



## **SUNY Broome Community College**

### **Sexual and Interpersonal Violence Prevention and Grievance Procedure**

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any educational program or activity receiving Federal financial assistance.”

*-Title IX of the Educational Amendments of 1972 to the 1964 Civil Rights Act*



## **SUNY Broome Community College**

### **2020 Title IX Sexual and Interpersonal Violence Prevention and Grievance Procedure**

Title IX of the Educational Amendments of 1972 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 U.S. Department of Education, which enforces Title IX, has long defined the meaning of Title IX's prohibition on sex discrimination broadly to include various forms of sexual harassment and sexual violence that interfere with a student's ability to equally access our educational programs and opportunities.

On May 19, 2020, the U.S. Department of Education issued a Final Rule under Title IX of the Education Amendments of 1972 that:

- Defines the meaning of "sexual harassment" (including forms of sex-based violence)
- Addresses how this institution **must** respond to reports of misconduct falling within that definition of sexual harassment, and
- Mandates a grievance process that this institution **must** follow to comply with the law in these specific covered cases before issuing a disciplinary sanction against a person accused of sexual harassment.

See, 85 Fed. Reg. 30026 (May 19, 2020). The full text of the Final Rule and its extensive Preamble are available here: <http://bit.ly/TitleIXReg>

Based on the Final Rule, SUNY Broome Community College will implement the following Title IX Grievance Procedures, effective August 14, 2020.

SUNY Broome Community College prides itself on creating an environment where all students, faculty, staff, and visitors can feel safe from being a victim of sexual, or any other violence.

However, if there is an instance of sexual or interpersonal violence where a member of the SUNY Broome community is involved, we will take direct action in addressing such behavior. Should you have any questions that you cannot find the answers to, or if you just want to talk to someone, please contact the SUNY Broome Community College Title IX Coordinator, Dr. Scott Kane, at 607-778-5009 or by emailing [kane1@sunybroome.edu](mailto:kane1@sunybroome.edu).

## How does the Title IX Grievance Procedure impact other campus disciplinary policies?

In recent years, “Title IX” cases have become a short-hand for any campus disciplinary process involving sex discrimination, including those arising from sexual harassment and sexual assault. But under the Final Rule, SUNY Broome Community College must narrow both the geographic scope of its authority to act under Title IX and the types of “sexual harassment” that it must subject to its Title IX investigation and adjudication process. ***Only*** incidents falling within the Final Rule’s definition of sexual harassment will be investigated and, if appropriate, brought to a live hearing through the Title IX Grievance Procedures defined below.

SUNY Broome Community College remains committed to addressing any violations of its policies, even those not meeting the narrow standards defined under the Title IX Final Rule.

Specifically, our campus has:

**A Code of Conduct** that defines certain behavior as a violation of campus policy, including **Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, Stalking, and related sex-based offenses.**

To the extent that alleged misconduct falls outside this Title IX Grievance Procedure, or misconduct falling outside this Title IX Grievance Procedure is discovered in the course of investigating covered Title IX misconduct, the institution retains authority to investigate and adjudicate the allegations under the policies and procedures defined within the Student Code of Conduct through a separate grievance proceeding (see “Conduct Process” at <https://sunnybroome.edu/osrr/student-conduct/> ).

The elements established in this Title IX Grievance Procedure under the Final Rule have no effect and are not transferable to any other policy of the College for any violation of the Student Code of Conduct, employment policies, or any civil rights violation except as narrowly defined in this Procedure. This Procedure does not set a precedent for other policies or processes of the College and may not be cited for or against any right or aspect of any other policy or process.

## Students' Bill of Rights

The State University of New York and SUNY Broome Community College are committed to providing options, support and assistance to victims/survivors of sexual assault, domestic violence, dating violence, and/or stalking to ensure that they can continue to participate in SUNY Broome Community College programs, activities, and employment.

All victims/survivors of these crimes and violations, regardless of race, color, national origin, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, or criminal conviction, have the following rights, regardless of whether the crime or violation occurs on campus, off campus, or while studying abroad:

### *All students have the right to:*

- Make a report to local law enforcement and/or state police;
- Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
- 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 from the institution;
- Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
- Be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services, where available;
- 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 crimes or violations;
- Describe the incident to as few institutional representatives as practicable and not to be required to unnecessarily repeat a description of the incident.
- Be free from retaliation by the institution, the accused and/or the respondent, and/or their friends, family and acquaintances within the jurisdiction of the institution;
- Access to at least one level of a determination;
- Be accompanied by an advisor of your choice who may assist and advise a reporting individual, accused, or respondent throughout the judicial or conduct process including during all meetings and hearings related to such process;
- Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the College.

### *Options in brief:*

Victims/survivors have many options that can be pursued simultaneously, including one or more of the following:

- Receive resources, such as counseling and medical attention;
- Confidentially or anonymously disclose a crime or violation
- Make a report to:
  - An employee with the authority to address complaints,
  - The Title IX Coordinator,
  - SUNY Broome Human Resources,
  - SUNY Broome Office of Public Safety,
  - Local law enforcement, and/or
  - Family Court or Civil Court.

## Policy for Alcohol and/or Drug Use Amnesty in Sexual Violence Cases

The health and safety of every student at the State University of New York and its State- operated and community colleges is of utmost importance. SUNY Broome Community College 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 Broome Community College strongly encourages students to report incidents of 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 Broome Community College officials or law enforcement will not be subject to SUNY Broome Community College's Student 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.

## Differences Between Confidential and Private Reporting Options

Any student wishing to speak with a SUNY Broome Community College employee about sexual violence should be aware of differences between *Confidential* and *Private* reporting options.

Consistent with our code of conduct, 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. Those available to take *Confidential* reports and detailed information on *Confidential* reporting options are available in the section “**Options for Confidentially Disclosing Sexual Violence**” of this Policy & Procedure.

References made to ***privacy*** mean SUNY Broome Community College offices and employees who cannot guarantee confidentiality but will maintain privacy to the greatest extent possible, and information disclosed will be relayed only as necessary to investigate and/or seek a resolution and to notify the Title IX Coordinator or designee, who is responsible for tracking patterns and spotting systemic issues. SUNY Broome Community College will limit the disclosure as much as practicable, even if the Title IX Coordinator determines that the request for confidentiality cannot be honored. If you disclose an incident to a SUNY Broome Community College employee who is responsible for responding to or reporting sexual violence or sexual harassment, but wish to maintain confidentiality, or do not consent to the institution's request to initiate an investigation, the Title IX Coordinator must weigh your request against our obligation to provide a safe, non-discriminatory environment for all members of our community, including you

## Title IX Definitions

1. The terms “*SUNY Broome*” and “*College*” mean SUNY Broome, State University of New York Community College.
2. “*Institution*” shall mean any college or university chartered by the regents or incorporated by special act of the legislature that maintains a campus in New York.
3. “*Title IX Coordinator*” shall mean the Title IX Coordinator and/or his or her designee or designees.
4. “*Business Day*” shall mean any day except Saturday, Sundays, and/or any day which is a federal holiday or in which the college is closed.
5. “*Education Program or Activity*” shall mean SUNY Broome Community College’s education program or activity” includes:
  - Any on-campus premises
  - Any off-campus premises that SUNY Broome Community College has substantial control over. This includes buildings or property owned or controlled by a recognized student organization.
  - Activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of SUNY Broome Community College’s programs and activities over which SUNY Broome Community College has substantial control.
6. “*Bystander*” shall mean a person who observes a crime, impending crime, conflict, potentially violent or violent behavior, or conduct that is in violation of rules or policies of an institution.
  - A bystander does not become a “reporting individual” when they bring forth a report. They remain a bystander.
7. “*Code of conduct*” shall mean the written policies adopted by an institution governing student behavior, rights, and responsibilities while such student is matriculated in the institution.
8. “*Confidentiality*” shall be 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.
9. “*Privacy*” shall be SUNY Broome Community College offices and employees who cannot guarantee confidentiality but will maintain privacy to the greatest extent possible, and information disclosed will be relayed only as necessary to investigate and/or seek a resolution and to notify the Title IX Coordinator or designee, who is responsible for tracking patterns and spotting systemic issues. Most SUNY Broome employees are required to report known incidents of sexual assault, or other crimes. They will not share the private information beyond what is required or needed to comply with law and policy.
10. “*Accused*” shall mean a person accused of a violation who has not yet entered an institution’s judicial or conduct process.

11. “*Respondent*” shall mean any individual who has been reported to be the perpetrator of conduct that could constitute covered sexual harassment as defined under this policy.
12. “*Complainant*” For the purposes of this Title IX Grievance Policy & Procedure, 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 under this policy.
13. “*Reporting individual*” shall encompass the terms victim, survivor, complainant, claimant, witness with victim status, and any other term used by an institution to reference an individual who brings forth a report of a violation.
  - A. A bystander or third party does not become a “reporting individual” when they bring forth a report.
14. “*Formal Complaint*” or the purposes of this Title IX Grievance Policy, “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 against a respondent about conduct within SUNY Broome education program or activity and requesting initiation of the procedures consistent with the Title IX Grievance Policy to investigate the allegation of sexual harassment.
15. The term “*consent*” or “*affirmative 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.

In other words:

  - Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.
  - Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
  - Consent may be initially given but withdrawn at any time.
  - Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in 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.
16. The term “*sexual violence*” means physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent due to the victim’s use of drugs or alcohol, or due to an intellectual or other disability. Acts of sexual violence include rape, sexual assault, sexual battery and sexual coercion.

17. The term “*sexual assault*” is defined as sexual acts that include but are not limited to unwanted touching of an intimate part of another person such as sexual organ, buttocks or breast; sodomy; oral copulation; and rape by foreign object by a friend, acquaintance or stranger:
  1. that is forced, manipulated or coerced through use of verbal coercion, intimidation (emotional and/or physical), threats, physical restraint and/or physical violence; and/or
  2. where no consent was given due to the victim’s being unconscious, asleep or unable to communicate, or to the victim’s saying nothing; and/or
  3. where the victim is temporarily incapable of appraising or controlling his or her conduct owing to the influence of alcohol or other drugs he or she consumed or to any other act committed upon him or her without his or her consent.
18. The term “*rape*” is defined as sexual intercourse with a friend, acquaintance or stranger:
  1. that is forced, manipulated or coerced through use of verbal coercion, intimidation (emotional and/or physical), threats, physical restraint, and/or physical violence; and/or
  2. where no consent was given due to the victim’s being unconscious, asleep or unable to communicate, or to the victim’s saying nothing; and/or
  3. where the victim is temporarily incapable of appraising or controlling his or her conduct owing to the influence of alcohol or other drugs he or she consumed or to any other act committed upon him or her without his or her consent.
19. “*Harassment*” is unwelcome conduct by any means, including electronic, directed against a person which is so severe and pervasive that it interferes with an individual’s employment, academic performance or participation in SUNY Broome programs or activities, and creates a working, learning, program or activity environment that a reasonable person would find intimidating, hostile or offensive. Harassment includes bullying and cyberbullying.
20. The term “covered *sexual harassment*” includes any conduct on the basis of sex that satisfies one or more of the following:
  1. An employee conditioning educational benefits on participation in unwelcome sexual conduct (i.e., quid pro quo);
  2. Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the educational institution’s education program or activity;
  3. Sexual assault (as defined in the Clery Act), which includes any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent;
  4. Dating violence (as defined in the Violence Against Women Act (VAWA) amendments to the Clery Act), which includes any violence committed by a person:
    - (A) who is or has been in a social relationship of a romantic or intimate nature with the victim;
    - and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship; (ii) The type of relationship; (iii) The frequency of interaction between the persons involved in the relationship.



5. Domestic violence (as defined in the VAWA amendments to the Clery Act), which includes any felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under New York States domestic or family violence laws or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of New York State;
6. Stalking (as defined in the VAWA amendments to the Clery Act), meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to-- (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.

\*Note that conduct that does not meet one or more of these criteria may still be prohibited under the Code of Conduct.\*

21. The term “*sexual activity*” shall have the same meaning as “*sexual act*” and “*sexual contact*” as described below:

1. The term “*sexual act*” means—
  1. contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight;
  2. contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;
  3. the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or
  4. the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;
2. The term “*sexual contact*” means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

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

- Evidence and questions about the complainant’s sexual predisposition or prior sexual behavior unless:
  - They are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
  - They concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent. 34 C.F.R. § 106.45(6)(i).
- 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. 85 Fed. Reg. 30026, 30294 (May 19, 2020).

These definitions are meant to guide the reader as to the intent behind certain words and phrases.

Questions regarding these definitions can be directed to:

Office of the Dean of Students  
SUNY Broome Community College  
Location: The Commons, Room 104  
Phone: +1 (607) 778-5009  
Email: [kanes1@sunybroome.edu](mailto:kanes1@sunybroome.edu)

## **Disability Accommodations**

This Policy does not alter any institutional obligations under federal disability laws including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973.

Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point before or during the Title IX Grievance Process that do not fundamentally alter the Process. The Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the Parties, even where the Parties may be receiving accommodations in other institutional programs and activities.

## Sexual and Interpersonal Violence Response Policy

Our existing Title IX office and reporting structure remains in place. What has changed is the way our Title IX office will handle different types of reports arising from sexual misconduct, as detailed in full.

In accordance with the Students' Bill of Rights, reporting individuals shall have the right to pursue more than one of the options below at the same time, or to choose not to participate in any of the options below. Detailed information on *Confidential* reporting options also available in the section “**Options for Confidentially Disclosing Sexual Violence.**”

### **Effective Date**

This Title IX Grievance Procedure became effective on August 14, 2020, and will only apply to formal complaints of sexual harassment brought on or after August 14, 2020. Complaints brought prior to August 14, 2020 will be investigated and adjudicated according to the Title IX Grievance Procedure if a case is not complete by that date.<sup>1</sup>

### **Revocation by Operation of Law**

Should any portion of the Title IX Final Rule, 85 Fed. Reg. 30026 (May 19, 2020), be stayed or held invalid by a court of law, or should the Title IX Final Rule be withdrawn or modified to not require the elements of this procedure, 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 the existing Student Code of Conduct.

### **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>.

### **Making a Report Regarding Covered Sexual Harassment to the Institution**

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

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<sup>1</sup> This specific provision may be subject to additional guidance from OCR (which will be shared, if issued)

Contact Information for the Title IX Coordinator:

Name: Dr. Scott Kane, AVP/Dean of Students & Title IX Coordinator

Location: The Commons, Room 104

Phone: +1 (607) 778-5009

Email: [kanes1@sunybroome.edu](mailto:kanes1@sunybroome.edu)

Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator.

*You have the right to make a report to SUNY Broome Public Safety, 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.*

**A. Confidential Reporting**

Confidential reporting is available when a reporting individual wishes to keep their identity unknown.

- i. To disclose *confidentially* the incident to one of the following college officials, who by law may maintain confidentiality, and can assist in obtaining services, individuals may contact:

1. Health Services

Location: The Commons, Room 102

Phone: 607-778-5181

Email: [healthservices@sunybroome.edu](mailto:healthservices@sunybroome.edu)

2. Counseling Services

Location: The Commons, Room 102

Phone: 607-778-5210

Email: [counselingservices@sunybroome.edu](mailto:counselingservices@sunybroome.edu)

More information on confidential reporting is available in the SUNY Options for Confidentially Disclosing Sexual Violence Policy at <https://system.suny.edu/sexual-violence-prevention-workgroup/policies/disclosure/> .

- ii. To disclose *confidentially* the incident and obtain services from the New York State, New York City or county hotlines: <http://www.opdv.ny.gov/help/dvhotlines.html>. Additional disclosure and assistance options are catalogued by the Office for the Prevention of Domestic Violence and presented in several languages: <https://opdv.ny.gov/language-access>(or by calling 1-800-942-6906).

Assistance can also be obtained through:

- Crime Victims Assistance Center: [www.cvac.us](http://www.cvac.us)
- SurvJustice: <http://survjustice.org/our-services/civil-rights-complaints/>
- Legal Momentum: <https://www.legalmomentum.org/>
- NYSCASA: <http://nyscasa.org/responding>
- NYSCADV: <http://www.nyscadv.org/>
- Pandora's Project: <https://pandys.org/about-sexual-assault/>
- GLBTQ Domestic Violence Project: <https://www.bwjp.org/resource-center/resource-results/glbtc-domestic-violence-project.html>
- RAINN: <https://www.rainn.org/get-help>
- Safe Horizons: <http://www.safehorizon.org/>

- iii. Please note that these hotlines are for crisis intervention, resources, and referrals, and are not reporting mechanisms, meaning that disclosure on a call to a hotline does not provide any information to the campus. Reporting individuals are encouraged to additionally contact a campus confidential or private resource so that the campus can take appropriate action in these cases.

## **B. Private Reporting**

- i. Private reporting is available when a reporting individual wishes to speak in a secure environment where only select SUNY Broome officials who need to know will be informed so that an investigation can take place.

To disclose the incident to one of the following college officials who can offer *privacy* and can provide information about remedies, accommodations, evidence preservation, and how to obtain resources. Those officials will also provide the information contained in the Students' Bill of Rights, including the right to choose when and where to report, to be protected by the institution from retaliation, and to receive assistance and resources from the institution. These college officials will disclose that they are private and not confidential resources, and they may still be required by law and college policy to inform one or more college officials about the incident. They will notify reporting individuals that the criminal process uses different standards of proof and evidence than internal procedures, and questions about the penal law or the criminal process should be directed to law enforcement or district attorney.

1. SUNY Broome Community College Title IX Team via an online reporting system (you can remain anonymous)  
[https://cm.maxient.com/reportingform.php?SUNYBroome&layout\\_id=1](https://cm.maxient.com/reportingform.php?SUNYBroome&layout_id=1)
2. Dr. Scott Kane, AVP/Dean of Students & Title IX Coordinator  
Location: The Commons, Room 104  
Phone: 607-778-5009  
Email: [kanes1@sunybroome.edu](mailto:kanes1@sunybroome.edu)
3. Marie Finelli, Deputy Title IX Coordinator and Resource/Compliance  
Location: Public Safety Annex Room 103  
Phone: 607-778-5180  
Email: [finellime@sunybroome.edu](mailto:finellime@sunybroome.edu)
4. Paige Sedlacek, Affirmative Action Officer & Deputy Title IX Coordinator  
Location: Wales Building Room 103  
Phone: 607-778-5213  
Email: [sedlacekpm@sunybroome.edu](mailto:sedlacekpm@sunybroome.edu)

### **C. Criminal Reporting**

- i. Criminal reporting is available when a reporting individual wishes to pursue the option of criminal investigation and arrest. The victim/survivor can request that no criminal action be taken after speaking with Public Safety and hearing the options available.

To file a criminal complaint with SUNY Broome Community College Office of Public Safety, local law enforcement, and/or state police:

1. SUNY Broome Community College Office of Public Safety  
Location: Public Safety Building  
Phone: 607-778-5083 or 911 if active emergency
2. Broome County Sheriff's Office  
Location: 155 Lt. VanWinkle Drive, Binghamton, NY 13905  
Phone: 607-778-1911 or 911 if active emergency
3. NYS State police 24-hour hotline to report sexual assault on any New York college campus  
Phone: 1-844-845-7269

### **When the Accused is an Employee**

In addition to the above, a reporting individual may also report the incident to the SUNY Broome Community College Office of Human Resources. A victim/survivor may request that one of the above referenced confidential or private employees assist in reporting to Employee Relations or Human Resources. Disciplinary proceedings will be conducted in accordance with applicable collective bargaining agreements. When the accused is an employee of an affiliated entity or vendor of the college, college officials will, at the request of the reporting individual, assist in reporting to the appropriate office of the vendor or affiliated entity and, if the response of the vendor or affiliated entity is not sufficient, assist in obtaining a persona non grata letter, subject to legal requirements and college policy.

#### **Office of Human Resources**

Location: Wales Building Room 103

Phone: 607-778-5319

To obtain effective intervention services:

#### **Counseling Services- No charge for students**

Location: The Commons, Room 102

Phone: 607-778-5210

Email: [counselingservices@sunybroome.edu](mailto:counselingservices@sunybroome.edu)

#### **Health Services- No charge for students**

Location: The Commons, Room 102 Phone:

607-778-5181

Email: [healthservices@sunybroome.edu](mailto:healthservices@sunybroome.edu)

Sexual contact can transmit Sexually Transmitted Infections (STI) and may result in pregnancy. Testing for STIs and emergency contraception is available at:

#### **Broome County Health Department**

Location: 225 Front Street, Binghamton, NY 13905

Phone: 607-778-2839

#### **Planned Parenthood of South Central New York**

Location: 117 Hawley Street, Binghamton, NY 13901

Phone: 607-723-7526

#### **Southern Tier AIDS Program**

Location: 227 Main Street, Johnson City, NY 13790

Phone: 607-798-1706

It is recommended that within 96 hours of an assault, you can get a Sexual Assault Forensic Examination (commonly referred to as a rape kit) at a hospital. To best preserve evidence, victims/survivors should avoid showering, washing, changing clothes, combing hair, drinking, eating, or doing anything to alter their physical appearance until after a physical exam has been completed. While there should be no charge for a rape kit, there may be a charge for medical or counseling services off campus and, in some cases, insurance may be billed for services. You are encouraged to let hospital personnel know if you do not want your insurance policyholder to be notified about your access to these services. The New York State Office of Victim Services may be able to assist in compensating victims/survivors for health care and counseling services, including emergency funds.

More information may be found here: <https://ovs.ny.gov/sites/default/files/brochure/rights-crime-victims-booklet-final-8-24-20.pdf>, or by calling 1-800-247-8035. Options are explained here: <https://ovs.ny.gov/help-crime-victims>.

## **Protection and Accommodations:**

Throughout the process, the following can be requested:

- a. When the accused is a student, to have the college issue a “No Contact Order,” consistent with college policy and procedure, meaning that continuing to contact the protected individual is a violation of college policy subject to additional conduct charges; if the accused and a protected person observe each other in a public place, it is the responsibility of the accused to leave the area immediately and without directly contacting the protected person. Both the accused/respondent and reporting individual may request a prompt review of the need for and terms of a No Contact Order, consistent with SUNY Broome Community College policy. Parties may submit evidence in support of their request.
- b. To have assistance from SUNY Broome Community College Office of Public Safety or other college officials in initiating legal proceedings in family court or civil court, including but not limited to obtaining an Order of Protection or, if outside of New York State, an equivalent protective or restraining order.
- c. To receive a copy of the Order of Protection or equivalent and have an opportunity to meet or speak with a college official who can explain the order and answer questions about it, including information from the Order about the accused’s responsibility to stay away from the protected person(s); that burden does not rest on the protected person(s).
- d. To an explanation of the consequences for violating these orders, including but not limited to arrest, additional conduct charges, and interim suspension.
- e. To have assistance from SUNY Broome Community College Office of Public Safety in effecting an arrest when an individual violates an Order of Protection or, if outside of New York State, an equivalent protective or restraining order within the jurisdiction of SUNY Broome Community College Office of Public Safety or, if outside of the jurisdiction to call on and assist local law enforcement in effecting an arrest for violating such an order.
- f. When the accused is a student and presents a continuing threat to the health and safety of the community, to have the accused subject to interim suspension pending the outcome of a conduct process. Parties may request a prompt review of the need for an interim suspension.
- g. When the accused is not a student but is a member of the college community and presents a continuing threat to the health and safety of the community, to subject the accused to interim measures in accordance with applicable collective bargaining agreements, employee handbooks, and SUNY Broome Community College policies and rules.
- h. When the accused is not a member of the college community, to have assistance from SUNY Broome Community College Office of Public Safety or other college officials in obtaining a persona non grata letter, subject to legal requirements and college policy.
- i. To obtain reasonable and available interim measures and accommodations that effect a change in academic, housing, employment, transportation, or other applicable arrangements in order to ensure safety, prevent retaliation, and avoid an ongoing hostile environment. Parties may request a prompt review of the need for and terms of any interim measures and accommodations that directly affect them.



While reporting individuals may request accommodations through any of the offices referenced in this policy, the following office can serve as a point to assist with these measures:

Office of the Dean of Students Location:

The Commons, Room 104

Phone: 607-778-5009

Email: [kanes1@sunybroome.edu](mailto:kanes1@sunybroome.edu)

## Options for Confidentially Disclosing Sexual Violence

The State University of New York and SUNY Broome Community College want you to get the information and support you need regardless of whether you would like to move forward with a report of sexual violence to campus officials or to police. You may want to talk with someone about something you observed or experienced, even if you are not sure that the behavior constitutes sexual violence. A conversation where questions can be answered is far superior to keeping something to yourself. Confidentiality varies, and this document is aimed at helping you understand how confidentiality applies to different resources that may be available to you.

### **In this Policy:**

- Confidential Resources.
- Non-Professional Counselors and Advocates.
- Privacy versus Confidentiality.
- Requesting Confidentiality: How SUNY Broome Community College Will Weigh the Request and Respond.
- Public Awareness/Advocacy Events.
- Anonymous Disclosure.
- Institutional Crime Reporting.

### **Confidential Resources:**

Individuals who are *confidential* resources will not report crimes to law enforcement or SUNY Broome Community College officials without your permission, except for extreme circumstances, such as a health and/or safety emergency. At SUNY Broome Community College, this includes:

- Counseling Services
  - Location: The Commons, Room 102
  - Phone: 607-778-5210
  - Email: [counselingservices@sunybroome.edu](mailto:counselingservices@sunybroome.edu)
- SUNY Broome Community College physicians, licensed medical professionals or supervised interns when they are engaged in a physician/patient relationship:
  - Health Services
    - Location: The Commons, Room 102
    - Phone: 607-778-5181
    - Email: [healthservices@sunybroome.edu](mailto:healthservices@sunybroome.edu)

Off-campus options to disclose sexual violence confidentially include (note that these outside options do not provide any information to the campus):

- Off-campus counselors and advocates. Crisis services offices will generally maintain confidentiality unless you request disclosure and sign a consent or waiver form. More information on an agency's policies on confidentiality may be obtained directly from the agency.
  - Crime Victims Assistance Center (CVAC) provides crisis counseling and advocacy services to victims of crime. Advocates are available 24/7: 607-722- 4256, located on 377 Robinson Street on the east side of Binghamton, NY.

- RISE: 607-754-4340 and 1-877-754-4340, located in a private location in Endicott, NY [www.rise-ny.org](http://www.rise-ny.org)
    - Services include: Assist individuals and families who experience, or are threatened with domestic violence. Shelter, supportive services, advocacy and counseling services are available for women and her children. Assistance with pursuing victim/survivor compensation of crimes or helps replace property lost or damaged during the crime]
  - A SAFE nurse is a registered nurse with special training in providing care to people who have been sexually assaulted. This nurse conducts medical forensic examinations and can serve as an expert witness. SAFE examinations can be conducted locally at [UHS Binghamton General Hospital](#) and [Lourdes Hospital](#). Learn more about the [SAFE program](#).
- Off-campus healthcare providers
    - Note that medical office and insurance billing practices may reveal information to the insurance policyholder, including medication and/or examinations paid for or administered. The New York State Office of Victim Services may be able to assist in compensating victims/survivors for health care and counseling services, including emergency compensation. More information may be found [here](#) or by calling 1-800-247-8035. Options are explained on the [help](#) page.

Note that even individuals who can typically maintain confidentiality are subject to exceptions under the law, including when an individual is a threat to him or herself or others and the mandatory reporting of child abuse.

### **Non-Professional Counselors and Advocates:**

Non-professional counselors and advocates can also assist you without sharing information that could identify you. These individuals will report the nature, date, time, and general location of an incident to SUNY Broome Community College's Title IX Coordinator, but will consult with you to ensure no personally identifying details are shared without your consent. These individuals are not considered confidential resources as discussed above.

### **Privacy versus Confidentiality:**

Consistent with the code of conduct, 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 Broome Community College offices and employees who cannot guarantee confidentiality but will maintain privacy to the greatest extent possible, and information disclosed will be relayed only as necessary to investigate and/or seek a resolution and to notify the Title IX Coordinator or designee, who is responsible for tracking patterns and spotting systemic issues. SUNY Broome Community College will limit the disclosure as much as practicable, even if the Title IX Coordinator determines that the request for confidentiality cannot be honored.

### **Requesting Confidentiality: How SUNY Broome Community College Will Weigh the Request and Respond:**

If you disclose an incident to a SUNY Broome Community College employee who is responsible for responding to or reporting sexual violence or sexual harassment, but wish to maintain confidentiality or do not consent to the institution's request to initiate an investigation, the Title IX Coordinator must weigh your request against our obligation to provide a safe, non-discriminatory environment for all members of our community, including you.

We will assist you with academic, housing, transportation, employment, and other reasonable and available accommodations regardless of your reporting choices. While reporting individuals may request accommodations through several SUNY Broome Community College offices, the Dean of Students Office (607-778-5009; [kanes1@sunybroome.edu](mailto:kanes1@sunybroome.edu)) can serve as a primary point of contact to assist with these measures. We also may take proactive steps, such as training or awareness efforts, to combat sexual violence in a general way that does not identify you or the situation you disclosed.

We may seek consent from you prior to conducting an investigation. You may decline to consent to an investigation, and that determination will be honored unless the SUNY Broome Community College's failure to act does not adequately mitigate the risk of harm to you or other members of the SUNY Broome community. Honoring your request may limit our ability to meaningfully investigate and pursue conduct action against an accused individual. If we determine that an investigation is required, we will notify you and take immediate action as necessary to protect and assist you.

When you disclose an incident to someone who is responsible for responding to or reporting sexual violence or sexual harassment, but wish to maintain confidentiality, SUNY Broome Community College will consider many factors to determine whether to proceed despite that request. These factors include, but are not limited to:

- Whether the accused has a history of violent behavior or is a repeat offender;
- Whether the incident represents escalation, such as a situation that previously involved sustained stalking;
- Whether there is increased risk that the accused will commit additional acts of violence;
- Whether the accused used a weapon or force;
- Whether the reporting individual is a minor; and
- Whether we possess other means to obtain evidence such as security footage, and whether the report reveals a pattern of perpetration at a given location or by a particular group.

If SUNY Broome Community College determines that it must move forward with an investigation, the reporting individual or victim/survivor will be notified and SUNY Broome Community College will take immediate action as necessary to protect and assist them.

### **Non-Investigatory Measures Available Under the Title IX Grievance Procedure**

#### **Supportive Measures**

Complainants (as defined above), who report allegations that could constitute covered sexual harassment under this policy, have the right to receive supportive measures from SUNY Broome Community College of whether they desire to file a complaint, which may include the list below. Supportive measures are non-disciplinary and non-punitive.

*Supportive Measures suggested by the Preamble: As appropriate, supportive measures may include, but not be limited to:*

- *Counseling*
- *extensions of deadlines or other course-related adjustments*
- *modifications of work or class schedules*
- *campus escort services*
- *restrictions on contact between the parties (no contact orders)*
- *changes in work or housing locations*
- *leaves of absence*
- *increased security and monitoring of certain areas of the campus*

See 85 Fed. Reg. 30401.

## **Emergency Removal**

SUNY Broome Community College retains the authority to remove a respondent from the College's program or activity on an emergency basis, where the College (1) undertakes an individualized safety and risk analysis and (2) determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of covered sexual harassment justifies a removal

If the College determines such removal is necessary, the respondent will be provided notice and an opportunity to challenge the decision immediately following the removal. If a respondent decides to challenge the decision, the appeal must be made in writing within 48 hours of the electronic notification of emergency removal. Appeals can be directed to the Vice President for Student Development and Chief Diversity Officer.

## **Administrative Leave**

SUNY Broome Community College retains the authority to place a non-student employee respondent on administrative leave during the Title IX Grievance process, consistent with the Employee Information Handbook.

## **Title IX Student Grievance Process**

Reporting individuals may request that student conduct charges be filed against the accused. Conduct proceedings are governed by the procedures set forth in the SUNY Broome Community College Student Code of Conduct as well as federal and New York State law, including the due process provisions of the United States and New York State Constitutions.

### **Participant Rights**

Throughout conduct proceedings, the respondent and the reporting individual will have:

- The same opportunity to be accompanied by an advisor of their choice who may assist and advise the parties throughout the conduct process and any related hearings or meetings. Participation of the advisor in any proceeding is governed by federal law and the Student Code of Conduct.
- The right to a prompt response to any complaint and to have their complaint investigated and adjudicated in an impartial, timely, and thorough manner by individuals who receive annual training in conducting investigations of sexual violence, the effects of trauma, impartiality, the rights of the respondent, including the right to a presumption that the respondent is "not responsible" until a finding of responsibility is made, and other issues related to sexual assault, domestic violence, dating violence, and stalking.
- The right to an investigation and process conducted in a manner that recognizes the legal and policy requirements of due process (including fairness, impartiality, and a meaningful opportunity to be heard) and is not conducted by individuals with a conflict of interest.

- The right to receive advance written or electronic notice of the date, time, and location of any meeting or hearing they are required to or are eligible to attend. Accused individuals will also be told the factual allegations concerning the violation, a reference to the specific code of conduct provisions alleged to have been violated, and possible sanctions.
- The right to have a conduct process run concurrently with a criminal justice investigation and proceeding, except for temporary delays as requested by external municipal entities while law enforcement gathers evidence. Temporary delays should not last more than 10 days except when law enforcement specifically requests and justifies a longer delay.
- The right to offer evidence during an investigation and to review available relevant evidence in the case file (or otherwise held by SUNY Broome Community College).
- The right to present evidence and testimony at a hearing, where appropriate.
- The right to a range of options for providing testimony via alternative arrangements, including telephone/videoconferencing or testifying with a room partition.
- The right to exclude prior sexual history with persons other than the other party in the conduct process or their own mental health diagnosis or treatment from admittance in college disciplinary stage that determines responsibility. Past findings of domestic violence, dating violence, stalking, or sexual assault may be admissible in the disciplinary stage that determines sanction.
- The right to ask questions of the decision maker and via the decision maker indirectly request responses from other parties and any other witnesses present.
- The right to make an impact statement during the point of the proceeding where the decision maker is deliberating on appropriate sanctions.
- The right to simultaneous (among the parties) written or electronic notification of the outcome of a conduct proceeding, including the decision, any sanctions, and the rationale for the decision and any sanctions.
- The right to written or electronic notice about the sanction(s) that may be imposed on the accused based upon the outcome of the conduct proceeding. For students found responsible for sexual assault, the available sanctions are suspension with additional requirements and expulsion/dismissal.
- Access to at least one level of appeal of a determination before a panel, which may include one or more students, that is fair and impartial and does not include individuals with a conflict of interest.
- The right to have access to a full and fair record or a student conduct hearing which shall be preserved and maintained for at least five years.
  - Questions can be directed to:
    - AVP/Dean of Students & Title IX Coordinator
      - Location: The Commons, Room 104
      - Phone: 607-778-5009
      - Email: [kanes1@sunybroome.edu](mailto:kanes1@sunybroome.edu)
- The right to choose whether to disclose or discuss the outcome of a conduct hearing.
- 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.

## **Procedures for Adjudicating Student Title IX Code Violations**

### **Filing a Formal Complaint**

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

To file a Formal Complaint, a complainant must provide the Title IX Coordinator a written, signed complaint describing the facts alleged. Complainants are only able to file a Formal Complaint under this Policy if they are currently participating in, or attempting to participate in, the education programs or activities of SUNY Broome Community College including as an employee. For complainants who do not meet this criteria, the College will utilize existing policies in the Code of Conduct.

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

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

### **Multi-Party Situations**

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

### **Determining Jurisdiction**

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

1. The conduct is alleged to have occurred on or after August 14, 2020;



2. The conduct is alleged to have occurred in the United States;
3. The conduct is alleged to have occurred in SUNY Broome's education program or activity; and
4. The alleged conduct, if true, would constitute covered sexual harassment as defined in this policy.

If all of the elements are met, SUNY Broome Community College will investigate the allegations according to this Grievance Procedure.

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

### **Mandatory Dismissal**

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

### **Discretionary Dismissal**

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

- A complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any allegations raised in the Formal Complaint;
- The respondent is no longer enrolled or employed by {the institution}; or,
- If specific circumstances prevent {the institution} 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.

### **Notice of Dismissal**

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.

### **Notice of Removal**

Upon dismissal for the purposes of Title IX, SUNY Broome Community College retains discretion to utilize the Student Code of Conduct <https://sunybroome.edu/osrr/student-code-of-conduct/> to determine if a violation of the Student Code of Conduct has occurred. If so, the College will promptly send written notice of the dismissal of the Formal Complaint under the Title IX Grievance Policy & Procedure and removal of the allegations to the conduct process.

## **Notice of Allegations**

The Title IX Coordinator will draft and provide the Notice of Allegations to any party to the allegations of sexual harassment. Such notice will occur as soon as practicable, after the institution receives a Formal Complaint of the allegations, if there are no extenuating circumstances.

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

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

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

## **Contents of Notice**

The Notice of Allegations will include the following:

- Notice of the institution's Title IX Grievance Procedure a hyperlink to a copy of the process.
- Notice of the allegations potentially constituting covered sexual harassment, and sufficient details known at the time the Notice is issued, such as the identities of the parties involved in the incident, if known, including the complainant; the conduct allegedly constituting covered sexual harassment; and the date and location of the alleged incident, if known.
- A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- A statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney, as required under 34 C.F.R. § 106.45(b)(5)(iv);
- 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, as required under 34 C.F.R. § 106.45(b)(5)(vi);

## **Ongoing Notice**

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

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

## **Advisor of Choice and Participation of Advisor of Choice**

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

The college has a long-standing practice of requiring students to participate in the process directly and not through an advocate or representative. Students participating as Complainant or Respondent in this process may be accompanied by an Advisor of 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 Broome Community College.

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

The College's obligations to investigate and adjudicate in a prompt timeframe under Title IX and other college policies apply to matters governed under this Policy, and the college cannot agree to extensive delays solely to accommodate the schedule of an Advisor of Choice. The determination of what is reasonable shall be made by the Title IX Coordinator or designee.

SUNY Broome will not be obligated to delay a meeting or hearing under this process more than five (5) days due to the unavailability of an Advisor of Choice, and may offer the party the opportunity to obtain a different Advisor of Choice or utilize one provided by the college.

## **Notice of Meetings and Interviews**

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

## **Delays**

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

The Title IX Coordinator, or designee shall have sole judgment to grant further pauses in the process.

## **Investigation**

### **General Rules of Investigations**

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

SUNY Broome Community College and not the parties, has the burden of proof and the burden of gathering evidence, i.e. the responsibility of showing a violation of this Policy & Procedure has occurred. This burden does not rest with either party, and either party may decide not to share their account of what occurred or may decide not to participate in an investigation or hearing. This does not shift the burden of proof away from SUNY Broome and does not indicate responsibility.

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

### **Inspection and Review of Evidence**

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

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

1. Evidence that is relevant, even if that evidence does not end up being relied upon by

the institution in making a determination regarding responsibility;

2. Inculpatory or exculpatory evidence (i.e. evidence that tends to prove or disprove the allegations) that is directly related to the allegations, whether obtained from a party or other source.
3. 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. See, 85 Fed. Reg. 30026, 30307.

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

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

The institution will provide copies of the parties' written responses to the investigator to all parties and their advisors, if any. See, 85 Fed. Reg. 30026, 30307

The institution may provide the parties five (5) business days after the initial inspection and review of evidence, and before the investigator completes their Investigative Report, to provide additional evidence in response to their inspection and review of the evidence, and then provide the parties five (5) business days to inspect, review, and respond to the party's additional evidence through a written response to the investigator. Those written responses may be disclosed to the parties. See, 85 Fed. Reg. 30026, 30307.

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

The parties and their advisors must sign an agreement not to disseminate any of the evidence subject to inspection and review or use such evidence for any purpose unrelated to the Title IX grievance process. See, 85 Fed. Reg. 30026, 30435.

The parties and their advisors agree not to photograph or otherwise copy the evidence. See, 85 Fed. Reg. 30026, 30435.

### **Inclusion of Evidence Not Directly Related to the Allegations:**

Evidence obtained in the investigation that is determined in the reasoned judgment of the investigator not to be directly related to the allegations in the Formal Complaint will be included in the appendices to the investigative report.

### **Investigative Report**

The Title IX Coordinator and/or an investigator designated by the Title IX Coordinator will create an Investigative Report that fairly summarizes relevant evidence, will and provide that Report to the parties at least ten (10) business days prior the hearing for each party's review and written response.

The Investigative Report is not intended to catalog all evidence obtained by the investigator, but only to provide a fair summary of that evidence.

Only relevant evidence (including both inculpatory and exculpatory – i.e. tending to prove and disprove the allegations - relevant evidence) will be referenced in the Investigative Report.

The investigator may redact irrelevant information from the Investigative Report when that information is contained in documents or evidence that is/are otherwise relevant. See, 85 Fed. Reg. 30026, 30304.

### **Hearing**

#### **General Rules of Hearings**

SUNY Broome Community College will not issue a disciplinary sanction arising from an allegation of covered sexual harassment without holding a live hearing.

The live hearing may be conducted with all parties physically present in the same geographic location, or, at the college's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually through Zoom Video Communications. This technology the college may delay or adjourn a hearing based on technological errors not within a party's control.

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

Prior to obtaining access to any evidence, the parties and their advisors must sign an agreement not to disseminate any of the testimony heard or evidence obtained in the hearing or use such testimony or evidence for any purpose unrelated to the Title IX Grievance Policy & Procedure. Once signed, this Agreement may not be withdrawn See, 85 Fed. Reg. 30026, 30435

## **Continuances or Granting Extensions**

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

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

## **Participants in the live hearing**

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

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

- The parties cannot waive the right to a live hearing.
- The institution may still proceed with the live hearing in the absence of a party, and may reach a determination of responsibility in their absence, including through any evidence gathered that does not constitute a "statement" by that party. 85 Fed. Reg. 30026, 30361
  - For example, a verbal or written statement constituting part or all of the sexual harassment itself is not a "prior statement" that must be excluded if the maker of the statement does not submit to cross-examination about that statement. In other words, a prior statement would not include a document, audio recording, audiovisual reading, and digital media, including but not limited to text messages, emails, and social media postings, that constitute the conduct alleged to have been the act of sexual harassment

under the formal complaint. See, OCR Blog (May 22, 2020), available at <https://www2.ed.gov/about/offices/list/ocr/blog/20200522.html>

- SUNY Broome Community College will not threaten, coerce, intimidate or discriminate against the party in an attempt to secure the party's participation. See 34 C.F.R. § 106.71; see also 85 Fed. Reg. 30026, 30216 (May 19, 2020).
- If a party does not submit to cross-examination, the decision-maker cannot rely on any prior statements made by that party in reaching a determination regarding responsibility, but may reach a determination regarding responsibility based on evidence that does not constitute a "statement" by that party.
- The decision-maker cannot draw an inference about the determination regarding responsibility based solely on a party's absence from the live hearing or refusal to answer cross examination or other questions. See 34 C.F.R. §106.45(b)(6)(i).

#### *The Decision-maker/Hearing Board*

- The hearing body will consist of a single decision-maker.
- No member of the hearing body will also have served as the Title IX Coordinator, Title IX investigator, or advisor to any party in the case, nor may any member of the hearing body serve on the appeals body in the case.
- 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 or against the parties to the particular case.
- The hearing body will be trained on topics including how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for complainants, and any technology to be used at the hearing.
- The parties will have an opportunity to raise any objections regarding a decision-maker's actual or perceived conflicts of interest or bias at the commencement of the live hearing.

#### *Advisor of choice*

- The parties have the right to select an advisor of their choice, who may be, but does not have to be, an attorney.
- The advisor of choice may accompany the parties to any meeting or hearing they are permitted to attend, but may not speak for the party, except for the purpose of cross-examination.
- The parties are not permitted to conduct cross-examination; it must be conducted by the advisor. As a result, if a party does not select an advisor, the institution will select an advisor to serve in this role for the limited purpose of conducting the cross-examination at no fee or charge to the party.
- The advisor is not prohibited from having a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.
- The advisor is not prohibited from being a witness in the matter.
- If a party does not attend the live hearing, the party's advisor may appear and conduct cross-examination on their behalf. 85 Fed. Reg. 30026, 30340 (May 19, 2020).



- If neither a party nor their advisor appear at the hearing, the college will provide an advisor to appear on behalf of the non-appearing party. See, 85 Fed. Reg. 30026, 30339-40.

#### *Witnesses*

- Witnesses cannot be compelled to participate in the live hearing, and have the right not to participate in the hearing free from retaliation. See, 85 Fed. Reg. 30026, 30360 (May 19, 2020).
- If a witness does not submit to cross-examination, as described below, the decision-maker cannot rely on any statements made by that witness in reaching a determination regarding responsibility, including any statement relayed by the absent witness to a witness or party who testifies at the live hearing. 85 Fed. Reg. 30026, 30347 (May 19, 2020).

### **Hearing Procedures**

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

- The Decision-maker will open and establish rules and expectations for the hearing;
- The Parties will each be given the opportunity to provide opening statements;
- The Decision-maker will ask questions of the Parties and Witnesses;
- Parties will be given the opportunity for live cross-examination after the hearing Decision-maker conducts its initial round of questioning; During the Parties' cross-examination, the decision-maker will have the authority to pause cross-examination at any time for the purposes of asking decision-maker's own follow up questions; and any time necessary in order to enforce the established rules of decorum.
- Should a Party or the Party's Advisor choose not to cross-examine a Party or Witness, the Party shall affirmatively waive cross-examination through a written or oral statement to the Decision-maker. A Party's waiver of cross-examination does not eliminate the ability of the Decision-maker to use statements made by the Party.

### **Live Cross-Examination Procedure**

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

Before any cross-examination question is answered, the decision-maker will determine if the question is relevant. Cross-examination questions that are duplicative of those already asked, including by the decision-maker may be deemed irrelevant if they have been asked and answered.

## **Review of Recording**

The recording of the hearing will not be provided to parties or advisors of choice.

## **Determination Regarding Responsibility**

### **Standard of Proof**

SUNY Broome Community College uses the preponderance of the evidence standard for investigations and determinations regarding responsibility of formal complaints covered under this Procedure. This means that the investigation and hearing determines whether it is more likely than not that a violation of the policy occurred.

### **General Considerations for Evaluating Testimony and Evidence**

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

The Decision-maker 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.

Still, 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.

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

Except where specifically barred by the Title IX Final Rule, a witness' testimony regarding third-party knowledge of the facts at issue will be allowed, but will generally be accorded lower weight than testimony regarding direct knowledge of specific facts that occurred.

The Final Rule requires that SUNY Broome Community College allow parties to call "expert witnesses" for direct and cross examination. If accurate: the college does not provide for expert witnesses in other proceedings. While the expert witness will be allowed to testify and be cross-examined as required by the Final Rule, the Decision-maker will be instructed to afford lower weight to non-factual testimony of the expert relative to fact witnesses, and any expert testimony that is not

directed to the specific facts that occurred in the case will be afforded lower weight relative to fact witnesses, regardless of whether the expert witness testimony is the subject of cross examination and regardless of whether all parties present experts as witnesses.

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

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

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.

### **Components of the Determination Regarding Responsibility**

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

1. Identification of the allegations potentially constituting covered sexual harassment;
2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
3. Findings of fact supporting the determination;
4. Conclusions regarding which section of the Student Code of Conduct, if any, the respondent has or has not violated.
5. For each allegation:
  - a. A statement of, and rationale for, a determination regarding responsibility;
  - b. A statement of, and rationale for, any disciplinary sanctions the recipient imposes on the respondent; and
  - c. 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
6. The recipient’s procedures and the permitted reasons for the complainant and respondent to appeal (described below in “Appeal”).

## **Timeline of Determination Regarding Responsibility**

If there are no extenuating circumstances, the determination regarding responsibility will be issued by SUNY Broome Community College within ten (10) business days of the completion of the hearing.

## **Finality**

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

## **Appeals**

Each party may appeal (1) the dismissal of a formal complaint or any included allegations and/or (2) a determination regarding responsibility. To appeal, a party must submit their written appeal within five (5) business days of being notified of the decision, indicating the grounds for the appeal.

*The limited grounds for appeal available are as follows:*

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

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

If a party appeals, the 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 will be decided by a panel of 3 Decision-makers who will be free of conflict of interest and bias, and will not serve as investigator, Title IX Coordinator, or hearing Decision-maker in the same matter.

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

## **Retaliation**

SUNY Broome Community College 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 Procedure.

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 Procedure.

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.