



Grievance Policy for Addressing Formal Complaints of Sexual Harassment Under the Title IX Regulations

Summary:

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.

Policy:

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.

Based on the Final Rule, SUNY Adirondack will implement the following Title IX Grievance Policy, effective August 14, 2020 and will only apply to formal complaints of sexual harassment brought on or after this date.

Students and employees, including faculty and student workers, are treated the same under the Final Rule. Employees should receive the same benefits and due process protections that students receive.

Definitions:

Business Day. A "business day" means a day other than Saturday, Sunday, New York State and federal holidays, and days when SUNY Adirondack is closed.

Complainant. For the purposes of this Title IX Grievance Policy, 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.

Consent. For the purposes of this Title IX Grievance Policy, “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.

a. 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.

b. Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.

c. Consent may be initially given but withdrawn at any time.

d. 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 a lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending upon the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants, may be incapacitated and therefore unable to consent.

e. Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.

f. When consent is withdrawn or can no longer be given, sexual activity must stop.

Covered Sexual Harassment. For the purposes of this Title IX Grievance Policy, “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 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.

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 Sexual Misconduct Policy.

Education Program or Activity. For the purposes of this Title IX Grievance Policy, SUNY Adirondack's "education program or activity" includes:

- Any on-campus premises
- Any off-campus premises that SUNY Adirondack 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 Adirondack's programs and activities over which the SUNY Adirondack has substantial control.

Formal Complaint. For 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 Adirondack's education program or activity and requesting initiation of the procedures consistent with the Title IX Grievance Policy to investigate the allegation of sexual harassment.

Parties. For the purposes of this Title IX Grievance process, "Parties" means the complainant and the respondent.

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).

Respondent. For the purposes of this Title IX Grievance policy, Respondent means any individual who has been reported to be the perpetrator of conduct that could constitute covered sexual harassment as defined under this policy.

Other Related Information:

Other Campus Disciplinary Policies

SUNY Adirondack remains committed to addressing any violations of its policies, even those not meeting the narrow standards defined under the Title IX Final Rule. Specifically, SUNY Adirondack has a Sexual Misconduct Policy, that runs parallel to the Title IX Grievance Policy, to implement the New York Education Law 129-B to respond to violations falling outside Title IX jurisdiction. To the extent that alleged misconduct falls outside the Title IX Grievance Policy, or misconduct falling outside the Title IX Grievance Policy is discovered in the course of investigating covered Title IX misconduct, the institution retains authority to investigate and adjudicate the allegations through a separate grievance proceeding under the regulations and policies listed below.

The elements established in the Title IX Grievance Policy under the Final Rule have no effect and are not transferable to any other policy of the College for any violation of the Code of Conduct, employment policies, or any civil rights violation except as narrowly defined in this Policy. This Policy 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.

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>.

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.

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 policy, this policy, or the invalidated elements of this policy, 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 Policy be revoked in this manner, any conduct covered under the Title IX Grievance Policy shall be investigated and adjudicated under the existing SUNY Adirondack Sexual Misconduct Policy.

Regulations and Policies

Title IX Final Rule and Preamble

<http://bit.ly/TitleIXReg>

NYS Education Law Article 129B

<https://www.nysenate.gov/legislation/laws/EDN/A129-B>

SUNY Adirondack Board of Trustees Policy Manual: Section 7.03 B Sex Discrimination
<N:\Policies, Processes, Procedures and Guidelines/Board of Trustees/Section 7 Human Resources.pdf>

Adirondack Community College HR Guidelines for Employees [page 5-6]

<N:\College Operations\Human Resources\HR Guidelines for SUNY Adirondack Employees.pdf>

SUNY Adirondack Administrative Staff Handbook [page 9 – 10]

<N:\College Operations\Human Resources\Handbooks\SUNY Adirondack Administrative Staff Handbook 4.2020.pdf>

SUNY Adirondack Faculty Handbook

<Faculty Handbook 2015-2016.pdf>

SUNY Adirondack Sexual Misconduct Policy

<https://www.sunyacc.edu/sexual-assault-prevention-and-response>

Student Code of Conduct [page 67-70]

<https://www.sunyacc.edu/Handbook 2021-22.pdf>

3303 Sexual Harassment Response and Prevention

<N:\Policies, Processes, Procedures and Guidelines\Human Resources\3303 Sexual Harassment Response and Prevention.pdf>

3304 Sexual and Romantic Relationships

<N:\Policies, Processes, Procedures and Guidelines\Human Resources\3304 Sexual and Romantic Relationships.pdf>

3306 Non-Discrimination and Anti-Harassment

<N:\Policies, Processes, Procedures and Guidelines\Human Resources\3306 Non-Discrimination and Anti-Harassment.pdf>

3309 Discrimination and Sexual Harassment Complaints

<N:\Policies, Processes, Procedures and Guidelines\Human Resources\3309 Discrimination and Sexual Harassment Complaints.pdf>