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I. Title IX Policy Statement:

SUNY NIAGARA (“SUNY NIAGARA” or the “College” SUNY NIAGARA prohibits discrimination and sexual harassment in any education program or activity that it operates as required by Title IX of the Education Amendments Act of 1972 (“Title IX”).

Inquiries about Title IX may be referred to SUNY NIAGARA’s Title IX Coordinator, the U.S. Department of Education’s Office for Civil Rights, or both. SUNY NIAGARA’s Title IX Coordinators are:

- Employees
 - Catherine Brown, Assistant Vice President of Human Resources, A-264, 716-614-5951. cbrown@niagaracc.suny.edu ;
- Students
 - Robert McKeown, Assistant Vice President of Student Services, A-266, 716-614-6201, McKeown@niagaracc.suny.edu;
- Athletics
 - Amanda Haseley, Director of Athletics H-168 716-614-6271, ahaseley@niagaracc.suny.edu.

The College’s Discrimination, Harassment, and Retaliation Policy and corresponding Complaint Form can be located at: <https://ett3x2kbxx8.exactdn.com/wp-content/uploads/2023/08/Discrimination-Harassment-and-Retaliation-Policy-Final-w-Cover.pdf>.

Additionally, to report information about conduct that may constitute sex discrimination or make a Complaint of sex discrimination under Title IX, please refer to: <https://www.niagaracc.suny.edu/hr/titleix/>.

The College’s Notice of Non-Discrimination is located at: <https://www.niagaracc.suny.edu/hr/compliance/>.

II. Applicability of Title IX Policy:

This policy applies to incidents that occur on or after August 1, 2024. Any incidents of alleged sex discrimination that occurred on or before July 31, 2024, will be processed through SUNY NIAGARA’s Title IX Policy available at: <https://ett3x2kbxx8.exactdn.com/wp-content/uploads/2023/08/Title-IX.pdf>. This policy may be subject to further change if the 2024 Title IX Final Rule is withdrawn or modified. In that case, any conduct covered under this policy shall be investigated and adjudicated under the previous 2020 Title IX Grievance Policy and/or SUNY NIAGARA’s Code of Conduct and/or Sexual Misconduct/VAWA policy.

This policy applies to all employees, applicants for employment, students, applicants for admission, interns, whether paid or unpaid, and contractors and persons conducting business with the College. Students who are only employed by the College as student assistants or work study, or who are interns inside and outside the College as a part of their course study, will be considered students for purposes of this policy.

III. Reporting Requirements

A. Supervisory Responsibility:

Supervisory personnel are responsible for maintaining a safe work environment that is free from discrimination and sexual harassment. As such, supervisors are required to promptly report information they encounter that could be considered sexual harassment, sexual assault, dating violence, domestic violence, stalking, or any other sex-based discrimination, regardless of when the behavior occurred, to a Title IX Coordinator listed above. Supervisors may be subject to disciplinary action, up to and including termination, for failing to report observed, reported, or suspected discrimination or sexual harassment, or knowingly permitting such conduct to continue in the workplace and/or education environment. Supervisors may also be subject to disciplinary action, up to and including termination, for engaging in any retaliation against a person who makes a complaint of discrimination or sexual harassment, or who assists, participates, or testifies in any investigation or proceeding related to such complaint.

B. Responsible Employees

A Responsible Employee means any employee who has the authority to take action to redress harassment, the duty to report discrimination or harassment to appropriate College officials, or an individual who a student reasonably believes has this authority or responsibility.

All College employees (faculty, staff, and administrators) are designated Responsible Employees and must report incidents of actual or suspected discrimination or harassment to the Title IX Coordinator or designee(s) immediately, with limited exceptions.

The Responsible Employee must include within their report the following information:

- the reporting student(s) or employee(s) name (known as the "Reporting Party"),
- the name of the accused (known as the "Responding Party"),
- the approximate date/time/location of the incident *if known*,
- how information was shared with them (i.e. personal conversation, written, etc.)

Some College employees may maintain the confidence of the Reporting Party if requested (i.e., Mental Health Counselors in the Wellness Center). Such confidential employees may offer options and advice without any obligation to inform an outside agency or College official unless the Reporting Party has requested the information to be shared or the reported incident involves potential or actual criminal conduct or an immediate threat to the College community.

Any Reporting Party has the right, and can expect, to have their reported allegations taken seriously by the College, and to have those incidents investigated and properly resolved through these procedures.

Failure of a Responsible Employee, as described in this section, to report an incident(s) of sex-based harassment or sex discrimination of which they become aware is a violation of College

policy and, accordingly, such Responsible Person may be subject to disciplinary consequences.

IV. Grievance Procedures for Complaints of Sex Discrimination:

SUNY NIAGARA has adopted grievance procedures that provide for the prompt and equitable resolution of sex-discrimination complaints made by students, employees, or other individuals who are participating or attempting to participate in its education program or activity, or by the Title IX Coordinator, alleging any action that would be prohibited by Title IX or the Title IX regulations.

Sex discrimination, as defined by Title IX, includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

Title IX's prohibition on sex discrimination includes sex-based harassment in the form of *quid pro quo* harassment, hostile environment harassment, sexual assault, dating violence, domestic violence, and stalking. For complaints of sex-based harassment involving a student, the College will utilize the Grievance Procedures set forth herein in **Section XII** and which is also available on the College's website at: <https://www.niagaracc.suny.edu/hr/titleix/>.

V. Complaints of Sex Discrimination:

The following individuals have a right to make a complaint of sex discrimination, including complaints of sex-based harassment, requesting that SUNY NIAGARA investigate and make a determination about alleged discrimination under Title IX:

- A "complainant," which includes:
 - A student or employee of SUNY NIAGARA who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX; or
 - A person other than a student or employee of SUNY NIAGARA who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX at a time when that individual was participating or attempting to participate in SUNY NIAGARA's education program or activity;
 - A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a complainant; or
 - SUNY NIAGARA's Title IX Coordinator.

An individual is entitled to make a complaint of sex-based harassment only if they are alleged to have been subjected to sex-based harassment, if they have a legal right to act on behalf of such person, or if the Title IX Coordinator initiates a complaint consistent with Title IX's requirements. Complaints may be made verbally or by completing the attached Discrimination/Sexual Harassment Complaint Form. SUNY NIAGARA

Concerning complaints of sex discrimination other than sex-based harassment, in addition to the individuals listed above, the following individuals have a right to make a complaint:

- Any student or employee of SUNY NIAGARA; or

- Any person other than a student or employee who was participating or attempting to participate in SUNY NIAGARA’s education program or activity at the time of the alleged sex discrimination.

SUNY NIAGARA may consolidate complaints of sex discrimination against more than one respondent, or by more than one complainant against one or more respondents, or by one party against another party when the allegations of sex discrimination arise out of the same facts or circumstances. Note that SUNY NIAGARA is not permitted to consolidate complaints if doing so would violate the Family Educational Rights and Privacy Act (“FERPA”).

VI. Jurisdiction of Title IX Grievance Procedure:

This policy applies to all instances of sex discrimination occurring on campus or at College-sponsored functions or events and may also apply to off-campus conduct, including conduct that occurs outside of the United States or outside of SUNY NIAGARA’s Education Program or Activity if such conduct causes or contributes to a sex-based hostile environment in the College’s education program or activity.

In the limited circumstances in which Title IX permits different treatment or separation on the basis of sex, SUNY NIAGARA will not carry out such different treatment or separation in a manner that discriminates on the basis of sex by subjecting a person to more than *de minimis* harm, except as permitted by law.

VII. Definitions:

1. **Admission** means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an Education Program or Activity operated by SUNY NIAGARA.
2. **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 sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based on a participant’s sex, sexual orientation, gender identity, or gender expression.
3. **Complainant** means (a) a student or employee who is alleged to have been subjected to conduct that could constitute sex-based harassment as defined in this procedure and who was participating or attempting to participate in SUNY NIAGARA’s Education Program or Activity; or (b) a person other than a student or employee who is alleged to have been subjected to conduct that could constitute sex-based harassment under these grievance procedures and who was participating or attempting to participate in SUNY NIAGARA’s Education Program or Activity at the time of the alleged sex-based harassment.
4. **Confidential Employee** means (1) an employee of SUNY NIAGARA whose

communications are privileged under Federal or State law. The employee's confidential status is only with respect to information received while the employee is functioning within the scope of their duties to which privilege or confidentiality applies; (2) an employee of SUNY NIAGARA designated as confidential for the purpose of providing services to persons related to sex discrimination. If the employee also has a duty not associated with providing those services, the employee's confidential status is only with respect to information received about sex discrimination in connection with providing those services; or (3) an employee of SUNY NIAGARA who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about sex discrimination. The employee's confidential status is only with respect to information received while conducting the study.

5. ***Disciplinary Sanctions*** means consequences imposed on a Respondent following a determination under this grievance procedure that the Respondent violated SUNY NIAGARA's prohibition against sex discrimination.
6. ***Education Program or Activity*** means all of the operations of a college, university, or other postsecondary institution, or a public system of higher education.
7. ***Party*** means Complainant or Respondent.
8. ***Peer Retaliation*** means retaliation by a student against another student.
9. ***Pregnancy or related conditions*** means (a) Pregnancy, childbirth, termination of pregnancy, or lactation; (b) Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or (c) Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.
10. ***Relevant*** means related to the allegations of sex discrimination under investigation as part of this Grievance Procedure. Questions are relevant when they seek evidence that may aid in showing whether the alleged sex discrimination occurred, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.
11. ***Remedies*** means measures provided, as appropriate, to a Complainant or any other person SUNY NIAGARA identified as having had their equal access to SUNY NIAGARA's Education Program or Activity limited or denied by sex discrimination. These measures are provided to restore or preserve that person's access to SUNY NIAGARA's Education Program or Activity after SUNY NIAGARA determines that sex discrimination occurred.
12. ***Respondent*** means a person who is alleged to have violated SUNY NIAGARA's prohibition on sex discrimination.
13. ***Responsible Employee*** means an employee who has the authority to address and/or stop the harassment, who has the duty to report discrimination or harassment to appropriate College officials, or an individual who a Complainant reasonably believes has such

authority or responsibility. All SUNY NIAGARA employees are designated as Responsible Employees and will promptly share any Title IX complaint or report with the Title IX Coordinator.

14. **Retaliation** means intimidation, threats, coercion, or discrimination by any person by SUNY NIAGARA, a student, or an employee or other person authorized by SUNY NIAGARA to provide aid, benefit, or service under SUNY NIAGARA's Education Program or Activity, for the purpose of interfering with any right or privilege secured by Title IX, or because the person has reported information, made a Complaint, testified, assisted or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Grievance Procedure.

15. **Sex-based harassment** means sexual harassment and other harassment on the basis of sex, including harassment because of gender identity, sexual orientation, sex characteristics, sex stereotypes, and/or pregnancy and other conditions, that is:

(1) *Quid pro quo harassment*. An employee, agent, or other person authorized by SUNY NIAGARA's Education Program or Activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person's participation in unwelcome sexual conduct;

(2) *Hostile environment harassment*. Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from SUNY NIAGARA's Education Program or Activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:

1. The degree to which the conduct affected the Complainant's ability to access SUNY NIAGARA's Education Program or Activity;
2. The type, frequency, and duration of the conduct;
3. The Parties' ages, roles within SUNY NIAGARA's Education Program or Activity, previous interactions and other factors about each Party that may be relevant to evaluating the effects of the conduct;
4. The location of the conduct and the context in which the conduct occurred; and
5. Other sex-based harassment in SUNY NIAGARA's Education Program or Activity.

(3) *Sexual Assault* (as defined in the Clery Act) means any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent;

(4) *Dating Violence* (as defined in the Violence Against Women Act (VAWA) Reauthorization of 2022 and the VAWA Amendments to the Clery Act) means any violence committed by a person:

- (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: The length of the relationship; the type of relationship; and the frequency of interaction between the persons involved in the relationship.

(5) *Domestic Violence* means any felony or misdemeanor crimes committed by a person who:

- (A) Is a current or former partner of the victim under the family or domestic violence laws of New York State, or a person similarly situated to a spouse of the victim;
- (B) Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;
- (C) Shared a child in common with the victim; or
- (D) Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of New York State; or

(6) *Stalking* means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- (A) fear for the person's safety or the safety of others; or
- (B) suffer substantial emotional distress.

15. *Student* means a person who has gained admission to SUNY NIAGARA.

16. *Supportive Measures* means individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a Complainant or Respondent, not for punitive or disciplinary reasons, and without fee or charge to the Complainant or Respondent to:

- 1) Restore or preserve that Party's access to SUNY NIAGARA's Education Program or Activity, including measures that are designed to protect the safety of the Parties or SUNY NIAGARA's educational environment; or
- 2) Provide support during SUNY NIAGARA's Grievance Procedure for sex discrimination.

VIII. Basic Requirements of Title IX Grievance Procedure

- a) *Equitable Treatment*: SUNY NIAGARA will treat Complainants and Respondents equitably.
- b) *Conflicts and Bias*: SUNY NIAGARA requires that any Title IX Coordinator, investigator, or decisionmaker not have a conflict of interest or bias for or against Complainants or

Respondents generally or an individual Complainant or Respondent. A decisionmaker may be the same person as the Title IX Coordinator or investigator.

- c) **Presumption:** SUNY NIAGARA presumes that the Respondent is not responsible for the alleged sex discrimination until a determination is made at the conclusion of its Grievance Procedure.
- d) **Reasonably Prompt Timeframes:** The formal resolution process, inclusive of evaluation of the Formal Title IX Complaint, investigation, determination, and appeal, is generally concluded within sixty (60) to ninety (90) business days of the filing of a Formal Title IX Complaint.
- e) **Extensions:** SUNY NIAGARA has also established a process that allows for the reasonable extension of timeframes on a case-by-case basis for good cause with notice to the Parties that includes the reason for the delay. Reasons for such delay include but are 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 disability accommodation(s).
- f) **Privacy:** SUNY NIAGARA will take reasonable steps to protect the privacy of the parties and witnesses during its grievance procedure. These steps will not restrict the ability of the Parties to obtain and present evidence, including by speaking to witnesses; consult with their family members, confidential resources, or advisors; or otherwise prepare for or participate in the grievance procedure. Retaliation is strictly prohibited, including against witnesses.
- g) **Objectivity:** SUNY NIAGARA will objectively evaluate all evidence that is relevant and not otherwise impermissible including both inculpatory and exculpatory evidence. Credibility determinations will not be based on a person's status as a Complainant, Respondent, or witness.
- h) **Impermissible Evidence:** The following types of evidence, and questions seeking that evidence, are impermissible (i.e., will not be accessed or considered, except by SUNY NIAGARA to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether they are relevant:
 - i) Evidence that is protected under a privilege recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
 - ii) A party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness unless SUNY NIAGARA obtains that party's or witness's voluntary, written consent for use in its grievance procedure; and
 - iii) Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual

conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's consent to the alleged sex-based harassment or preclude a determination that sex-based harassment occurred.

IX. Disability Accommodations

A. Generally

This grievance procedure does not alter any institutional obligation 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 Procedure that do not fundamentally alter the Procedure. 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.

B. Supportive Measures

If the Complainant or Respondent discloses a disability, the Title IX Coordinator may consult, as appropriate, with the Accessibility Services Office to provide support to students with disabilities to determine how to comply with Section 504 of the Rehabilitation Act of 1973 regarding the implementation of any supportive measures.

X. Reporting Sex Discrimination

A. Types of Complaints

Types of complaints that may be addressed under these Grievance Procedures include, but are not limited to, sex discrimination other than sex-based harassment, such as:

- Complaints of retaliation;
- Complaints of sex discrimination that do not involve sex-based harassment;
- Complaints regarding failure to make reasonable modifications to policies, practices, or procedures, as necessary, to ensure equal access and prevent sex discrimination based on parental, family or marital status, including pregnancy or related conditions; or
- Complaints that SUNY NIAGARA's policies or procedures discriminate on the basis of sex.

Complaints may be submitted using the following options:

- 1) Individuals may report directly to a Title IX Coordinator or Responsible Employee verbally, by mail, by telephone, by electronic mail, or by using the attached Complaint Form.

- 2) Employees should promptly report any complaints to their supervisor or other administrator with whom they feel comfortable, if their supervisor is the alleged offender.
- 3) Individuals may also submit a complaint directly to the U.S. Department of Education, Office for Civil Rights (OCR), which is the federal agency charged with enforcing compliance with Title IX. Information regarding OCR can be found at: Office for Civil Rights, 400 Maryland Avenue, SW, Washington, D.C. 20202-1100, or on its website at: ed.gov/ocr.
- 4) Employees or students should make a report to campus safety or local law enforcement if the incident involves conduct that may constitute a crime (i.e., physical confinement, unwanted physical touching, sexual assault).

B. Confidential Reports

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

- Title IX Coordinator or designee(s); and
- Officials with authority to institute corrective measures under Title IX.

The following officials at SUNY NIAGARA may provide confidentiality:

- **For employees:** Employee Assistance Program (EAP). Tel. 800-252-4555 or Web. HigherEdEAP.com. The EAP is a 3rd party, neutral service for employees seeking counseling and other resources.
- **For students:** Mental Health Counselors within the Wellness Center.
Wellness Center
<https://www.niagaracc.suny.edu/wellness/>
Phone: 716-614-6275
Fax: 716-614-6817
Location: C-122

A student or employee wishing to report an incident off campus in complete confidence may contact YWCA, or other external resources listed here: <http://nyscasa.org/> or <https://www.suny.edu/violence-response/>.

YWCA

Rachel Sandle-Sacco
T:716-433-6714 ext. 235
C: 716-481-3610

24-Hour Crisis Hotline

T: 716-433-6716
Text: 716-870-9726

Individuals will maintain confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor.

- **Semi-Confidential Options for Students**

- There are some professionals on campus who are designated as *semi-confidential* for students. These individuals are not required to reveal personally identifiable information about a victim/survivor to the Title IX Coordinator, or anyone else on campus. They are, however, required to report aggregate data to a Title IX Coordinator, including nature, date, time, and general location of the incident. These individuals include: Wellness Center Supervisor of College Nursing, Assistant Vice President of Student Services, or the, Director of Athletics and Director of Housing.

C. Public Awareness Events

If SUNY NIAGARA's Title IX Coordinator is notified of information about conduct that may reasonably constitute sex discrimination, including sexual harassment, under Title IX or this policy during a public event designed to raise awareness of such conduct and that is held on SUNY NIAGARA's campus or sponsored by SUNY NIAGARA through an online platform, SUNY NIAGARA is not obligated to act in response to the information unless it constitutes an immediate and serious threat to the health or safety of a Complainant, any students, employees, or other persons.

However, in all cases, SUNY NIAGARA must use this information to inform its efforts to prevent sex-based harassment, including by providing specific training to address such conduct, as part of its Education Program or Activity or at a specific location when information indicates there may be multiple incidents of such conduct.

Nothing herein obligates SUNY NIAGARA to require its Title IX Coordinator or any other employee to attend such public awareness events.

XI. Supportive and Interim Measures

A. Types of Supportive/Interim Measures

Complainants who report allegations of sex-based harassment have the right to receive supportive measures from the College regardless of whether they file a formal complaint. Supportive measures are non-disciplinary and non-punitive and may vary depending on what is reasonably available at the College.

Such measures may include, but are not limited to:

- no contact orders;
- providing education, counseling, and/or medical services;
- student academic support;
- student living arrangement adjustments;

- providing a campus escort, as available;
- academic or work schedule and assignment accommodations, such as extension of deadlines or modification of work schedules;
- leaves of absence;
- increased security and monitoring of certain areas on campus; or
- referral to campus and community support resources.

Supportive measures must not unreasonably burden either party. They must be designed to protect the safety of the parties or SUNY NIAGARA’s educational environment or to provide support during SUNY NIAGARA’s grievance procedure under this policy.

SUNY NIAGARA may modify or terminate supportive measures at the conclusion of the grievance procedure or may continue them beyond that point within SUNY NIAGARA’s discretion.

The College will take additional prompt remedial action with respect to any member of the community, guest, or visitor upon a finding that they have engaged in harassing or discriminatory behavior or retaliation while on campus, against a student or employee, or while at a College-sponsored event or activity.

The College will not disclose information about any supportive measures to individuals other than the individual to whom they apply, unless necessary to provide the supportive measure or restore or preserve a party’s access to SUNY NIAGARA’s Education Program or Activity, or there is an exception that applies, such as:

- SUNY NIAGARA has obtained prior written consent from a person with the legal right to consent to the disclosure;
- When the information is disclosed to an appropriate third Party with the legal right to receive disclosures on behalf of the person whose personally identifiable information is at issue;
- To carry out the purpose of the policy when it is necessary to address conduct that reasonably may constitute sex-based harassment under Title IX in SUNY NIAGARA’s Education Program or Activity;
- As required by Federal law, federal regulations, or the terms and conditions of a federal award; or
- To the extent such disclosures are not otherwise in conflict with Title IX, when required by State or local law or when permitted under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g, or its implementing regulations, 34 CFR Part 99).

B. Process for Reviewing Supportive Measures

SUNY NIAGARA provides for a Complainant or Respondent to seek modification or reversal of SUNY NIAGARA’s decision to provide, deny, modify or terminate supportive measures.

This review will be done by an impartial employee who did not make the challenged

decision on the original supportive measure request. The impartial employee who makes this determination will have the authority to modify or reverse the decision if such employee determines that the decision to provide, deny, modify, or terminate the supportive measure was inconsistent with the procedure as outlined above for providing supportive measures in accordance with the Title IX regulations.

Parties are only allowed to challenge their own individual supportive measures. For instance, a Complainant may only challenge the supportive measures they requested and/or received. Challenges by one party will not be heard to supportive measures afforded to the opposite party, unless that measure directly impacts the party making such a challenge (i.e., two-way no-contact orders).

C. Emergency Removal

SUNY NIAGARA retains the authority to remove a Respondent from its Education Program or Activity on an emergency basis, where SUNY NIAGARA: (1) undertakes an individualized safety and risk analysis, and (2) determines that an imminent and serious threat to the health or safety of a Complainant or any students, employees, or other persons arising from the allegations of sex-based harassment justifies removal. Other interim actions, such as no contact orders or exclusion from certain locations, may also be issued under the same authority where necessary for the physical health or safety of any individual.

SUNY NIAGARA will provide the Respondent with notice and an opportunity to challenge the decision immediately following the removal.

If the Respondent is a Student, Robert McKeown, Assistant Vice President of Student Services, shall issue the Notice of Emergency Removal. If the Respondent is an Employee, then the Notice of Emergency Removal will be issued by Catherine Brown, Assistant Vice President of Human Resources, in consultation with the Division Chair/Assistant Vice Presidents or Direct Supervisor in which the Respondent works. The individual who issues the Notice of Emergency Removal will not be a decision-maker in any other part of the grievance process under this Policy for the case.

The Notice of Removal shall be in writing and will provide the Respondent with the basis upon which removal was issued, and the opportunity to promptly challenge the determination.

A Respondent seeking to challenge a Notice of Emergency Removal shall request the College official who issued the notice. That College official shall refer the determination to a neutral office which will then determine whether to modify or rescind the Notice of Emergency Removal. The Respondent will be allowed to submit evidence in support of their request. The issuing College official shall determine if the requested modifications are appropriate, in consultation with the Title IX Coordinator or designee(s), as applicable. Any decisions to modify or rescind the Notice of Emergency Removal will be provided in writing to the Respondent in a reasonably prompt timeframe.

D. Administrative Leave

SUNY NIAGARA retains the authority to place a non-student employee Respondent on administrative leave during the Title IX Grievance Procedure, consistent with any existing, applicable collective bargaining agreement (“CBA”) and/or relevant provisions of the Condition of Employment for Administrative Employees.

If a Complainant or Respondent is both a student and an employee of SUNY NIAGARA, SUNY NIAGARA will make a fact-specific inquiry to determine whether these procedures apply to the individual. For example, the College will review whether the Complainant or Respondent’s primary relationship with SUNY NIAGARA is to receive an education or whether the alleged sex-based harassment primarily occurred while the individual was performing employment-related work.

E. Federal Reporting Obligations Pursuant to the Clery Act

College administrators must issue timely warnings for incidents of sexual misconduct reported to them that pose a substantial threat of bodily harm or danger to members of the campus community. The College will ensure that a victim’s name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions considering the potential danger.

Certain campus officials – those deemed Campus Security Authorities – have a duty to report sexual assault, domestic violence, dating violence, and stalking for federal statistical reporting purposes. All personally identifiable information is kept confidential, but statistical information must be passed along to campus police regarding the type of incident and its general location (on or off-campus, in the surrounding area, but no addresses are given) for publication in the Annual Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety. Mandated federal reporters include student services, public safety, local police, coaches, athletic directors, residence life staff, student activities staff, human resources staff, advisors to student organizations, and any other official with significant responsibility for student and campus activities. The information to be shared includes the date, the location of the incident (using Clery location categories), and the Clery crime category.

F. False Allegations

Deliberately false and/or malicious accusations under this policy, as opposed to allegations which, even if erroneous, are made in good faith, are a serious offense and may be subject to disciplinary consequences.

XII. Title IX Grievance Procedure for Sex Discrimination

A. Filing a Complaint

Who can make a Complaint?

- A Complainant, which includes: a student or employee of SUNY NIAGARA who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX; or a person other than a student or employee of SUNY NIAGARA who is alleged to have been subjected to conduct that could constitute sex discrimination under Title IX at a time when that individual was participating or attempting to participate in SUNY NIAGARA's Education Program or Activity;
- A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a Complainant; or
- The Title IX Coordinator.

Title IX Coordinator initiated Complaints:

In the absence of a Complaint or the withdrawal of any or all the allegations in a Complaint, and the absence or termination of an informal resolution process, the Title IX Coordinator must determine whether to initiate a Complaint of sex-based harassment. This determination is fact-specific, and the Title IX Coordinator must consider:

- The Complainant's request not to proceed with the initiation of a Complaint;
- The Complainant's reasonable safety concerns regarding the initiation of a Complaint;
- The risk that additional acts of sex-based harassment would occur if a Complaint were not initiated;
- The severity of the alleged sex-based harassment, including whether the sex-based harassment, if established, would require the removal of a Respondent from campus or imposition of another disciplinary sanction to end the sex-based harassment and prevent its recurrence;
- The age and relationship of the Parties, including whether the Respondent is an employee of the recipient;
- The scope of the alleged sex-based harassment, including information suggesting a pattern, ongoing sex-based harassment, or sex-based harassment alleged to have impacted multiple individuals;
- The availability of evidence to assist a decisionmaker in determining whether sex-based harassment occurred; and
- Whether SUNY NIAGARA could end the alleged sex-based harassment and prevent its recurrence without initiating these grievance procedures.

If after considering these and other relevant factors, the Title IX Coordinator determines that the conduct as alleged presents an imminent and serious threat to the health or safety of the Complainant or other person, or that the conduct as alleged prevents SUNY NIAGARA from ensuring equal access on the basis of sex to its Education Program or Activity, the Title IX

Coordinator may initiate a Complaint.

If the Title IX Coordinator initiates a Complaint after making this determination, they must notify the Complainant before doing so and address reasonable concerns about the Complainant's safety or the safety of others, including by providing supportive measures as provided herein.

Format of Complaint

A Complaint can be an oral or written request to SUNY NIAGARA that objectively can be understood as a request for SUNY NIAGARA to investigate and make a determination about alleged sex discrimination at the College.

To whom can I make a complaint?

- Title IX Coordinator or designee(s); and
- Officials with authority to institute corrective measures under Title IX.

The following officials at SUNY NIAGARA may provide confidentiality:

- For employees: Employee Assistance Program (EAP). Tel. 800-252-4555 or Web. HigherEdEAP.com;
- For students: Mental Health Counselors within the Wellness Center. <https://www.niagaracc.suny.edu/wellness/>. Phone: 716-614-627. Location: C-122;
- A student or employee wishing to report an incident off campus in complete confidence may contact YWCA, Rachel Sandle-Sacco, Tel. 716-433-6714 ext. 235, Cell 716-481-3610, or other external resources listed here: <http://nyscasa.org/> or <https://www.suny.edu/violence-response/>.

Individuals will maintain confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor.

B. Consolidation of Complaints

SUNY NIAGARA may consolidate Complaints of sex discrimination against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against another Party when the allegations of sex discrimination arise out of the same facts or circumstances. When more than one Complainant or more than one Respondent is involved, references below to a Party, Complainant, or Respondent include the plural, as applicable.

C. Allegations Potentially Falling Under Two Policies

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

D. Notice of Allegations

Upon initiation of SUNY NIAGARA's Title IX grievance procedure, SUNY NIAGARA will notify the Parties of the following:

- SUNY NIAGARA's Title IX grievance procedure and any informal resolution process;
- Sufficient information available at the time to allow the Parties to respond to the allegations, including the identities of the Parties involved in the incident(s), the conduct alleged to constitute sex discrimination, and the date(s) and location(s) of the alleged incident(s);
- Retaliation is prohibited; and
- The Parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence or an accurate description of this evidence.

If, in the course of an investigation, SUNY NIAGARA decides to investigate additional allegations of sex discrimination by the Respondent toward the Complainant that are not included in the notice provided or that are included in a Complaint that is consolidated, SUNY NIAGARA will notify the Parties of the additional allegations.

E. Investigation

SUNY NIAGARA will provide for adequate, reliable, and impartial investigation of Complaints. The burden is on SUNY NIAGARA - not on the Parties - to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred.

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

SUNY NIAGARA will provide the parties with the same opportunities to be accompanied to any meeting or proceeding by the advisor of their choice, who may be but is not required to be, an attorney.

- SUNY NIAGARA will not limit the choice or presence of the advisor for the Complainant or Respondent in any meeting or proceeding.
- SUNY NIAGARA may establish restrictions regarding the extent to which the advisor may participate in these grievance procedures, as long as the restrictions apply equally to the parties.
- SUNY NIAGARA will provide the parties with the same opportunities, if any, to have people other than the advisor of the parties' choice present during any meeting or proceeding.
- SUNY NIAGARA will provide an equal opportunity for the Parties to present fact witnesses and other inculpatory and exculpatory evidence that is relevant and not otherwise impermissible. SUNY NIAGARA will review all evidence gathered through

the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.

- SUNY NIAGARA will provide each Party and the Party's advisor, if any, with an equal opportunity to access the evidence that is relevant to the allegations of sex-based harassment and not otherwise impermissible, in the following manner:
- SUNY NIAGARA will provide an equal opportunity to access either the relevant and not otherwise impermissible evidence, or the same written investigative report that accurately summarizes the evidence. SUNY NIAGARA will further provide the parties with an equal opportunity to assess the relevant and not otherwise impermissible evidence upon the request of any party.
- SUNY NIAGARA will provide a reasonable opportunity to review and respond to the evidence or the investigative report
- SUNY NIAGARA will take reasonable steps to prevent and address the Parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures. Disclosure of such information and evidence for purposes of administrative proceedings or litigation related to the Complaint of sex discrimination is authorized.

Impermissible Evidence

The following types of evidence, and questions seeking that evidence, are impermissible (*i.e.*, will not be accessed or considered, except by SUNY NIAGARA to determine whether one of the exceptions listed below applies; will not be disclosed; and will not otherwise be used), regardless of whether they are relevant:

- Evidence that is protected under a privilege recognized by Federal or State law or evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
- A Party's or witness's records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the Party or witness, unless SUNY NIAGARA obtains that Party's or witness's voluntary, written consent for use in its grievance procedure; and
- Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant's consent to the alleged sex discrimination or preclude determination that sex discrimination occurred.

Questioning Parties and Witnesses to Aid in Evaluating Allegations and Assessing Credibility

- SUNY NIAGARA will provide a process that enables the decisionmaker to question parties and witnesses to adequately assess a party's or witness's credibility to the extent credibility is both in dispute and relevant to evaluating one or more allegations of sex-based harassment.
- SUNY NIAGARA's process for proposing and asking relevant and not otherwise impermissible questions and follow-up questions of parties and witnesses, including questions challenging credibility, will:
 - Allow the investigator/decisionmaker to ask such questions during individual meetings with a party or witness;
 - Allow each party to propose such questions that the party wants to be asked of any party or witness and have those questions asked by the investigator/decisionmaker during one or more individual meetings, including follow-up meetings, with a party or witness, subject to the procedures for evaluating and limiting questions discussed below; and
 - Provide each party with an audio or audiovisual recording or transcript with enough time for the party to have a reasonable opportunity to propose follow-up questions.

F. Determination Regarding Responsibility

Following an investigation and evaluation of all relevant and not otherwise impermissible evidence, SUNY NIAGARA will:

- Use the **preponderance of the evidence** standard of proof to determine whether sex discrimination occurred. The standard of proof requires the decisionmaker to evaluate relevant and not otherwise impermissible evidence for its persuasiveness. If the decisionmaker is not persuaded under the applicable standard by the evidence that sex discrimination occurred, whatever the quantity of the evidence is, the decisionmaker will not determine that sex discrimination occurred.
- Notify the Parties in writing of the determination whether sex discrimination occurred under Title IX, including the rationale for such determination, and the procedures and permissible bases for the Complainant and Respondent to appeal, if applicable;
- Not impose discipline on a Respondent for sex discrimination prohibited by Title IX unless there is a determination at the conclusion of the grievance procedure that the Respondent engaged in prohibited sex discrimination.
- If there is a determination that sex discrimination occurred, the Title IX Coordinator will, as appropriate:

- Coordinate the provision and implementation of remedies to a Complainant and other individuals SUNY NIAGARA identifies as having had equal access to its Education Program or Activity limited or denied by sex discrimination;
- Coordinate the imposition of any disciplinary sanctions on a Respondent, including notification to the Complainant of any such disciplinary sanctions; and
- Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within SUNY NIAGARA’s Education Program or Activity.
- Comply with the grievance procedure before the imposition of any disciplinary sanctions against a Respondent; and
- Not discipline a Party, witness, or others participating in the grievance procedure for making a false statement or for engaging in consensual sexual conduct based solely on the determination of whether sex discrimination occurred.

G. Informal Resolution

Procedures for Entering and Exiting Informal Resolution Process

At any time prior to determining whether sex-based harassment occurred under this Grievance Procedure, including prior to making a Complaint, Parties may instead seek SUNY NIAGARA’s assistance to resolve allegations of sex discrimination and enter the informal resolution process.

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

No Party may be required to participate in informal resolution, and SUNY NIAGARA will not condition enrollment, employment, or enjoyment of any other right or privilege upon agreeing to informal resolution.

The Parties may elect to leave the informal resolution process at any point until the informal resolution process is concluded. If a Party elects to leave the informal resolution process, the Grievance Procedure that the Parties paused in lieu of informal resolution will continue. The Parties understand that the timeframes governing the formal Grievance Procedure will temporarily cease while engaging in the informal resolution process and will only resume upon re-engaging in the Grievance Procedure.

Supportive Measures will be available, or will continue to be available, during an informal resolution process, if elected. The Title IX Coordinator will also, to the extent necessary, take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within SUNY NIAGARA’s Education Program or Activity during any

period of informal resolution.

Notice Prior to Entry into Informal Resolution Process

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

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

Determination to Approve Entry into Informal Resolution Process

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

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

Critically, informal resolution is never permitted where the allegations include sexual assault, allegations that an employee engaged in sex-based harassment of a student, or when such a process would conflict with Federal, State, or local law.

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

If an informal resolution is approved or denied, SUNY NIAGARA will provide the outcome in writing simultaneously to the Parties. If an informal resolution is approved, the Title IX Coordinator shall also provide the information of the process facilitator in writing to the Parties in a reasonable timeframe once the facilitator is assigned.

Role of the Facilitator

Informal resolution processes are managed by Trained Facilitators who must not be the same person as the investigator or the decisionmaker(s) in SUNY NIAGARA's Grievance Procedure. Any person designated to facilitate informal resolution must not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. The Title IX Coordinator may serve as the facilitator, subject to these restrictions. For example, if the Title IX Coordinator is also the investigator, they may not serve as the facilitator of informal resolution.

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

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

Contents of Informal Resolution Agreements

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

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

Breach of Informal Resolution Agreements

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

Confidentiality

In entering the informal resolution process, the Parties agree that any testimony and evidence (including admissions of responsibility) they share or receive during the informal resolution process concerning the allegations of the Complaint are confidential while the Parties participate

in the informal resolution process. No evidence concerning the allegations obtained within the informal resolution process may be disseminated to any person, provided that any Party to the informal resolution process may generally discuss the allegations under investigation with a parent, friend, advisor, or other source of emotional support, or with an advocacy organization. Should the Parties withdraw from the informal resolution process, information disclosed or obtained for purposes of the informal resolution process may be incorporated into the Grievance Procedure, provided that this information is disclosed and reviewed by the Parties under SUNY NIAGARA's Grievance Procedure.

Informal Resolution Options

SUNY NIAGARA offers the following informal resolution procedures for complaints of sex-based harassment described under this Grievance Procedure:

Administrative Resolution

Should the Parties mutually determine to enter the informal resolution process, and the Respondent elects to accept responsibility for the allegations of the Complaint at any point during the informal resolution process, the institution may administratively resolve the Complaint.

Where the Respondent admits responsibility, the Parties will receive simultaneous written notification of the acceptance of responsibility, and a decisionmaker will convene to determine the Respondent's sanction and other remedies, as appropriate and consistent with College policy. The Parties will be given an opportunity to be heard at the sanctions hearing, including without limitation, the submission of impact statements, and the Parties may be accompanied by their Advisor. Questioning of Parties or witnesses will not be permitted. The Parties will receive simultaneous written notification of the decision regarding sanctions and remedies, which may be appealed according to the process described within this policy.

Mediation

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

The mediation process will typically commence within ten (10) business days after the Title IX Coordinator receives consent to mediate from both Parties, and has made the determination to allow informal resolution to go forward. Mediation will continue until concluded or terminated by either Party, the facilitator, or the Title IX Coordinator. During mediation, any potential investigation will halt, and calculations for time frames will be stayed

(or paused). If the mediation results in a resolution, the disciplinary process will be concluded, and the matter will be closed. If a resolution cannot be reached, the matter will be referred to the appropriate College official to re-evaluate other options for resolution, including investigation or proceeding forward with the Grievance Procedure.

During mediation, a facilitator will guide a discussion between the Parties. In circumstances where the Parties do not wish to meet face to face, either Party can request “caucus” mediation, and the facilitator will conduct separate meetings. Whether or not the Parties agree to meet face to face, each Party will be permitted to bring an Advisor of their choice to any meetings who may be, but is not required to be, an attorney.

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

Restorative Justice

A Restorative Justice (“RJ”) Conference is a dialogue, facilitated by a trained informal resolution facilitator, intended to restore relationships and repair harm after a conflict has occurred. Both the responsible Party and the individuals affected by the conflict come together to identify what harm was caused and, collaboratively, determine how conflict and trust might be, respectively, resolved and repaired.

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

The RJ Conference proceeds only if all Parties agree to participate willingly. Upon doing so, the RJ process typically commences within ten (10) business days after the Title IX Office receives written agreements from all involved Parties. The conference will continue until the conference is successfully concluded or until the Title IX Office determines that the conference will not be successful. If successful, an agreeable resolution is reached by all involved Parties, at which time the process is concluded, and the matter is resolved. If a resolution cannot be reached, the matter will be referred to the appropriate College official to re-evaluate other options for resolution.

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

H. Dismissal of Complaint

SUNY NIAGARA may dismiss a Complaint of sex discrimination for any of the following

reasons:

- SUNY NIAGARA is unable to identify the Respondent after taking reasonable steps to do so;
- The Respondent is not participating in SUNY NIAGARA's Education Program or Activity and is not employed by SUNY NIAGARA;
- The Complainant voluntarily withdraws any or all of the allegations in the Complaint, the Title IX Coordinator declines to initiate a Complaint, and SUNY NIAGARA determines that, without the Complainant's withdrawn allegations, the conduct that remains alleged in the Complaint, if any, would not constitute sex discrimination under Title IX even if proven; or
- SUNY NIAGARA determines the conduct alleged in the Complaint, even if proven, would not constitute sex discrimination under Title IX. SUNY NIAGARA will make reasonable efforts to clarify the allegations with the Complainant before dismissing the Complaint.

Notice of Dismissal

Upon dismissal, SUNY NIAGARA will promptly notify the Complainant of the basis for the dismissal. If the dismissal occurs after the Respondent has been notified of the allegations, then SUNY NIAGARA will also notify the Respondent of the dismissal and the basis for the dismissal promptly following notification to the Complainant, or simultaneously if notification is in writing.

SUNY NIAGARA will notify the Complainant that a dismissal may be appealed and will provide the Complainant with an opportunity to appeal the dismissal of a Complaint. If the dismissal occurs after the Respondent has been notified of the allegations, then SUNY NIAGARA will also notify the Respondent that the dismissal may be appealed. Dismissals may be appealed on the following bases:

- Procedural irregularity that would change the outcome;
- New evidence that would change the outcome and that was not reasonably available when the dismissal was made; and
- The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that would change the outcome.

I. Appeal of Dismissals and Determinations

SUNY NIAGARA will offer an appeal from a dismissal or determination of whether sex-based harassment occurred on the following bases:

- Procedural irregularity that would change the outcome;
- New evidence that would change the outcome and that was not reasonably available when the determination or dismissal was made; and

- The Title IX Coordinator, investigator, or decisionmaker had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that would change the outcome.

If a party appeals a dismissal or determination of whether sex-based harassment occurred, SUNY NIAGARA will:

- Notify the Parties of any appeal, including notice of the allegations, if notice was not previously provided to the Respondent;
- Implement appeal procedures equally for the Parties;
- Ensure that the decisionmaker for the appeal did not take part in an investigation of the allegations or dismissal of the Complaint;
- Ensure that the decisionmaker for the appeal has been trained consistent with the Title IX regulations;
- Provide the Parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome; and
- Notify the Parties in writing of the result of the appeal and the rationale for the result.

Any additional procedures or bases for appeal SUNY NIAGARA offers will be equally available to all parties.

Supportive measures will continue to be made available, or offered, to the parties, as appropriate.

a. Appeal of Determinations

The submission of an appeal of a determination has the effect of pausing any disciplinary sanctions while the appeal is being deliberated and decided upon. Supportive measures and remote learning opportunities remain available during the pendency of the appeal.

If a Party appeals, SUNY NIAGARA will, as soon as practicable, notify the other Party in writing of the appeal, however the time for an 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 of formal disciplinary sanctions imposed upon employees who are covered by a CBA or Conditions of Employment for Administrative Employees Handbook with the College shall be made in accordance with the discipline procedure set forth in the applicable agreement or handbook.

For all other matters covered under this policy, written appeals, including any supporting documentation, must be submitted to and received by the College President of the party's notice of the investigation findings within twenty (20) days of the issuance of the determination of responsibility or notice of dismissal of the complaint. Appeals may be submitted by both the Complainant and Respondent within the timeframes set forth herein. Upon receipt of an appeal,

notification that an appeal has been submitted shall be provided in writing to the Parties within five (5) business days.

The College President shall issue a determination within the timeframes set forth in the applicable CBA or Conditions of Employment Handbook, or of receipt of the appeal(s) within ten (10) business days if no CBA or Employment Handbook applies.

If any component of the appeal procedure set forth herein conflicts with a disciplinary procedure set forth in an applicable CBA, the CBA shall govern.

XIII. Miscellaneous

a. Compliance with Sanctions

All Parties are expected to comply with conduct sanctions, responsive actions, and corrective actions within the timeframe specified by the Title IX Coordinator or appropriate College official. Failure to abide by these conduct sanctions, responsive actions, and corrective actions by the date specified, whether by refusal, neglect, or any other reason, may result in additional responsive/corrective actions, up to and including expulsion and/or termination, as appropriate.

b. Records

In implementing this policy, records of all allegations, investigations, resolutions, and hearings will be maintained confidentially by the Title IX Coordinator or designee(s) electronically per applicable record retention requirements.

XIV. Prohibition Against Retaliation:

Retaliation against any individual covered by this policy who, in good faith, brings a written or verbal complaint of discrimination or sexual harassment, or who assists, participates, or testifies in any investigation or proceeding related to such complaint, regardless of whether the alleged harassment rises to the level of a violation of this policy or the law, is strictly prohibited. Such retaliation is unlawful and SUNY NIAGARA will not tolerate or permit adverse treatment of individuals because they report discrimination or sexual harassment or provide information related to such complaints. Adverse treatment includes discharge, discipline, discrimination, or any action that could discourage an individual from coming forward to make or support a claim of discrimination or sexual harassment. Individuals who believe they may have experienced retaliation should contact the Title IX Coordinator or other appropriate College official for prompt investigation.

Cross-reference: Discrimination, Harassment, and Retaliation Policy
Americans with Disabilities Act (ADA)/Section 504 of the Rehabilitation Act Policy

Notice of Non-Discrimination
Sexual Misconduct/VAWA Policy
Code of Conduct



TITLE IX COMPLAINT FORM

SUNY NIAGARA strongly encourages individuals who have experienced, have knowledge of, or have witnessed sex discrimination, sexual harassment, sexual assault, dating violence, stalking, or other forms of sexual and related misconduct committed by or against students, staff, or faculty to report the incident immediately to the College.

To ensure that all complaints are investigated appropriately, effectively, and in accordance with College policy, complaints should be documented using this form. However, all complaints – regardless of their format – will be promptly investigated.

Please make your written report as accurate, complete, and truthful as possible. Every effort will be made to evaluate your report promptly, however, the timing and manner in which the College responds to the report will vary depending on the information provided.

CAMPUS _____

(PLEASE PRINT OR TYPE)

DATE _____

1. Name of Complainant: _____

Phone No. _____

Status/Job Title (Faculty, Staff, Student) _____

Home Address _____

City _____ State _____ Zip Code _____

2. Name(s) of individual(s) engaging in alleged sex discrimination or sexual harassment:

Status (Faculty/Staff/Student): _____

Job Title: _____

Relationship to you (supervisor; subordinate; co-worker; professor/instructor; other):

3. Description of Incident. Describe each incident, including dates, times, and locations. If you cannot remember exact dates, times, or locations, please provide approximations. Use additional pages if necessary and attach any relevant documents or evidence.

4. Is the alleged discrimination or sexual harassment continuing? Yes No

5. Please provide the name(s) of any relevant witness(es) and their contact information, if known.

6. Are there others who may have experienced similar alleged discrimination or sexual harassment by the individual named above? If so, please provide their name(s) and contact information, if known.

7. Have you previously complained or provided information (verbal or written) about this or any other related incidents? If yes, when and to whom did you complain or provide information?

8. Please check the appropriate box(es):

- I wish to receive information about the informal resolution process and/or begin the informal resolution process concerning my complaint.
- I wish to immediately file a formal complaint of discrimination or sexual harassment and proceed with the College's grievance procedures.

9. Have you reported this incident(s) to a federal, state or local government agency or otherwise instituted a court action?

Yes No

If yes, with which agency or court?

When? _____

10. Relief, including any supportive measures, requested:

I attest that the information I have provided is a true and accurate description of my complaint and that I have not willfully or deliberately made false statements. I understand that SUNY NIAGARA prohibits any individual from retaliating against me for filing a complaint or participating in an investigation of such complaint and that I must notify my supervisor, Title IX Coordinator, or other appropriate College official if I believe that I have been subjected to unlawful retaliation.

(Print Name) _____ Signature: _____ Date: _____

Signature of Person Receiving Complaint:

_____ Date _____

Title _____ Date _____