicable after the Complaint is evaluated. If there are any delays or extensions, the Title IX Coordinator or designee must appropriately notify the Parties in writing, on a case-by-case basis, with good cause and the rationale for the extension or delay.



*Can I make a Complaint and request initiation of the Grievance Procedure even if I have made a complaint to law enforcement?*

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

## **B. Multi-Party Situations and Consolidation of Complaints**

SUNY Potsdam may consolidate complaints alleging Sex-Based Harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against the other Party, where the allegations of Sex-Based Harassment arise out of the same facts or circumstances.

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

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

## **C. 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.

## **D. Dismissal of a Complaint**

### *Grounds for Dismissal*

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

- SUNY Potsdam is unable to identify the Respondent after taking reasonable steps to do so;
- The Respondent is not participating in SUNY Potsdam's Education Program or Activity and is not employed by SUNY Potsdam

- The Complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator or designee declines to initiate a complaint of these procedures, and SUNY Potsdam determines that, without the Complainant’s withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute Sex-Based Harassment under Title IX or this grievance procedure even if proven; or
- SUNY Potsdam determines that the conduct alleged in the complaint, even if proven, would not constitute Sex-Based Harassment under Title IX or these procedures. Note: SUNY Potsdam must make reasonable efforts to clarify the allegations with the Complainant before dismissing under this basis.

### *Notice of Dismissal*

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

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

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

### *Appeals of Dismissals*

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

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

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

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

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

Appeals may be no longer than two thousand five hundred (2,500) words or five (5) pages (including attachments). Appeals should be submitted in electronic form using ARIAL or TIMES NEW ROMAN, 12-point font, and single-spaced. Appeals should use footnotes, not endnotes. Appeals that do not meet these standards may be returned to the Party for correction, but the time for appeal will not be extended unless there is evidence that technical malfunction caused the appeal document not to meet these standards.

Appeals will be decided by a three-person panel, who will be free of conflict of interest and bias, and will not serve as investigator, Title IX Coordinator or designee, or hearing decisionmaker in the same matter. Outcome of appeal will be provided in writing simultaneously to both Parties and include rationale for the decision.

## **E. Notice of Allegations**

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

*What does the Notice of Allegations Include?*

The written Notice of Allegations must include:

- SUNY Potsdam's Grievance Procedures and SUNY Potsdam's Informal Resolution process;
- Sufficient information available at the time of the issuance of the Notice of Allegations to allow the Parties to respond to the allegations, which includes the identities of the Parties involved in the incident(s), the conduct alleged to constitute Sex-Based Harassment under the Grievance Procedures, and the date(s) and location(s) of the alleged incident(s), to the extent that information is available to SUNY Potsdam
- A statement that the Parties are entitled to:

- an equal opportunity to access the Relevant and not otherwise impermissible evidence; or
- an accurate description of the Relevant and not otherwise impermissible evidence, with an equal opportunity for the Parties to access the underlying Relevant and not otherwise impermissible evidence upon request of any Party;
- A statement that the Respondent is presumed not responsible for the alleged Sex-Based Harassment until a determination is made at the conclusion of SUNY Potsdam's Grievance Procedure and that prior to the determination, the Parties will have an opportunity to present Relevant and not otherwise impermissible evidence to a trained, impartial decisionmaker;
- Parties may have an advisor of their choice, and that the advisor may be, but is not required to be, an attorney;
- SUNY Potsdam's code of conduct prohibits knowingly making false statements or knowingly submitting false information during SUNY Potsdam's Grievance Procedures; and
- If, in the course of an investigation, SUNY Potsdam decides to investigate additional allegations of Sex-Based Harassment by the Respondent toward the Complainant that are not included in the original written Notice of Allegations provided, SUNY Potsdam is required to provide written notice of any additional allegations to the Parties whose identities are known.

*What if SUNY Potsdam decides to investigate additional allegations of Sex-Based Harassment?*

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

*What if I have safety concerns about a Notice of Allegations being issued to a Respondent?*

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

## **F. Advisor of Choice and Participation of Advisor of Choice**

A Party's advisor of choice may accompany the Party to any meeting or proceeding, and that SUNY Potsdam cannot limit the choice of who that advisor may be or their presence for the Parties in any meeting or proceeding unless such advisor does not follow SUNY Potsdam's established rules of decorum and rules around participation.

## **G. Investigation**

### *General Rules of Investigations*

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

SUNY Potsdam and not the Parties, have the burden to conduct an investigation that gathers sufficient evidence to determine whether Sex-Based Harassment occurred under this Grievance Procedure. This burden does not rest with either Party, and either Party may decide not to share their account of what occurred or may decide not to participate in the investigation or hearing. This does not shift the burden of proof away from SUNY Potsdam and does not indicate responsibility.

SUNY Potsdam 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 Potsdam will provide an equal opportunity for the Parties to present witnesses, including fact and expert witnesses, and other inculpatory or exculpatory evidence, as described below.

### *Notice of Participation*

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

### *Advisors of Choice and Participation of Advisors of Choice*

SUNY Potsdam will provide the Parties with the same opportunities to be accompanied to any meeting or proceeding by the advisor of their choice. An advisor is any individual who provides the Victim/Survivor/Complainant or the Accused/Respondent/Referred Party with support, guidance, and/or advice. Both parties are permitted one advisor of their choosing to accompany them and assist them throughout the investigation and conduct process. An advisor may be a friend, parent, faculty, mentor, attorney, or any person they wish. The advisor will not be permitted to speak for them in the process or to have any role in the process other than to advise and assist them.

SUNY Potsdam has a long-standing practice of requiring students and employees to participate in the process directly and not through an advocate or representative. Individuals participating as Complainant or Respondent in this process may be accompanied by an Advisor of Choice to any meeting or hearing to which they are required or are eligible to attend. The Advisor of Choice is

not an advocate. Except where explicitly stated by this Policy, as consistent with the Final Rule, Advisors of Choice shall not participate directly in the process as per standard policy and practice of SUNY Potsdam.

Potsdam 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.

Potsdam's obligations to investigate and adjudicate in a prompt timeframe under Title IX and other college policies apply to matters governed under this Policy, and SUNY Potsdam cannot agree to extensive delays solely to accommodate the schedule of an Advisor of Choice. The determination of what is reasonable shall be made by the Title IX Coordinator or designee. SUNY Potsdam will not be obligated to delay a meeting or hearing under this process more than five (5) business days due to the unavailability of an Advisor of Choice and may offer the party the opportunity to obtain a different Advisor of Choice or utilize one provided by SUNY Potsdam.

#### *Expert and Character Witnesses*

Parties may not present expert or character witnesses as part of an investigation.

#### *Access to and Review of the Investigative Report*

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

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

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

SUNY Potsdam will take reasonable steps to prevent and address the Parties' and their advisors of choice's unauthorized disclosure of information and evidence obtained solely through this Grievance Procedure. Participating individuals who engage in the unauthorized disclosure of information and evidence obtained solely through this Grievance Procedure may be subject to

*Student Community Rights and Responsibilities* (Student Code of Conduct) and other SUNY Potsdam policies and/or procedures that may apply.

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

#### *Review and Access to Relevant and Not Otherwise Impermissible Evidence*

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

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

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

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

#### *Relevant Evidence*

Evidence is Relevant when it is related to the allegations of Sex-Based Harassment under investigation as part of this grievance procedure.

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

### *Impermissible Evidence*

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

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

### *Timeframes*

The investigation process will be concluded within a reasonably prompt manner, and no longer than sixty (60) 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. If there are any delays or extensions, the Title IX Coordinator or designee must appropriately notify the Parties in writing, as detailed below.

### *Extensions and Delays*

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



## H. Live Hearing

### *General Rules for Live Hearings*

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

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

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

### *Participants in the Live Hearing*

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

#### *Complainant and Respondent (The Parties)*

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

The Parties shall be subject to SUNY Potsdam's rules of decorum:

<https://www.potsdam.edu/current/student-conduct-community-standards/rules-decorum>

#### *The Decisionmaker*

The hearing body will consist of a panel of 3 decisionmakers. No member of the hearing body will have served as the Title IX Coordinator or designee, Title IX investigator or advisor to any Party in the case, nor may any member of the hearing body serve on the appeals body in the case. No member of the hearing body will have a conflict of interest or bias in favor of or against

Complainants or Respondents generally, or in favor of or against the Parties to the particular case. The hearing body will be trained prior to serving during any hearing. The Parties will have an opportunity to raise any objections regarding a decisionmaker's actual or perceived conflicts of interest or bias at the commencement of the live hearing.

#### *Advisor of Choice*

The Parties have the right to select an advisor of their choice, who may be, but is not required to be, an attorney. The advisor of choice may accompany the Parties to any meeting or hearing they are permitted to attend, but may not speak for the Party. An advisor of choice is not prohibited from being a witness in the hearing. Advisors of choice are subject to SUNY Potsdam's rules of decorum, and may be removed upon violation of those rules:

<https://www.potsdam.edu/current/student-conduct-community-standards/rules-decorum>

#### *Witnesses*

Witnesses cannot be compelled to participate in the live hearing and have the right not to participate in the hearing free from Retaliation. Witnesses are subject to SUNY Potsdam's rules of decorum, and may be removed upon violation of those rules:

<https://www.potsdam.edu/current/student-conduct-community-standards/rules-decorum>

#### *Hearing Procedures*

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

#### *Questioning Parties and Witnesses*

During a live hearing, each Party is allowed to ask Relevant and not otherwise impermissible questions and follow-up questions of the Parties and witnesses through the decisionmaker OR the hearing board. No questioning to another Party or witness will be conducted by a Party personally.

#### *Procedures for Decisionmaker's Evaluation of Questions and Limitation on Questions*

The panel of 3 decisionmakers will determine whether a proposed question is Relevant and not otherwise impermissible as described in this Grievance Procedure, prior to the question being posed, and will explain any decision to exclude a question as not Relevant or otherwise impermissible.

If a panel of 3 decisionmakers determines that a Party's question is Relevant and not otherwise impermissible, then the question must be asked unless such question is unclear or harassing of the Party or witness being questioned. The panel of 3 decisionmakers must give a Party an opportunity to clarify or revise a question that the panel of 3 decisionmakers has determined is unclear or harassing and, if the Party sufficiently clarifies or revises a question so that it is no longer unclear or harassing, the question must be asked.

#### *Refusal to Respond to Questions and Inferences Based on Refusal to Respond to Questions*

A panel of 3 decisionmakers may choose to place less or no weight upon statements by a Party or witness who refuses to respond to questions deemed Relevant and not impermissible.

The panel of 3 decisionmakers must not draw an inference about whether Sex-Based Harassment occurred based solely on a Party's or witness's refusal to respond to such questions.

#### *Continuances or Granting Extensions*

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

#### **Newly-discovered Evidence**

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

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

The panel of 3 decisionmaker 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 panel of 3 decisionmaker 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.

# **I. Determination Regarding Responsibility and Sanctioning**

## *Standard of Proof*

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

## *General Considerations for Evaluating Evidence and Testimony*

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

Determinations regarding responsibility may be based in part, or entirely, on documentary, audiovisual, and digital evidence, as warranted in the reasoned judgment of the decisionmaker. Decisionmakers shall not draw inferences regarding a Party or witness' credibility based on the Party or witness' status as a Complainant, Respondent, or witness, nor shall it base its judgments in stereotypes about how a Party or witness would or should act under the circumstances.

Generally, credibility judgments should rest on the demeanor of the Party or witness, the plausibility of their testimony, the consistency of their testimony, and its reliability in light of corroborating or conflicting testimony or evidence. However, credibility judgments should not rest on whether a Party or witness' testimony is non-linear or incomplete, or if the Party or witness is displaying stress or anxiety.

Decision makers will afford the highest weight relative to other testimony to first-hand testimony by Parties and witnesses regarding their own memory of specific facts that occurred. Both inculpatory and exculpatory (i.e. tending to prove and disprove the allegations) evidence will be weighed in equal fashion.

A witness' testimony regarding third-Party knowledge of the facts at issue will be allowed but will generally be accorded lower weight than testimony regarding direct knowledge of specific facts that occurred.

## *Expert and Character Witnesses*

Character or expert witnesses are not permitted in the hearing; a maximum of two (2) character letters or letters of reference may be submitted for consideration by the Hearing Board before the imposition of sanctions.

### *Communication of the Determination in Writing*

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

The written determination will include:

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

### *Timeline of Determination Regarding Responsibility*

If there are no extenuating circumstances, the determination regarding responsibility will be issued by SUNY Potsdam within 7 business days of the completion of the hearing.

### *Determination of Disciplinary Sanctions After a Finding of Responsibility*

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

In addition, each Party will have an opportunity to make an impact statement during the point of the proceeding where the decisionmaker is deliberating on appropriate sanctions.

### *Finality of Determination*

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

### *Disclosures of Outcome by the Parties*

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

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

## **J. Appeals**

Each Party may appeal a determination regarding responsibility. To appeal, a Party must submit their written appeal within 7 business days of being notified of the decision, indicating the grounds for appeal.

For appeals resulting from dismissal of a complaint, please see the section on *Dismissal of Complaints*.

### *Grounds for Appeal*

The limited grounds for appeal available are as follows:

- Procedural irregularity that would change the outcome;
- New evidence that would change the outcome and that was not reasonably available when the determination whether Sex-Based Harassment occurred or dismissal was made; and
- The Title IX Coordinator or designee, investigator, or decisionmaker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that would change the outcome.
- A sanction imposed as a result of the original student conduct hearing that is significantly disproportionate to the severity of the offense for which the Respondent/Referred Party has been found responsible may be appealed. Evidence must show that the sanction is inappropriate based on the infraction.

### *Additional Procedures for Appeal Process*

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

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

Appeals may be no longer than two thousand five hundred (2,500) words or five (5) pages (including attachments). Appeals should be submitted in electronic form using ARIAL or TIMES NEW ROMAN, 12-point font, and single-spaced. Appeals should use footnotes, not endnotes.

Appeals that do not meet these standards may be returned to the Party for correction, but the time for appeal will not be extended unless there is evidence that technical malfunction caused the appeal document not to meet these standards.

Appeals will be decided by a panel of 3 decisionmakers, who will be free of conflict of interest and bias, and will not serve as investigator, Title IX Coordinator/designee, or hearing decisionmaker in the same matter.

## **K. INFORMAL RESOLUTION**

### *Procedures for Entering and Exiting Informal Resolution Process*

At any time prior to determining whether Sex-Based Harassment occurred under this Grievance Procedure, including prior to making a Complaint, Parties may instead seek SUNY Potsdam's assistance to resolve allegations of Sex-Based Harassment, and may elect to enter the informal resolution process. Informal resolution is not available for complaints of sexual assault, dating violence, domestic violence and/or stalking.

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

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

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

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

### *Notice Prior to Entry Into Informal Resolution Process*

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

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

*Determination to Approve Entry into Informal Resolution Process*

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

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

Informal resolution processes may never be applied where the allegations include Sexual Assault when penetration or the equivalent has been alleged.

Informal resolution may be available to address allegations of student-on-student Sex-Based Harassment but is not allowed to address allegations of employee-on-student Sex-Based Harassment.

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

If informal resolution is approved or denied, SUNY Potsdam will provide the outcome in writing simultaneously to the Parties. If informal resolution is approved, the Title IX Coordinator or



designee shall also provide the information of the facilitator in writing to the Parties in a reasonable timeframe once the facilitator is assigned.

### *Role of the Facilitator*

Informal resolution processes are managed by trained facilitators. All facilitators must not be the same person as the investigator or the decisionmakers in SUNY Potsdam's Grievance Procedures. Any person designated to facilitate informal resolution must not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. The Title IX Coordinator or designee may serve as the facilitator, subject to these restrictions. If the Title IX Coordinator or designee is also the investigator, they would not be able to serve as a facilitator of informal resolution.

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

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

### *Contents of Informal Resolution Agreements*

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

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

### *Breach of Informal Resolution Agreements*

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

### *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 complaint is confidential. No evidence concerning the allegations obtained within the informal resolution process may be disseminated to any person, provided that any Party to the informal resolution process may generally discuss the allegations under investigation with a parent, friend, advisor, or other source of emotional support, or with an advocacy organization. As a condition of entering the informal resolution process, any evidence shared or received during the informal resolution process may not be used in any subsequent Grievance Procedure or institutional appeal.

### *Informal Resolution Options*

SUNY Potsdam offers the following informal resolution procedures for addressing complaints of Sex-Based Harassment described under this Grievance Procedures:

#### Administrative Resolution

Should the Parties mutually determine to enter the informal resolution process, and the Respondent elects to accept responsibility for the allegations of the complaint at any point during the informal resolution process, the institution may administratively resolve the complaint. Where the Respondent admits responsibility, the Parties will receive simultaneous written notification of the acceptance of responsibility, and the decision-maker(s) will convene to determine the Respondent's sanction and other Remedies, as appropriate and consistent with institutional policy. The Parties will be given an opportunity to be heard at the sanctions hearing, including without limitation, the submission of impact statements, and the Parties may be accompanied by their Advisor, but questioning of Parties or witnesses will not be permitted. The Parties will receive simultaneous written notification of the decision regarding sanctions and Remedies, which may be appealed according to the process described below.

#### Mediation

The purpose of mediation is for the Parties who are in conflict to identify the implications of a student'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. SUNY Potsdam will also 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 SUNY Potsdam receives consent to mediate from both Parties and has made its determination to allow informal resolution to go forward. Mediation will continue until concluded or terminated by either Party, the facilitator or the Office of Student Conduct and Community Standards. 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 Office of Student Conduct and Community Standards to re-evaluate other options for resolution, including investigation or proceeding forward with the Grievance Procedures.

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 Office will monitor adherence to the proposed solution and close the matter when compliance is satisfactory.

### **XIII. Transcript Notations**

For crimes of violence, including, without limitation, sexual violence, defined as crimes that meet the reporting requirements pursuant to the Clery Act (20 U.S.C. 1092(f)(1)(F)(i)(I)-(VIII)), SUNY Potsdam is required to make a notation on the transcript of a student found responsible for suspension or expulsion, per SUNY Potsdam’s Transcript Notation Policy found in SUNY Potsdam’s Code of Conduct (*Student Community Rights and Responsibilities*): [SUNY Potsdam Policy Handbook.pdf](#)

### **XIV. Retaliation**

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

SUNY Potsdam will keep the identity of any individual who has made a report or complaint of sex discrimination confidential, including the identity of any individual who has made a report or filed a complaint of Sex-Based Harassment or sex discrimination under SUNY Potsdam's Title IX Grievance Procedures, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding under SUNY Potsdam's Title IX Grievance Procedures. No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX of the Education Amendments of 1972 or its implementing regulations.

No person may intimidate, threaten, coerce, or discriminate against any individual because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing under SUNY Potsdam's Grievance Procedures.

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

Complaints alleging Retaliation may be filed according to SUNY Potsdam's Grievance Procedures for Sex Discrimination: <https://www.potsdam.edu/about/safety/title-ix/policies-procedures>