



Office of Institutional Equity

SUNY DOWNSTATE HEALTH SCIENCES UNIVERSITY'S NONDISCRIMINATION POLICY/NOTICE OF NONDISCRIMINATION – 2024 FINAL RULE

Effective: August 1, 2024

Nondiscrimination Policy

Under 2024 Amendments to the U.S. Department of Education's Title IX Regulations

SUNY Downstate Health Sciences University (SUNY Downstate) does not discriminate on the basis of sex and prohibits sex discrimination in any Education Program or Activity that it operates, as required by Title IX, including in admission and employment.

Notice of Nondiscrimination

Under 2024 Amendments to the U.S. Department of Education's Title IX Regulations

SUNY Downstate Health Sciences University does not discriminate on the basis of sex and prohibits sex discrimination in any Education Program or Activity that it operates, as required by Title IX and its regulations, including in admission and employment.

Inquiries about Title IX may be referred to SUNY Downstate Health Sciences University's Title IX Coordinator, the U.S. Department of Education's Office for Civil Rights, or both. SUNY Downstate Health Sciences University's Title IX Coordinator is Bolaji Olasokan, Esq., Title IX Director, Basic Science Building, Room 5-95, AskODI@downstate.edu, (718) 270-1738.

SUNY Downstate Health Sciences University's Nondiscrimination Policy and Grievance Procedures can be located at <https://www.downstate.edu/education-training/student-affairs/student-policies/index.html>

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.downstate.edu/education-training/student-affairs/student-policies/index.html>

Abbreviated Notice of Nondiscrimination

SUNY Downstate Health Sciences University prohibits sex discrimination in any Education Program or Activity that it operates. Individuals may report concerns or questions to the Title IX Coordinator. The notice of nondiscrimination is located at <https://www.downstate.edu/education-training/student-affairs/student-policies/index.html>

GRIEVANCE PROCEDURE FOR COMPLAINTS OF SEX DISCRIMINATION UNDER TITLE IX

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

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

Should any portion of the 2024 Title IX Final Rule (89 Fed. Reg. 33474 (Apr. 29, 2024)), be stayed or held invalid by a court of law, or if the 2024 Title IX Final Rule is withdrawn or modified to not require elements of this Procedure, the Procedures in their entirety, or the invalidated elements of this Procedure, will be deemed revoked as of the publication date of the Opinion or Order from the Court and for all reports after that date, as well as any elements of the process that occur after that date if a case is not completed by the date of the Opinion or Order publication by the Court. If this Grievance Procedure is revoked in this manner, any conduct covered under this Procedure shall be investigated and adjudicated under the previous 2020 Title IX Grievance Policy and/or The Rules of Student Conduct or Sexual Misconduct Policy. SUNY Downstate Health Sciences University will update this Procedure as soon as practicable to reflect any court rulings or changes that invalidate parts of the Procedure, where applicable.

II. Scope of Procedure

SUNY Health Sciences University has adopted a Grievance Procedure that provides 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, and four (4) specific offenses (sexual assault, dating violence, domestic violence, and stalking). For the prompt and equitable resolution of Complaints of sex-based harassment involving a student Party, SUNY Downstate will utilize the Grievance Policy for addressing Sex-Based Harassment for Students and Employees located on the policies page: <https://www.downstate.edu/education-training/student-affairs/student-policies/index.html>.

III. Jurisdiction of Procedure

- This Procedure applies to all sex discrimination occurring under SUNY Downstate Health Sciences University's Education Program or Activity in the United States.
- Conduct that occurs under SUNY Downstate Health Sciences University's education program or activity includes but is not limited to conduct that occurs in any building owned or controlled by SUNY Downstate

or any affiliated organization that is officially recognized by SUNY Downstate Health Sciences University and conduct that is subject to SUNY Downstate Health Sciences University disciplinary authority.

- SUNY Downstate Health Sciences University has an obligation to address a sex-based hostile environment under its Education Program or Activity, even when some conduct alleged to be contributing to the hostile environment occurred outside the recipient's Education Program or Activity or outside the United States.
 - In the limited circumstances in which Title IX permits different treatment or separation on the basis of sex, SUNY Downstate Health Sciences University will not implement a 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.

IV. Non-Discrimination in Application

The requirements and protections of this Policy apply equally regardless of sex, sexual orientation, gender identity, gender expression, race, color, national origin, religion, creed, age, disability, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, criminal conviction, or other protected classes covered by applicable federal, state, or local law. All requirements and protections are equitably provided to individuals regardless of such protected status(es) or status as a Complainant, Respondent, or Witness. Individuals who wish to file a complaint about the SUNY Downstate's policy or process may contact the U.S. Department of Education's Office for Civil Rights using contact information available at <https://ocrcas.ed.gov/contact-ocr>. Individuals may also file complaints with the New York State Division of Human Rights (DHR), using contact information available at <https://dhr.ny.gov/complaint>.

V. 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 Downstate Health Sciences University.
2. **Affirmative Consent** means a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, provided 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.

Please note that to comply with the above definition of Affirmative Consent, you should remember the following:

- Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- Consent may be initially given but withdrawn at any time.
- Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.
- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
- When consent is withdrawn or can no longer be given, sexual activity must stop.

“Consent” and “affirmative consent” may be used interchangeably under this Grievance Procedure.

3. ***Complainant*** means:

(1) a student or student employee 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 Downstate Health Sciences University’s Education Program or Activity; or

(2) a person other than a student, student employee 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 Downstate Health Sciences University’s Education Program or Activity at the time of the alleged sex-based harassment.

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

5. ***Confidential Employee*** means:

(1) an employee of SUNY Downstate Health Sciences University 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 Downstate Health Sciences University whom the recipient has designated as confidential for the purpose of providing services to persons related to Sex-Based Harassment. If the employee also has a duty not associated with providing those services, the employee’s confidential status is only with respect to information received about Sex-Based Harassment in connection with providing those services; or

(3) an employee of SUNY Downstate Health Sciences University who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about Sex-Based Harassment. The employee’s confidential status is only with respect to information received while conducting the study.

6. ***Disciplinary Sanctions*** means consequences imposed on a Respondent following a determination under this Grievance Procedure that the Respondent violated SUNY Downstate Health Sciences University’s prohibition sex discrimination.

7. ***Education Program or Activity*** means all of the operations of SUNY Downstate Health Sciences University.

8. ***Party*** means Complainant or Respondent.

9. ***Peer Retaliation*** means Retaliation by a student against another student.

10. ***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.

11. **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. Evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.
12. **Remedies** means measures provided, as appropriate, to a Complainant or any other person SUNY Downstate Health Sciences University identifies as having had their equal access to SUNY Downstate Health Sciences University's Education Program or Activity limited or denied by Sex-Based Harassment. These measures are provided to restore or preserve that person's access to SUNY Downstate Health Sciences University's Education Program or Activity after SUNY Downstate Health Sciences University determines that sex discrimination occurred.
13. **Respondent** means a person(s) who is alleged to have violated SUNY Downstate Health Sciences University's prohibition on sex discrimination.
14. **Retaliation** means intimidation, threats, coercion, or discrimination by any person by SUNY Downstate Health Sciences University, a Student, or an employee or other person authorized by SUNY Downstate Health Sciences University to provide aid, benefit, or service under SUNY Downstate Health Sciences University's Education Program or Activity, for the purpose of interfering with any right or privileged secured by Title IX, or because the person has reported information, made a complaint, testified, assisted or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this procedure, including an informal resolution process.
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 Downstate Health Sciences University'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 Downstate Health Sciences University'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 Downstate Health Sciences University's Education Program or Activity;
 2. The type, frequency, and duration of the conduct;
 3. The Parties' ages, roles within SUNY Downstate Health Sciences University'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 Downstate Health Sciences University'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: (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship.

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

- (A) Is a current or former partner of the victim under the family or domestic violence laws of the State of New York, 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 the State of New York; 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.

16. **Student** means a person who has enrolled or is on an approved leave of absence at SUNY Downstate.

17. **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 Downstate Health Sciences University's Education Program or Activity, including measures that are designed to protect the safety of the Parties or SUNY Downstate Health Sciences University's educational environment; or (2) provide support during SUNY Downstate Health Sciences University's grievance procedures for sex discrimination or during the informal resolution process.

VI. NOTE: Disability Accommodations

Generally

This procedure does not alter any institutional obligations under applicable federal, state, and/or local disability laws, including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973, among others. Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point before or during the Title IX Grievance Procedure that do not fundamentally alter the Procedures. 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.

Requests for Reasonable Accommodations During the Title IX Grievance Procedure

If the Complainant or Respondent discloses a disability, the Title IX Coordinator may consult, as appropriate, with Office of Student Affairs (for students) or the Office of Employee and Labor Relations (for employees) who provide support to individuals with disabilities to determine how to comply with applicable law including, without limitation, Section 504 of the Rehabilitation Act of 1973 in the implementation of any Supportive Measures, or any other reasonable accommodations requested during the Grievance Procedure.

VII. Basic Requirements of the Grievance Procedure

SUNY Downstate Health Sciences University is required to:

- Treat Complainants and Respondents equitably;
- Ensure that any person designated by SUNY Downstate Health Sciences University as a Title IX Coordinator, investigator, or decisionmaker does not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. A decisionmaker may be the same person as the Title IX Coordinator or investigator
- Presume that the Respondent is not responsible for the alleged sex discrimination until a determination is made at the conclusion of its Grievance Procedure.
- Establish reasonably prompt timeframes for the major stages of this Grievance Procedure, including a process that allows for the reasonable extension of timeframes on a case-by-case basis for good cause with notice to the parties that includes the reason for the delay;
- Establish the following process that allows for the reasonable extension of timeframes on a case-by-case basis for good cause with notice to the parties that includes the reason for the delay.
- Ensure that reasonable steps to protect the privacy of the Parties and witnesses during the pendency of the Grievance Procedure are taken, provided that the steps do not restrict the abilities of the Parties to obtain and present evidence, including by speaking to witnesses (as long as doing so does not result in Retaliation), consult with their family members, confidential resources, or advisors, or otherwise prepare for or participate in this Grievance Procedure. The parties cannot engage in retaliation, including against witnesses;
- Ensure an objective evaluation of all evidence that is Relevant and not otherwise impermissible under this Grievance Procedure, including both inculpatory and exculpatory evidence, and provide that credibility determinations must not be based on a person's status as a Complainant, Respondent or Witness;
- Exclude impermissible evidence from consideration as defined in the Grievance Procedure. The following types of evidence, and questions seeking that evidence, are impermissible (i.e., will not be accessed or considered, except by SUNY Downstate Health Sciences University 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 Downstate Health Sciences University obtains that Party's or witness's voluntary, written consent for use in its grievance procedures; 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 determination that sex-based harassment occurred.

- Clearly articulate principles for how SUNY Downstate Health Sciences University will determine which policies and procedures will apply if not all to complaints that are handled under this Grievance Procedure.

VIII. Reporting Sex Discrimination to SUNY Downstate Health Sciences University

A. Complaints

The following people have a right to make a **Complaint of sex discrimination**, including Complaints of sex-based harassment, requesting that SUNY Downstate Health Sciences University investigate and make a determination about alleged discrimination under Title IX:

- A "Complainant," which includes: a student or employee of SUNY Downstate Health Sciences University 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 Downstate Health Sciences University 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 Downstate Health Sciences University'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 Downstate Health Sciences University's Title IX Coordinator.

With respect to **Complaints of sex discrimination other than sex-based harassment**, in addition to the people listed above, the following persons have a right to make a Complaint:

- Any student or employee of SUNY Downstate Health Sciences University; or
- Any person other than a student or employee who was participating or attempting to participate in SUNY Downstate Health Sciences University Education Program or Activity at the time of the alleged sex discrimination.

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 on the basis of parental, family or marital status, including pregnancy or related conditions; or
- Complaints that SUNY Downstate Health Sciences University's policies or procedures discriminate on the basis of sex.

Complaints may be submitted 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: Bolaji Olosokan

Title: Title IX Director

Office Address: Basic Science Building, 5-95

Email Address: AskODI@downstate.edu

Telephone Number: (718) 270-1738

B. Confidential Reports

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

- Title IX Coordinator or designee(s);
- Student Affairs, Deans, or Academic Deans or Faculty
- NYS University Police Department
- All other employees at SUNY Downstate that are not designated as confidential resources

The following officials may provide confidentiality:

- SUNY Downstate Student Counseling Center: counseling@downstate.edu (718) 270-1408
- SUNY Downstate Employee Assistance Program, Dr. Magda Alliancin, Director, (718) 270-1489
- Individuals serving in a pastoral role under SUNY Downstate's Department of Pastoral Care: Reverend Sharon Codner-Walker, Sharon.Walker@downstate.edu, (718) 270-2594
- SUNY Downstate physicians, licensed medical professionals or supervised interns when they are engaged in a physician/patient relationship: Student Health Center, 440 Lenox Road, Apt 1-W, (718) 270-1995/2018 (Please note that this does not include physicians, licensed medical professionals or supervised interns who are engaged with the reporting individual in a faculty/student relationship or supervisor/supervisee relationship. Physicians, licensed medical professionals or supervised interns working within the SUNY Downstate Student Health Center do not serve in a faculty role.)

C. Public Awareness Events

When SUNY Downstate Health Sciences University's Title IX Coordinator is notified of information about conduct that reasonably may constitute sex-based harassment under Title IX or this policy that was provided by a person during a public event to raise awareness about sex-based harassment that was held on SUNY Downstate Health Sciences University's campus or through an online platform sponsored by it, SUNY Downstate Health Sciences University is not obligated to act in response to the information, unless it indicates an imminent and serious threat to the health or safety of a Complainant, any students, employees, or other persons.

However, in all cases SUNY Downstate Health Sciences University must use this information to inform its efforts to prevent sex-based harassment, including by providing tailored training to address alleged sex-based harassment in a particular part of its Education Program or Activity or at a specific location when information indicates there may be multiple incidents of sex-based harassment.

Nothing in Title IX or this policy obligates SUNY Downstate Health Sciences University to require its Title IX Coordinator or any other employee to attend such public awareness events.

IX. Supportive and Interim Measures

Providing Supportive Measures

Complainants who report allegations of Sex-Based Harassment have the right to receive supportive measures from SUNY Downstate Health Sciences University regardless of whether or not they file a complaint. Supportive measures are non-disciplinary and non-punitive. Supportive measures may vary depending upon what is reasonably available at SUNY Downstate.

As appropriate, supportive measures may include without limitation:

- Counseling services
- Extensions of deadlines or other course-related adjustments
- Modifications of work or class schedules
- Campus escort services, as available
- Restrictions on contact applied to one or more Parties (no contact orders)
- Changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative
- Leaves of absence
- Increased security and monitoring of certain areas of the campus
- Training and education programs related to Sex-Based Harassment

Supportive measures must not unreasonably burden either party and must be designed to protect the safety of the parties or SUNY Downstate Health Sciences University's educational environment, or to provide support during SUNY Downstate Health Sciences University's Sex-Based Harassment Grievance procedures under this policy or during informal resolution under this procedure.

SUNY Downstate Health Sciences University can modify or terminate supportive measures at the conclusion of the Grievance Procedure, or at the conclusion of the informal resolution process, or may continue them beyond that point within SUNY Downstate Health Sciences University's discretion.

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

- SUNY Downstate Health Sciences University 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 Downstate Health Sciences University'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).

Process for Review of Supportive Measures

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

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

Request for a modification or reversal of a supportive measure must be timely and should be submitted within five (5) business days. SUNY Downstate Health Sciences University will conduct a fact specific inquiry into timeliness.

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

Parties are only allowed to challenge their own individual supportive measures. Challenges by one party will not be heard to supportive measures afforded to the opposite party, unless that supportive measure directly impacts the party making such challenge (i.e., two-way no contact orders).

Emergency Removal of a Student

SUNY Downstate Health Sciences University retains the authority to remove a Respondent from all or part of SUNY Downstate Health Sciences University's Education Program or Activity on an emergency basis, where SUNY Downstate Health Sciences University (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.

SUNY Downstate Health Sciences University will provide the Respondent with notice and an opportunity to challenge the decision immediately following the removal under the policies in the Rules of Student Conduct ("Change in Student Status/Interim Suspension").

Any decision made to remove a Respondent may be challenged under the following appeal procedure:

1. Within five (5) calendar days of receiving the written notice of a decision from the Vice President for Student Affairs or their designee at SUNY Downstate, the student may submit an appeal of the decision in writing to the Vice President for Student Affairs who shall initiate the appeal process.
2. The appeal shall be heard by a three (3) person Board of Appeals. The decisionmaker who imposes the initial removal shall not hear appeals or render decisions on appeals. The individuals chosen to oversee appeals cannot have been involved in the original decision-making process. The written request for appeal must specify the particular substantive and/or procedural basis for the appeal and must be made

on grounds other than general dissatisfaction with the decision of the Vice President for Student Affairs or their designee. While the appeal is pending and being heard by the Board of Appeals, the original decision will remain in place. All appeals decisions will be issued within seven (7) calendar days after the Board of Appeals has heard/reviewed the appeal.

3. The criteria for appeal will be limited to the following:

- ***Disproportionate Findings or New Information:*** if there is any information not previously considered that would allow the student to return to campus or if there is any new information which was not previously available to the student that may change the outcome of the decision-making process;
- ***Procedural irregularities:*** if there were any procedural irregularities that materially affected the outcome of the matter to the detriment of the student who appealed the decision.

4. After reviewing the matter fully, the Board of Appeals will issue a written decision affirming, modifying, or reversing the decision to remove the Respondent. The Board of Appeals' decision shall be final, and no other appeals or grievance procedures are available at the campus level.

Individuals who hear a challenge to an emergency removal must also not be involved in any decision regarding responsibility or appeal of a determination.

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

Emergency Removal of a Respondent who is an Employee / Administrative Leave

SUNY Downstate Health Sciences University retains the authority to place an employee Respondent on administrative leave during the Grievance Procedure, consistent with the most recent appropriate Collective Bargaining Agreement.

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

X. The Title IX Grievance Procedure for Sex Discrimination

A. Filing a Complaint

Who can make a Complaint?

- A Complainant (as defined in Section IX of this Grievance Procedure);
- 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 of the allegations in a Complaint, and in 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 initiation of a complaint;
- The risk that additional acts of sex-based harassment would occur if a complaint is not initiated;
- The severity of the alleged sex-based harassment, including whether the Sex-Based Harassment, if established, would require the removal of a Respondent from campus or imposition of another Disciplinary Sanction to end the sex-based harassment and prevent its recurrence;
- The age and relationship of the Parties, including whether the Respondent is an employee of SUNY Downstate Health Sciences University;
- 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 Downstate Health Sciences University 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 present as an imminent and serious threat to the health or safety of the complainant or other person, or that the conduct as alleged prevents SUNY Downstate Health Sciences University 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 does initiate the Complaint after making this determination, the Title IX Coordinator must notify the Complainant prior to doing so and appropriately address reasonable concerns about the complainant's safety or the safety of others, including by providing Supportive Measures as listed in Section IX of this Grievance Procedure.

Complaint Format

As defined in Section V (5) of this Grievance Procedure, a complaint can be an oral or written request to SUNY Downstate Health Sciences University that objectively can be understood as a request for SUNY Downstate Health Sciences University to investigate and make a determination about alleged sex discrimination at the institution.

Who can I report a Complaint to?

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

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

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

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

B. Consolidation of Complaints

SUNY Downstate Health Sciences University 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 the other Party(ies), 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 investigation and adjudication of only those allegations that constitute covered sexual harassment.

D. Notice of Allegations

Upon initiating SUNY Downstate Health Sciences University's Grievance Procedures, the Title IX Coordinator shall provide a notice of allegations in writing to the Parties whose identities are known. Such notice will occur as soon as practicable after SUNY Downstate Health Sciences University receives a complaint, if there are no extenuating circumstances.

Contents of Notice of Allegations

The written Notice of Allegations will include the following:

- Notice of SUNY Downstate Health Sciences University Title IX's Grievance Procedures.
- Sufficient information available at the time of the issuance of the Notice of Allegations to allow the Parties to respond to the allegations, which includes the identities of the Parties involved in the incident(s), the conduct alleged to constitute sex discrimination under the Grievance Procedures, and the date(s) and location(s) of the alleged incident(s), to the extent that information is available to SUNY Downstate Health Sciences University;
- A statement that retaliation is prohibited; and
- A statement that the Parties are entitled to:
 - an equal opportunity to access the Relevant and not otherwise impermissible evidence; or
 - an accurate description of the Relevant and not otherwise impermissible evidence, with an equal opportunity for the Parties to access the underlying Relevant and not otherwise impermissible evidence upon request of any Party;
- Knowingly giving false information or making false statements to the University or misrepresenting oneself, on or off-campus, may lead to disciplinary action under the Rules of Student Conduct.
- If, in the course of an investigation, SUNY Downstate Health Sciences University decides to investigate additional allegations of sex discrimination by the Respondent toward the Complainant that are not included in the original written Notice of Allegations provided or that are included in a complaint that is

consolidated, SUNY Downstate will provide written notification to the Parties whose identities are known of any additional allegations.

E. Investigation

General Rules of Investigations

SUNY Downstate Health Sciences University will provide for adequate, reliable, and impartial investigation of complaints.

SUNY Downstate Health Sciences University, and not the parties, has the burden to conduct an investigation that gathers sufficient evidence to determine whether sex discrimination occurred under this Grievance Procedure (has the burden of proof and the burden of gathering evidence, i.e., the responsibility of showing a violation of this Policy has occurred).

SUNY Downstate Health Sciences University 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 Downstate Health Sciences University will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.

SUNY Downstate Health Sciences University will provide each Party with an equal opportunity to access the evidence that is relevant to the allegations of sex discrimination and not otherwise impermissible, in the following manner:

SUNY Downstate Health Sciences will provide an equal opportunity to access either the relevant and not otherwise impermissible evidence, or an accurate description of this evidence.

The Title IX Coordinator will notify the Parties when the relevant evidence is ready for inspection and the Parties will be permitted to access the relevant evidence prior to making a determination.

SUNY Downstate Health Sciences University will provide a reasonable opportunity to respond to the evidence or the accurate description of the evidence; and

SUNY Downstate Health Sciences University will take reasonable steps to prevent and address the Parties' unauthorized disclosure of information and evidence obtained solely through the grievance procedures. Disclosures of such information and evidence for purposes of administrative proceedings or litigation related to the Complaint of sex discrimination are 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 Downstate Health Sciences University 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 Downstate Health Sciences University 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

When a party or witness's credibility is in dispute, and such dispute is relevant to evaluating one or more allegations of sex discrimination, the investigator and/or decisionmaker must have an opportunity to question any party or witness whose credibility is in dispute in a live format.

The investigator/decisionmaker will 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 discrimination. This will occur during individual meetings with a Party or witness.

Each Party shall have the opportunity to propose questions that the Party wants 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 appropriate procedures outlined herein regarding the decisionmaker's advance evaluation of all questions. Parties shall provide any proposed questions within ten (10) calendar days of request.

Each Party will be provided with an audio or audiovisual recording or transcript with enough time for the Party to have a reasonable opportunity to propose follow-up questions.

Timeframes

SUNY Downstate Health Sciences University shall take no more than ninety (90) business days to complete an investigation. In cases where a longer timeframe may be necessary, the Title IX Coordinator will advise the Parties of such and provide a proposed timeframe for completion. If there are any delays or extensions, the Title IX Coordinator must appropriately notice the parties in writing, as detailed below.

Extensions and Delays

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

F. Determination Regarding Responsibility

Following an investigation and evaluation of all relevant and not otherwise impermissible evidence, SUNY Downstate Health Sciences University 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 by the evidence, under the applicable standard, 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 people SUNY Downstate Health Sciences University identifies as having had equal access to the institution's 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 the institution's Education Program or Activity.
- Comply with the Grievance Procedure before the imposition of any disciplinary sanctions against a Respondent.

G. Dismissal of a Complaint

Grounds for Dismissal

SUNY Downstate Health Sciences University may dismiss a complaint of sex discrimination for any of the following reasons:

- The institution is unable to identify the Respondent after taking reasonable steps to do so;
- The Respondent is not participating in the institution's Education Program or Activity and is not employed by SUNY Downstate Health Sciences University;
- The Complainant voluntarily withdraws any or all of the allegations in the complaint, the Title IX Coordinator declines to initiate a complaint of these procedures, and the institution 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 or this Grievance Procedure even if proven; or
- SUNY Downstate Health Sciences University determines that the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX or these procedures.
- SUNY Downstate Health Sciences University will make reasonable efforts to clarify the allegations with the Complainant before dismissing under this basis.

Notice of Dismissal

If SUNY Downstate Health Sciences University dismisses a Complaint, the institution shall 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 Downstate Health Sciences University 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 Downstate Health Sciences University 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 Health Sciences University 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.

Appeal rights must also be outlined in any notification of dismissal of a Complaint, as outlined below.

A. Appeal of Dismissals and Determinations

SUNY Downstate Health Sciences University offers the following process for appeals from a dismissal or a determination whether sex discrimination occurred:

If the dismissal or determination is appealed, SUNY Downstate Health Sciences University 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 of the result of the appeal and the rationale for the result.

When a Complaint is dismissed, SUNY Downstate Health Sciences University will, at a minimum:

- Offer supportive measures to the Complainant as appropriate.
- If the Respondent has been notified of the allegations, offer supportive measures to the Respondent as appropriate; and
- Take other prompt and effective steps, as appropriate, through the Title IX Coordinator to ensure that sex discrimination does not continue or recur within the institution's Education Program or Activity.

The submission of appeal stays any sanctions for the pendency of an appeal.

Supportive measures and remote learning opportunities (if possible) remain available during the pendency of the appeal.

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

Appeals may be no longer than 25 pages (including attachments). Appeals should be submitted in electronic form using ARIAL or TIMES NEW ROMAN, 12-point font, and single-spaced. Appeals should use footnotes, not endnotes. Appeals that do not meet these standards may be returned to the Party for correction, but the time for

appeal will not be extended unless there is evidence that technical malfunction caused the appeal document not to meet these standards.

Appeals will be decided by a three (3)-member panel to serve as the Appeal Board. Members of the Appeal Board will be selected from faculty who are not in the same program as the involved parties and may include up to one (1) student, all of whom shall be free of conflict of interest and bias, and will not serve as investigator, Title IX Coordinator, or Hearing Officer or decisionmaker in the same matter.

The decision on the appeal will be provided in writing simultaneously to both Parties, and include rationale for the decision.

The determination of the Appeal Decision-making Body is final.

H. Retaliation

SUNY Downstate Health Sciences University prohibits retaliation, including peer retaliation, in the institution's education program or activity.

When SUNY Downstate Health Sciences University has information about conduct that reasonably may constitute Retaliation under Title IX or its Grievance Procedures, the institution is obligated to initiate its Grievance Procedures or, as appropriate, SUNY Downstate Health Sciences University's informal resolution process.

SUNY Downstate Health Sciences University will keep the identity of any individual who has made a report or complaint of sex discrimination confidential, including the identity of any individual who has made a report or filed a complaint of Sex-Based Harassment or sex discrimination under SUNY Downstate Health Sciences University's Title IX Grievance Procedures, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding under SUNY Downstate Health Sciences University's Title IX Grievance Procedures.

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

No person may intimidate, threaten, coerce, or discriminate against any individual because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing under this 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 violations of the Rules of Student Conduct that do not involve sex discrimination or Sex-Based Harassment, but that arise from the same facts or circumstances as a report or complaint of sex discrimination or a report or complaint of Sex-Based Harassment. SUNY Downstate Health Sciences University has an amnesty policy on other offenses as enumerated in the Rules of Student Conduct and Sexual Misconduct Policy.

Complaints alleging retaliation may be filed according to SUNY Downstate's Sexual Misconduct Policy.

I. 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 Downstate Health Sciences University's assistance to resolve allegations of Sex-Based Harassment, and may elect to enter the informal resolution process. This Process is at the sole discretion of SUNY Downstate Health Sciences University.

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

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

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

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

Notice Prior to Entry into Informal Resolution Process

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

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

Determination to Approve Entry into Informal Resolution Process

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

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

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

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

Role of the Facilitator

Informal resolution processes are managed by trained facilitators. All facilitators must not be the same person as the investigator or the/a decisionmaker(s) in SUNY Downstate Health Sciences University's Grievance Procedures. Any person designated to facilitate informal resolution must not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. The Title IX Coordinator may serve as the facilitator, subject to these restrictions.

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

- SUNY Downstate Health Sciences University'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 Downstate Health Sciences University's response to sex discrimination;
- The rules and practices associated with SUNY Downstate Health Sciences University's informal resolution process; and
- How to serve impartially, including by avoiding conflicts of interest and bias.

Contents of Informal Resolution Agreements

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

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

Breach of Informal Resolution Agreements

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

Confidentiality

In entering the informal resolution process, the Parties agree that any testimony and evidence (including admissions of responsibility) they share or receive during the informal resolution process concerning the allegations of the complaint is confidential. No evidence concerning the allegations obtained within the informal resolution process may be disseminated to any person, provided that any Party to the informal resolution process may generally discuss the allegations under investigation with a parent, friend, advisor, or other source of emotional support, or with an advocacy organization. As a condition of entering the informal resolution process, any evidence shared or received during the informal resolution process may not be used in any subsequent Grievance Procedure or institutional appeal.

Informal Resolution Options

SUNY Downstate Health Sciences University offers the following informal resolution procedures for addressing 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 the Title IX Coordinator or their designee will convene to determine the Respondent's sanction and other Remedies, as appropriate and consistent with institutional policy. The Parties will be given an opportunity to be heard at the sanctions hearing, including without limitation, the submission of impact statements, and the Parties may be accompanied by their Advisor, but questioning of Parties or witnesses will not be permitted. The Parties will receive simultaneous written notification of the decision regarding sanctions and Remedies, which may be appealed according to the process described above following the hearing.

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 and/or the Vice President for Student Affairs will also review any request for mediation and may decline to mediate based on the facts and circumstances of the particular case. Either Party has the right to terminate the mediation process and choose or resume another option for resolution at any time.

The mediation process will typically commence within 10 business days after the Title IX Coordinator and/or the Vice President for Student Affairs receives consent to mediate from both Parties and has made its determination to allow informal resolution to go forward. Mediation will continue until concluded or terminated by either Party, the facilitator, or the Title IX Coordinator and/or the Vice President for Student Affairs. During mediation, any potential investigation will halt, and calculations for time frames will be stayed. If the mediation results in a resolution, the disciplinary process will be concluded, and the matter will be closed. If a resolution cannot be

reached, the matter will be referred to the Title IX Coordinator to re-evaluate other options for resolution, including investigation or proceeding forward with the Grievance Procedures.

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

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