

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

**Published: October 14<sup>th</sup>, 2021**

## **1. Introduction**

### **What is the purpose of the Title IX Formal Complaint Grievance Policy?**

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.

Based on the Final Rule, SUNY Morrisville will implement the following Title IX Formal Complaint Grievance Policy, effective August 14, 2020.

### **How does the Title IX Formal Complaint Grievance Policy 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 Morrisville 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, be brought to a live hearing through the Title IX Formal Complaint Grievance Policy defined below.

SUNY Morrisville 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 the following policies:

### **A Sexual Assault Response Policy:**

The State University of New York and SUNY Morrisville are committed to providing options, support and assistance to victims/survivors of these crime and violations regardless of race, color, national origin, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, or criminal convictions, have the following rights, regardless of whether the crime or violation occurs on campus, off campus, or while studying abroad. We are committed to providing a safe and secure environment in which all members are treated with dignity and respect. To that end, the college takes the strongest possible stance against sexual misconduct in all its forms, including sexual harassment, sexual assault, sexual violence or the use of coercion, intimidation or exploitation of others for sexual purposes. The college is actively engaged in educating its members about these vital issues and in providing timely support and assistance to victims of sexual assault.

**Sex Offenses, Lack of Consent:** Whether or not specifically stated, it is an element of every offense defined in this article that the sexual act was committed without consent of the victim.

#### **Definitions relating to this policy are below:**

**Affirmative Consent** - Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.”

- Consent to any sexual act or prior consensual sexual activity between or with any party does not 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.
- When consent is withdrawn or cannot be given, sexual activity must stop.
- Consent cannot be given when a person is incapacitated. 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.

**Burden of proof** in all cases is “the preponderance of the evidence standard” – whether it is “more likely than not” that the violation occurred. If the evidence presented meets this standard, then the accused must be found responsible.

**Sexual assault** - New York State does not specifically define sexual assault. However, according to the Federal Regulations, sexual assault includes offenses that meet the definitions of rape, fondling, incest, or statutory rape as used in the FBI’s UCR program.

**Rape** - The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

**Fondling** - The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

**Incest** - Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

**Statutory Rape** - Sexual intercourse with a person who is under the age of consent in New York State (17 years is the age of consent in New York State.)

**Sexual harassment** - unwelcome verbal or physical conduct of a sexual nature that is sufficiently severe or pervasive to effectively alter or deny the individual reasonable access to University resources or that such conduct creates an intimidating, hostile or sexually offensive environment for learning, working or living on campus.

### **Students’ Bill of Rights**

The State University of New York and SUNY Morrisville are committed to providing options, support and assistance to victims/survivors of these crime and violations regardless of race, color, national origin, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, or criminal convictions, have the following rights, regardless of whether the crime or violation occurs on campus, off campus, or while studying abroad. Can also be viewed on the website at: [http://www.morrisville.edu/student\\_life/judicialaffairs.aspx](http://www.morrisville.edu/student_life/judicialaffairs.aspx).

All students have the right to:

1. Make a report to local law enforcement and/or state police;
2. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
3. Make a decision about whether or not to disclose a crime or violation and participate in the College judicial process and/or criminal justice process free from pressure from the institution;
4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
5. Be treated with dignity and to receive from the institution courteous, fair and respectful health care and counseling services, where available;
6. Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
7. Describe the incident to as few institutional representatives as practicable and not be required to unnecessarily repeat a description of the incident.
8. 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;
9. Access to at least one level of appeal of a determination;
10. Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or respondent throughout the College judicial process including during all meetings and hearings related to such process;
11. Exercise civil rights and practice of religion without interference by the investigative, criminal Justice, or College judicial process of the institution.

In accordance with the above 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:

### **I-Reporting:**

- Resident Assistants and Resident Hall Directors
- New York State University Police, SUNY Morrisville at: 911
- Title IX Coordinator, Miguel Pereira, located in Helyar, 1st floor, SUNY Morrisville, Morrisville, N.Y. 13408, 315-684-6997 or via email at [pereirma@morrisville.edu](mailto:pereirma@morrisville.edu)
- Shannon Wiley, Interim Coordinator of Student Rights and Responsibilities, Helyar Hall, SUNY Morrisville, Morrisville, N.Y., 315-684-6070; [wileysl@morrisville.edu](mailto:wileysl@morrisville.edu)
- Norwich campus, Patricia Davis, Student Services Advisor, Roger W. Follett Hall, Norwich, NY, 13815, 607- 334-5111, or via email at [davispm@morrisville.edu](mailto:davispm@morrisville.edu)
- New York State Police Troop D-Morrisville at 315-684-9550
- Madison County Sheriff's at 315-366-2311

### **II- Resources:**

- Be notified of existing campus and community-based medical, counseling, mental health and student services for victims of sexual assault whether or not the assault is formally reported to campus or civil authorities;
- Use the SUNY SAVR site for access to resources at <https://www.suny.edu/violence-response/>;
- Have access to campus counseling;
- Be informed of and assisted in exercising:
  - Any rights to confidential or anonymous testing for sexually transmitted infections, HIV, and pregnancy,
  - Any rights to preventive measures such as emergency contraception or HIV prophylaxis,
  - Any rights that may be provided by law to obtain the communicable diseases test results of sexual assault suspects;
- Be informed of the possible availability of crime victim assistance compensation through the New York State Crime Victims Board;

### **III- Protection and Accommodations:**

- Be given notice describing options to pursue a criminal complaint with the appropriate law enforcement agency, to pursue the SUNY Morrisville's judicial conduct process, or to pursue both processes simultaneously;
- Reports of sexual assault will be investigated and evaluated by the appropriate criminal and civil authorities of the jurisdiction in which the sexual assault is reported;
  - Victims shall receive full and prompt cooperation and assistance of campus personnel in notifying the proper authorities;
  - Victims shall receive full, prompt, and victim-sensitive cooperation of campus personnel with regard to obtaining, securing and maintaining evidence, including a medical examination when it is necessary to preserve evidence of the assault;
  - Campus personnel shall take reasonable and necessary actions to prevent further unwanted contact of the alleged victim by the alleged violator including issuing "No contact" orders in writing to all parties involved in a reported sexual assault;
  - Victims shall be notified of the options for and assisted in changing academic and living situations if such changes are reasonably available (The campus will promptly review existing interim measures or accommodations). The parties can submit evidence to support their request.

### **A Sexual Harassment Prevention Policy:**

The State University of New York College of Agriculture and Technology at Morrisville, heretofore referred to as SUNY Morrisville, is committed to maintaining a workplace free from sexual harassment. Sexual harassment is a form of workplace discrimination. All employees are required to work in a manner that prevents sexual harassment in the workplace. This Policy is one component of SUNY Morrisville's commitment to a discrimination-free work environment.

Sexual harassment is against the law<sup>1</sup> and all employees have a legal right to a workplace free from sexual harassment and employees are urged to report sexual harassment by filing a complaint internally with SUNY Morrisville. Employees can also file a complaint with a government agency or in court under federal, state or local antidiscrimination laws.

**Policy:**

1. SUNY Morrisville's policy applies to all employees, applicants for employment, interns, whether paid or unpaid, contractors and persons conducting business, regardless of immigration status, with SUNY Morrisville. In the remainder of this document, the term "employees" refers to this collective group.
2. Sexual harassment will not be tolerated. Any employee or individual covered by this policy who is determined to have engaged in behavior which would violate this policy may be subject to disciplinary measures, up to and including termination of employment.
3. Retaliation Prohibition: No person covered by this Policy shall be subject to adverse action because the employee reports sexual harassment, provides information, or otherwise participates in any investigation of a sexual harassment complaint. SUNY Morrisville will not tolerate such retaliation against anyone who, in good faith, reports or provides information about suspected sexual harassment. Any employee of SUNY Morrisville who is determined to have engaged in retaliation may be subject to disciplinary measures, up to and including termination of employment.
4. All employees, paid or unpaid interns, or non-employees working in the workplace who believe they have been subject to such retaliation should inform a supervisor, manager, the Title IX Coordinator or Affirmative Action Officer. All employees, paid or unpaid interns or nonemployees who believe they have been a target of such retaliation may also seek relief in other available forums, as explained below in the section on Legal Protections.
5. Sexual harassment is offensive, is a violation of our policies, is unlawful, and may subject SUNY Morrisville to liability for harm to targets of sexual harassment. Harassers may also be individually subject to liability. Employees of every level who are determined to have engaged in sexual harassment, including managers and supervisors who engage are determined to have engaged in sexual harassment or who allow such behavior to continue, are in violation of this policy and may be subject to discipline.
6. All reports and/or complaints of harassment, including sexual harassment, will be taken seriously and dealt with promptly.) In cases where an investigation is warranted, SUNY Morrisville will keep the investigation confidential to the extent possible. In cases where an investigation confirms a violation of this policy, appropriate corrective action will be taken. All employees, including managers and supervisors, are required to cooperate with any internal investigation of sexual harassment.

7. All employees are encouraged to report any harassment or behaviors that violate this policy. SUNY Morrisville will provide all employees a complaint form for employees to report harassment and file complaints.
8. Managers and supervisors are required to report any complaint that they receive, or any harassment that they observe or become aware of, to the Title IX Coordinator or Affirmative Action Officer.
9. This policy applies to all employees, paid or unpaid interns, and non-employees and all must follow and uphold this policy. This policy must be provided to all employees and should be posted prominently in all work locations to the extent practicable (for example, in a main office, not an offsite work location) and be provided to employees upon hiring.

### **What Is “Sexual Harassment”?**

Sexual harassment is a form of sex discrimination and is unlawful under federal, state, and (where applicable) local law. Sexual harassment includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender.

Sexual harassment includes unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual’s sex when:

- Such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile or offensive work environment, even if the reporting individual is not the intended target of the sexual harassment;
- Such conduct is made either explicitly or implicitly a term or condition of employment; or
- Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual’s employment.

A sexually harassing hostile work environment includes, but is not limited to, words, signs, jokes, pranks, intimidation or physical violence which are of a sexual nature, or which are directed at an individual because of that individual’s sex. Sexual harassment also consists of any unwanted verbal or physical advances, sexually explicit derogatory statements or sexually discriminatory remarks made by someone which are offensive or objectionable to the recipient, which cause the recipient discomfort or humiliation, which interfere with the recipient’s job performance.

Sexual harassment also occurs when a person in authority tries to trade job benefits for sexual favors. This can include hiring, promotion, continued employment or any other terms, conditions or privileges of employment. This is also called “quid pro quo” harassment.

Any employee who feels harassed should report so that any violation of this policy can be corrected promptly. Any harassing conduct, even a single incident, can be addressed under this policy.

### **Examples of sexual harassment**

The following describes some of the types of acts that may be unlawful sexual harassment and that are strictly prohibited:

- Physical acts of a sexual nature, such as:
  - o Touching, pinching, patting, kissing, hugging, grabbing, brushing against another employee's body or poking another employee's body;
  - o Rape, sexual battery, molestation or attempts to commit these assaults.
- Unwanted sexual advances or propositions, such as:
  - o Requests for sexual favors accompanied by implied or overt threats concerning the target's job performance evaluation, a promotion or other job benefits or detriments;
  - o Subtle or obvious pressure for unwelcome sexual activities.
- Sexually oriented gestures, noises, remarks or jokes, or comments about a person's sexuality or sexual experience, which create a hostile work environment.
- Sex stereotyping occurs when conduct or personality traits are considered inappropriate simply because they may not conform to other people's ideas or perceptions about how individuals of a particular sex should act or look.
- Sexual or discriminatory displays or publications anywhere in the workplace, such as:
  - o Displaying pictures, posters, calendars, graffiti, objects, promotional material, reading materials or other materials that are sexually demeaning or pornographic. This includes such sexual displays on workplace computers or cell phones and sharing such displays while in the workplace.
- Hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity and the status of being transgender, such as:
  - o Interfering with, destroying or damaging a person's workstation, tools or equipment, or otherwise interfering with the individual's ability to perform the job;
  - o Sabotaging an individual's work;
  - o Bullying, yelling, name-calling.

### **Who can be a target of sexual harassment?**

Sexual harassment can occur between any individuals, regardless of their sex or gender. New York Law protects employees, paid or unpaid interns, and non-employees, including independent contractors, and those employed by companies contracting to provide services in the workplace. Harassers can be a superior, a subordinate, a coworker or anyone in the workplace including an independent contractor, contract worker, vendor, client, customer or visitor.



## **Where can sexual harassment occur?**

Unlawful sexual harassment is not limited to the physical workplace itself. It can occur while employees are traveling for business or at employer sponsored events or parties. Calls, texts, emails, and social media usage by employees can constitute unlawful workplace harassment, even if they occur away from the workplace premises, on personal devices or during non-work hours.

## **Retaliation**

Unlawful retaliation can be any action that could discourage a worker from coming forward to make or support a sexual harassment claim. Adverse action need not be job-related or occur in the workplace to constitute unlawful retaliation (e.g., threats of physical violence outside of work hours).

Such retaliation is unlawful under federal, state, and (where applicable) local law. The New York State Human Rights Law protects any individual who has engaged in “protected activity.”

Protected activity occurs when a person has:

- made a complaint of sexual harassment, either internally or with any anti-discrimination agency;
- testified or assisted in a proceeding involving sexual harassment under the Human Rights Law or other anti-discrimination law;
- opposed sexual harassment by making a verbal or informal complaint to management, or by simply informing a supervisor or manager of harassment;
- reported that another employee has been sexually harassed;
- encouraged a fellow employee to report harassment.

Even if the alleged harassment does not turn out to rise to the level of a violation of law, the individual is protected from retaliation if the person had a good faith belief that the practices were unlawful.

## **Reporting Sexual Harassment**

Preventing sexual harassment is everyone’s responsibility. SUNY Morrisville cannot prevent or remedy sexual harassment unless it knows about it. Any employee, paid or unpaid intern or nonemployee who has been subjected to behavior that may constitute sexual harassment is encouraged to report such behavior to a supervisor, manager, the Title IX Coordinator or the Affirmative Action Officer. Anyone who witnesses or becomes aware of potential instances of

sexual harassment should report such behavior to a supervisor, manager, the Title IX Coordinator or the Affirmative Action Officer.

Reports of sexual harassment may be made verbally or in writing. A form for submission of a written complaint is attached to this Policy, and all employees are encouraged to use this complaint form. Employees who are reporting sexual harassment on behalf of other employees should use the complaint form and note that it is on another employee's behalf.

Employees, paid or unpaid interns or non-employees who believe they have been a target of sexual harassment may also seek assistance in other available forums, as explained below in the section on Legal Protections.

### **Supervisory Responsibilities**

All supervisors and managers who receive a complaint or information about suspected sexual harassment, observe what may be sexually harassing behavior or for any reason suspect that sexual harassment is occurring, are required to report such suspected sexual harassment to the Title IX Coordinator or the Affirmative Action Officer.

Supervisors and managers who are determined to have engaged in sexual harassment, who fail to report suspected sexual harassment, or who otherwise knowingly allow sexual harassment to continue are in violation of this policy and may be subject to disciplinary action, up to and including termination.

Supervisors and managers determined to have engaged in retaliation may be subject to disciplinary measures, up to and including termination of employment.

### **Complaint and Investigation of Sexual Harassment**

All reports and/or complaints of harassment, including sexual harassment, will be taken seriously and dealt with promptly. In cases where an investigation is warranted, SUNY Morrisville will keep the investigation confidential to the extent possible.

An investigation of any complaint, information or knowledge of suspected sexual harassment will be prompt and thorough, commenced immediately and completed as soon as possible. All persons involved, including complainants, witnesses and alleged harassers will be accorded due process, as outlined below, to protect their rights to a fair and impartial investigation.

Any employee may be required to cooperate as needed in an investigation of suspected sexual harassment. SUNY Morrisville will not tolerate retaliation against employees who file

complaints, support another's complaint or participate in an investigation regarding a violation of this policy.

While the process may vary from case to case, investigations will be conducted by the Title IX Coordinator, the Affirmative Action Officer or a designee of the institution and should be done in accordance with the following steps:

- Upon receipt of complaint, the Title IX Coordinator, the Affirmative Action Officer or a designee of the institution will conduct an immediate review of the allegations, and take any interim actions (e.g., instructing the respondent to refrain from communications with the complainant), as appropriate. If complaint is verbal, encourage the individual to complete the "Complaint Form" in writing. If he or she refuses, prepare a Complaint Form based on the verbal reporting.
- If documents, emails or phone records are relevant to the investigation, take steps to obtain and preserve them.
- Request and review all relevant documents, including all electronic communications.
- Interview all parties involved, including any relevant witnesses;
- Create a written documentation of the investigation (such as a letter, memo or email), which contains the following:
  - o A list of all documents reviewed, along with a detailed summary of relevant documents;
  - o A list of names of those interviewed, along with a detailed summary of their statements;
  - o A timeline of events;
  - o A summary of prior relevant incidents, reported or unreported; and
  - o The basis for the decision and final resolution of the complaint, together with any corrective action(s).
- Keep the written documentation and associated documents in a secure and confidential location.
- Promptly notify the reporting individual and respondent of the final determination in writing and work with Human Resources and appropriate supervisors to implement any necessary corrective actions.
- Inform the individual who reported of the right to file a complaint or charge externally as outlined in the next section.

### **Legal Protections and External Remedies**

Sexual harassment is not only prohibited by SUNY Morrisville but is also prohibited by state, federal, and, where applicable, local law.

Aside from the internal process at SUNY Morrisville, employees may also choose to pursue legal remedies with the following governmental entities. While a private attorney is not required to file a complaint with a governmental agency, you may seek the legal advice of an attorney.

In addition to those outlined below, employees in certain industries may have additional legal protections. Union employees at SUNY Morrisville should consult with their union representative for additional details.

### **New York State Division of Human Rights (DHR)**

The Human Rights Law (HRL), codified as N.Y. Executive Law, art. 15, § 290 et seq., applies to all employers in New York State with regard to sexual harassment, and protects employees, paid or unpaid interns and non-employees, regardless of immigration status. A complaint alleging violation of the Human Rights Law may be filed either with the Division of Human Rights (DHR) or in New York State Supreme Court.

Complaints with DHR may be filed any time within one year of the harassment. If an individual did not file at DHR, they can sue directly in state court under the HRL, within three years of the alleged sexual harassment. An individual may not file with DHR if they have already filed an HRL complaint in state court.

Complaining internally to SUNY Morrisville does not extend your time to file with DHR or in court. The one year or three years is counted from date of the most recent incident of harassment.

You do not need an attorney to file a complaint with DHR, and there is no cost to file with DHR.

DHR will investigate your complaint and determine whether there is probable cause to believe that sexual harassment has occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If sexual harassment is found after a hearing, DHR has the power to award relief, which varies but may include requiring your employer to take action to stop the harassment, or redress the damage caused, including paying of monetary damages, attorney's fees and civil fines.

DHR's main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458. You may call (718) 741-8400 or visit: [www.dhr.ny.gov](http://www.dhr.ny.gov).

Contact DHR at (888) 392-3644 or visit [dhr.ny.gov/complaint](http://dhr.ny.gov/complaint) for more information about filing a complaint. The website has a complaint form that can be downloaded, filled out, notarized and mailed to DHR. The website also contains contact information for DHR's regional offices across New York State.

### **United States Equal Employment Opportunity Commission**

The United States Equal Employment Opportunity Commission (EEOC) enforces federal antidiscrimination laws, including Title VII of the 1964 federal Civil Rights Act (codified as 42 U.S.C. § 2000e et seq.). An individual can file a complaint with the EEOC anytime within 300 days from the harassment. There is no cost to file a complaint with the EEOC. The EEOC will investigate the complaint, and determine whether there is reasonable cause to believe that discrimination has occurred, at which point the EEOC will issue a Right to Sue letter permitting the individual to file a complaint in federal court.

The EEOC does not hold hearings or award relief, but may take other action including pursuing cases in federal court on behalf of complaining parties. Federal courts may award remedies if discrimination is found to have occurred. In general, private employers must have at least 15 employees to come within the jurisdiction of the EEOC.

An employee alleging discrimination at work can file a “Charge of Discrimination.” The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by calling 1-800-669- 4000 (TTY: 1-800-669-6820), visiting their website at [www.eeoc.gov](http://www.eeoc.gov) or via email at [info@eeoc.gov](mailto:info@eeoc.gov).

If an individual filed an administrative complaint with DHR, DHR will file the complaint with the EEOC to preserve the right to proceed in federal court.

### **Local Protections**

Many localities enforce laws protecting individuals from sexual harassment and discrimination. An individual should contact the county, city or town in which they live to find out if such a law exists. For example, employees who work in New York City may file complaints of sexual harassment with the New York City Commission on Human Rights. Contact their main office at Law Enforcement Bureau of the NYC Commission on Human Rights, 40 Rector Street, 10th Floor, New York, New York; call 311 or (212) 306-7450; or visit [www.nyc.gov/html/cchr/html/home/home.shtml](http://www.nyc.gov/html/cchr/html/home/home.shtml).

### **Contact the Local Police Department**

If the harassment involves unwanted physical touching, coerced physical confinement or coerced sex acts, the conduct may constitute a crime, thus you may wish to contact the local police department.

### **A Sexual and Romantic Relationship Policy:**

#### **Summary**

When faculty, staff and students exercise power and authority over other faculty, staff and students whether due to current supervisory, instructional, or other professional responsibility, or perceived influence or control over an educational or work experience, a power imbalance is created, which may impede the real or perceived freedom of the faculty, student or employee not to enter into a sexual or romantic relationship or to terminate or alter that sexual or romantic relationship. To address this power imbalance, the State University of New York (“the State University” or “SUNY”) Board of Trustees is requiring all SUNY campuses (State-operated campuses, community colleges, and statutory colleges) to adopt by March 1, 2019 a Sexual and Romantic Relationship policy, which must include specific elements enumerated below.

## **Policy**

On or before March 1, 2019, each SUNY campus and System Administration shall individually develop, with input from appropriate members of their workplace and campus communities, including local governance, a sexual or romantic relationship policy which shall be widely disseminated to their respective communities, and which will, at a minimum:

- Apply to all faculty, students and staff (campuses shall further define whether students who are also employees are categorized for purposes of the policy as a student or staff);
- Prohibit any sexual or romantic relationships between faculty or staff members and students if there is an existing supervisory, evaluative or instructional relationship, unless the relationship is disclosed and supervision, evaluation or instruction is terminated in accordance with the policy;
- Require for sexual or romantic relationships between faculty or staff where there is a supervisory or reporting relationship between the participants that each employee inform an appropriate campus entity (which may be a supervisor, or the Director of Human Resources or equivalent, or, at the campuses’ option, the Title IX Officer or Coordinator) of such relationship;
- Require that for sexual or romantic relationships in the workforce (including for student-teaching assistants or graduate student teachers) alternative supervisory roles be created to ensure that supervisors in a consensual romantic or sexual relationship with an employee be removed from any evaluation of the employee, and from any activity or decision that may appear to reward, penalize, or otherwise affect the employment status of the employee;
- Make allowances for pre-existing relationships or marriages provided that the relationship is reported as required herein and that alternative supervisory relationships be established; and
- Require that discipline be imposed for any individual failing to follow the terms of the policy, up to and including termination.

## **A Student Code of Conduct:**

The Student Code of Conduct defines certain behavior by students as a violation of campus policy, including:

**Sexual assault** - New York State does not specifically define sexual assault. However, according to the Federal Regulations, sexual assault includes offenses that meet the definitions of rape, fondling, incest, or statutory rape as used in the FBI's UCR program. If a student is found responsible it will result in suspension for a minimum of the remainder of the semester or a maximum of the remainder of the semester + 2 semesters or expulsion from SUNY Morrisville. It is assumed that the victim/survivor did not give affirmative consent.

**Rape** - The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

**Fondling** - The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

**Incest** - Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

**Statutory Rape** - Sexual intercourse with a person who is under the age of consent in New York State (17 years is the age of consent in New York State.)

**Sexual Harassment**- Unwelcome verbal or physical conduct of a sexual nature that effectively denies reasonable access to institutional resources, employment, academic performance or participation in institutional programs or activities and creates a working, learning, program or activity environment that a reasonable person would find intimidating, hostile or offensive.

**Stalking**- Any unwelcome course of conduct directed at a specific person that would cause emotional distress and effectively denies reasonable access to institutional resources, employment, academic performance or participation in institutional programs or activities and creates a working, learning, program or activity environment that a reasonable person would find intimidating, hostile or offensive.

**Unlawful Dissemination or Publication of an Intimate Image**- The intentional unlawful sharing of an image, of another person who is identifiable from the image or from information displayed in connection with the image, that are created under circumstances when the person depicted had a reasonable expectation that the image would remain private and the actor knew or reasonably should have known the person depicted intended for an image to remain private, regardless of whether the actor was present when an image was created, with intent to cause harm to the emotional, financial or physical welfare of that person. This includes sexually intimate images, created during the course of an intimate

relationship, distributed without the depicted person's prior knowledge or without their consent.

**Assault, Abuse, Fighting-** Includes threatening or abusive conduct such as but not limited to the use of physical means to initiate or resolve conflict in retaliation or response to verbal provocation when retreat or withdrawal is a viable option, intentionally or recklessly causing physical harm to a person, intentionally or recklessly threatening or causing reasonable apprehension of such harm, the use of self-defense spray in an offensive manner, and holding someone against his or her will. For ease of reference, specific violations are offered in detail below.

**Dating Violence (Subcategory to Assault, Abuse, Fighting, and covered by the CLERY Act)-** This occurs when a person who is or has been in a social relationship of a romantic or intimate nature with the victim AND where the existence of such a relationship can be determined based on a consideration of the following factors:

- The length of the relationship
- The type of relationship
- The frequency of interaction between the persons involved in the relationship

**Domestic Violence (Subcategory to Assault, Abuse, Fighting, and covered by the CLERY Act)-** Includes felony or misdemeanor crimes of violence committed by a person who is:

- A current or former spouse of the victim
- A person with whom the victim shares a child in common with
- Cohabiting with or has cohabitated with the victim as a spouse, or person similarly situated as the spouse under the domestic or family violence laws of the jurisdiction in which it occurs
- By law, prohibited from the victim under the domestic or family violence laws of the jurisdiction in which it occurs

To the extent that alleged misconduct falls outside the Title IX Formal Complaint Grievance Policy, or misconduct falling outside the Title IX Formal Complaint Grievance Policy 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 above.

The elements established in the Title IX Formal Complaint Grievance Policy under the Final Rule have no effect and are not transferable to any other policy of the College 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.



## **How does the Title IX Formal Complaint Grievance Policy impact the handling of complaints?**

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 as detailed in full throughout Section 2.

## **Section 2: The Title IX Formal Complaint Grievance Policy**

### **General Rules of Application**

#### **Effective Date**

The Title IX Formal Complaint Grievance Policy will become effective on August 14, 2020, and will only apply to sexual harassment alleged to have occurred on or after August 14, 2020. Incidents of sexual harassment alleged to have occurred before August 14, 2020, will be investigated and adjudicated according to the process in place at the time the incident allegedly occurred.

#### **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 Formal Complaint Grievance Policy be revoked in this manner, any conduct covered under the Title IX Formal Complaint Grievance Policy shall be investigated and adjudicated through policies in place prior to August 14, 2020.

#### **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>.

#### **Definitions**

## **Covered Sexual Harassment**

For the purposes of this Title IX Formal Complaint 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 above reference policies.

## **Consent**

For the purposes of this Title IX Formal Complaint Grievance Policy, “consent” means:

**Affirmative Consent** - Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as

those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.”

- Consent to any sexual act or prior consensual sexual activity between or with any party does not 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.
- When consent is withdrawn or cannot be given, sexual activity must stop.
- Consent cannot be given when a person is incapacitated. 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.

Please note this is the same definition of consent used in the Sexual Assault Response Police found at <https://www.morrisville.edu/contact/offices/university-police/title-ix> and the Student Code of Conduct, found at <https://www.morrisville.edu/handbook/policies/sexual-assault-response>.

### **Education Program or Activity**

For the purposes of this Title IX Formal Complaint Grievance Policy, SUNY Morrisville’s “education program or activity” includes:

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

### **Formal Complaint**

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

### **Complainant**

For the purposes of this Title IX Formal Complaint 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.

### **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 Formal Complaint 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.
  - Evidence and questions that constitute, or seek disclosure of, information protected under a legally-recognized privilege. (*e.g., attorney-client privilege*)
- Any party's medical, psychological, and similar records unless the party has given voluntary, written consent.

### **Respondent**

For the purposes of this Title IX Formal Complaint 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.

### **Privacy vs. Confidentiality**

References made to *confidentiality* refer to the ability of identified confidential resources to not report crimes and violations to law enforcement or college officials without permission, except for extreme circumstances, such as a health and/or safety emergency or child abuse. References made to *privacy* mean SUNY Morrisville 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 Morrisville will limit the disclosure as much as practicable, even if the Title IX Coordinator determines that the request for confidentiality cannot be honored.

### **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 Formal Complaint 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.

### **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 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.

Contact Information for the Title IX Coordinator:

Name: Miguel Pereira

Title: Title IX Coordinator

Office Address: Helyar Hall

Email Address: pereir@morrisville.edu

Telephone Number: 315-684-6997

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.

## **Confidential Reporting**

The following Officials will provide privacy, but not confidentiality, upon receiving a report of conduct prohibited under this policy:

- Title IX Coordinator or designee

## **Non-Investigatory Measures Available Under the Title IX Formal Complaint Grievance Policy**

### **Supportive Measures**

Complainants (as defined above), who report allegations that could constitute covered sexual harassment under this policy, have the following right to receive supportive measures from SUNY Morrisville regardless of whether they desire to file a complaint, which may include:

- Use the SUNY SAVR site for access to resources at <https://www.suny.edu/violence-response/>;
- Have access to campus counseling;
- Be informed of and assisted in exercising:
  - To consult with a local rape crisis or local victim assistance organization
  - To have a representative of such organization accompany the victim through the examination:
  - Any rights to confidential or anonymous testing for sexually transmitted infections, HIV, and pregnancy,
  - Any rights to preventive measures such as emergency contraception or HIV prophylaxis,
  - Any rights that may be provided by law to obtain the communicable diseases test results of sexual assault suspects,
  - To be informed by law enforcement of the examination of the evidence kit or transfer of the evidence kit,
  - To be informed by law enforcement if the DNA from the kit matches existing DNA profiles (but this information can be delayed prior to arresting a suspect).
- Be informed of the possible availability of crime victim assistance compensation through the New York State Crime Victims Board;
- Campus personnel shall take reasonable and necessary actions to prevent further unwanted contact of the alleged victim by the alleged violator including issuing “No contact” orders in writing to all parties involved in a reported sexual assault;
- Be notified of the options for changing academic and living situations if such changes are reasonably available (The campus will promptly review existing interim measures or accommodations). The parties can submit evidence to support their request.

### **Emergency Removal**

SUNY Morrisville retains the authority to remove a respondent from SUNY Morrisville’s program or activity on an emergency basis, where SUNY Morrisville (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 SUNY Morrisville determines such removal is necessary, the respondent will be provided notice and an opportunity to challenge the decision immediately following the removal.

### **Administrative Leave**

SUNY Morrisville retains the authority to place a non-student employee respondent on administrative leave during the Title IX Formal Complaint Grievance Process, consistent with the Employee handbook.

## **The Title IX Formal Complaint Grievance Process**

### **Filing a Formal Complaint**

The timeframe for the Title IX Formal Complaint 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) calendar days after the filing of the Formal Complaint, provided that the Process may be extended for a good reason, including but not limited to the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. 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 Morrisville including as an employee. For complainants that do not meet this criterion, the College will utilize existing policies listed above and if a complainant does not wish to make a Formal Complaint, the Title IX Coordinator may determine if a Formal Complaint is necessary. SUNY Morrisville 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 Formal Complaint Grievance Policy 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 will determine if the instant Title IX Formal Complaint Grievance Process should apply to a Formal Complaint. The Process will apply when all of the following elements are met, in the reasonable determination of the Title IX Coordinator:

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 {institution'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 Morrisville will investigate the allegations according to this Grievance Process.

### **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 Formal Complaint Grievance Process will be applied to investigation and adjudication of only the allegations that constitute covered sexual harassment under the Title IX Final Rule.

### **Mandatory Dismissal**

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

### **Discretionary Dismissal**

The Title IX Coordinator may dismiss a Formal Complaint brought under the Title IX Formal Complaint Grievance Policy, 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 Morrisville retains discretion to utilize the above-mentioned policies to determine if a violation has occurred. If so, SUNY Morrisville will promptly send written notice of the dismissal of the Formal Complaint under the Title IX Formal Complaint Grievance Process and removal of the allegations to the other policy.

### **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 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

Complainant 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 Formal Complaint Grievance Process 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;
- 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;

### **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 Formal Complaint Grievance Policy, 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 Morrisville will provide the parties equal access to advisors and support persons; any restrictions on advisor participation will be applied equally.

SUNY Morrisville 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 Morrisville.

SUNY Morrisville 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.

SUNY Morrisville's obligations to investigate and adjudicate in a prompt timeframe under Title IX and other college policies apply to matters governed under this Policy, and SUNY Morrisville 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 Morrisville 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 SUNY Morrisville.

### **Notice of Meetings and Interviews**

SUNY Morrisville 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 Process of up to five (5) days for good cause (granted or denied in the sole judgment of the Title IX Coordinator or designee) provided that the requestor provides reasonable notice and the delay does not overly inconvenience other parties.

For example, a request 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 Morrisville 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 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 Morrisville and does not indicate responsibility.

SUNY Morrisville cannot access, consider, or disclose medical records without a waiver from the party (or parent, if applicable) to whom the records belong or of whom the records include information. SUNY Morrisville 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.

The institution will make available the evidence for each party and each party's advisor, if any, to inspect and review. 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) calendar 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.

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

### **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 not be disclosed, or may be appropriately redacted before the parties' inspection to avoid disclosure of personally identifiable information of a student. Any evidence obtained in the investigation that is kept from disclosure or appropriately redacted will be documented in a "privilege log" that may be reviewed by the parties and their advisors, if any.

### **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, and will 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.

### **Hearing**

## **General Rules of Hearings**

SUNY Morrisville 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 SUNY Morrisville's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually. This technology will enable participants simultaneously to see and hear each other. At its discretion, SUNY Morrisville may delay or adjourn a hearing based on technological errors not within a party's control.

All proceedings will be recorded through audio recording. That recording or transcript will be made available to the parties for inspection and review upon request.

## **Continuances or Granting Extensions**

SUNY Morrisville 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, SUNY Morrisville will notify all participants and endeavor to accommodate all participants' schedules and complete the hearing as promptly as practicable.

## **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.
  - 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.
- SUNY Morrisville will not threaten, coerce, intimidate or discriminate against the party in an attempt to secure the party's participation.

- 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.

#### The Decision-maker

- The hearing body will consist of a 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.
- If neither a party nor their advisor appear at the hearing, SUNY Morrisville will provide an advisor to appear on behalf of the non-appearing party.

## Witnesses

- Witnesses cannot be compelled to participate in the live hearing, and have the right not to participate in the hearing free from retaliation.
- If a witness does not submit to cross-examination, as described below, the decision-maker can 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.

## Hearing Procedures

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

- Decision-maker will open and establish rules and expectations for the hearing;
- The Parties will each be given the opportunity to provide opening statements;
- Decision-maker will ask questions of the Parties and Witnesses;
- Parties advisor will be given the opportunity for live cross-examination after Decision-maker conducts its initial round of questioning; During the 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 be available for review by the parties upon request, unless there are any extenuating circumstances. The recording of the hearing will not be provided to parties or advisors of choice.

## **Determination Regarding Responsibility**

### **Standard of Proof**

SUNY Morrisville uses the preponderance of the evidence standard for investigations and determinations regarding responsibility of formal complaints covered under this Policy. This means that the investigation and hearing determine 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.

Decision-makers 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.

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

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 Morrisville allow parties to call “expert witnesses” for direct and cross examination. SUNY Morrisville does not provide for expert witnesses in other proceedings. While the expert witness 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 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 Morrisville allow parties to call character witnesses to testify. SUNY Morrisville 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 Morrisville 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 policy, 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 Morrisville within ten (10) calendar 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) calendar 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 should be typed and submitted in electronic form.

Appeals will be decided by an Appeal Decision-making Body of 3 people who will be free of conflict of interest and bias, and will not serve as investigator, Title IX Coordinator, or hearing decisionmaker in the same matter.

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

### **Retaliation**

SUNY Morrisville 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 Formal Complaint Grievance Policy, 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 or as required by law, or to carry out the purposes of and including the conduct of any investigation, hearing, or judicial proceeding under this Title IX Formal Complaint Grievance Policy.

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

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

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