

**NONDISCRIMINATION POLICY/NOTICE OF NONDISCRIMINATION – 2024 FINAL
RULE**

Published: 9/3/2024

Nondiscrimination Policy¹

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

SUNY Erie Community College 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 Nondiscrimination²

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

SUNY Erie Community College 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 Erie Community College Title IX Coordinator, the U.S. Department of Education’s Office for Civil Rights, or both. SUNY Erie Community College’s Title IX Coordinator is Laura Tesch, Special Projects HR/Legal. She can be reached at tesch@ecc.edu.

SUNY Erie’s nondiscrimination policy and grievance procedures can be located at <https://catalog.ecc.edu/content.php?catoid=30&navoid=2550>

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.ecc.edu/student-support/equity-diversity-inclusion/>

Abbreviated Notice of Nondiscrimination³

¹ 34 C.F.R. 106.8(b).

² 34 C.F.R. 106.8(c).

³ 34 C.F.R. 106.8(c)(2).

SUNY Erie Community College 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 ecc.edu

Grievance Procedure for Complaints of Sex Discrimination **(Under § 106.45 of the 2024 Title IX Final Rule)⁴**

I. Effective Date

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 the institution's Title IX procedure.

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 Reg. 33474 (Apr. 29, 2024)), be stayed or held invalid by a court of law, or if the 2024 Title IX Final Rule is withdrawn or modified to not require elements of this Grievance Procedure, the Grievance Procedure in its entirety, or the invalidated elements of this Procedure, they 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 complete by the date of the opinion or order publication by the Court. If this 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 Code of Conduct Student Policy. SUNY Erie Community College will update this Grievance Procedure as soon as practicable to reflect any court rulings or changes that invalidate parts of the Grievance Procedure, if applicable.

II. Scope of Procedure⁵

SUNY Erie Community College 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 specific offenses (sexual assault, dating violence, domestic violence, and stalking). For the prompt and equitable resolution of

⁴ 34 C.F.R. 106.45.

⁵ 34 C.F.R. 106.10.

Complaints of sex-based harassment involving a student Party, the institution will utilize://catalog.ecc.edu/mime/media/30/320/Sexual+Harassment+Policy.pdf

III. Jurisdiction of Procedure⁶

- This Procedure applies to all sex discrimination occurring under SUNY Erie's Education Program or Activity in the United States.
- Conduct that occurs under SUNY Erie's Education Program or Activity includes but is not limited to conduct that occurs in a building owned or controlled by a student organization that is officially recognized by SUNY Erie and conduct that is subject to SUNY Erie's disciplinary authority.
- SUNY Erie 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 Erie must not carry out such different treatment or separation in a manner that discriminates on the basis of sex by subjecting a person to more than de minimis harm, except as permitted by law.

IV. Definitions ⁷

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 Erie.

2. **Consent** means a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in 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.

3. **Complainant** means:

(a) a student or employee who is alleged to have been subjected to conduct that could constitute sex-based harassment as defined in this procedure and who was participating or attempting to participate in SUNY Erie other than a student or employee who is alleged to have been subjected to conduct that could constitute sex-based harassment under these grievance procedures and who was participating or attempting to participate in SUNY Erie's Education Program or Activity at the time of the alleged sex-based harassment.

⁶ 34 C.F.R. 106.11.

⁷ 34 C.F.R. 106.2.

4. ***Complaint*** means an oral or written request to SUNY Erie that objectively can be understood as a request for SUNY Erie to investigate and make a determination about alleged sex discrimination at the institution.
5. ***Confidential Employee*** means:
- (1) an employee of SUNY Erie 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 Erie whom the recipient has designated as confidential for the purpose of providing services to persons related to sex discrimination. If the employee also has a duty not associated with providing those services, the employee's confidential status is only with respect to information received about sex discrimination in connection with providing those services; or
 - (3) an employee of SUNY Erie who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about sex discrimination. The employee's confidential status is only with respect to information received while conducting the study.
6. ***Disciplinary Sanctions*** means consequences imposed on a Respondent following a determination under this grievance procedure that the Respondent violated SUNY Erie's prohibition sex discrimination.
7. ***Education Program or Activity*** means all of the operations of a college, university, or other postsecondary institution, or a public system of higher education.
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, and evidence is relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination occurred.

11. **Remedies** means measures provided, as appropriate, to a Complainant or any other person SUNY Erie identified as having had their equal access to SUNY Erie's Education Program or Activity limited or denied by sex discrimination. These measures are provided to restore or preserve that person's access to SUNY Erie's Education Program or Activity after SUNY Erie determines that sex discrimination occurred.

12. **Respondent** means a person who is alleged to have violated SUNY Erie's prohibition on sex discrimination.

13. **Retaliation** means intimidation, threats, coercion, or discrimination by any person by SUNY Erie, a student, or an employee or other person authorized by SUNY Erie to provide aid, benefit, or service under SUNY Erie'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 Grievance Procedure.

14. **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 Erie'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 Erie'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 Erie's Education Program or Activity;
2. The type, frequency, and duration of the conduct;
3. The Parties' ages, roles within SUNY Erie'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 Erie's Education Program or Activity.

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

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

(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) Where the existence of such a relationship shall be determined based on a consideration of the following factors: The length of the relationship; the type of relationship; and the frequency of interaction between the persons involved in the relationship.

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

(A) Is a current or former partner of the victim under the family or domestic violence laws of New York State, or a person similarly situated to a spouse of the victim;

(B) Is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner;

(C) Shared a child in common with the victim; or

(D) Commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of New York State; or

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

(A) fear for the person's safety or the safety of others; or

(B) suffer substantial emotional distress.

15. ***Student*** means a person who has gained admission.

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

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

V. Basic Requirements of Title IX Grievance Procedure:⁸

- a) *Equitable Treatment*: SUNY Erie will treat Complainants and Respondents equitably.
- b) *Conflicts and Bias*: SUNY Erie requires that any Title IX Coordinator, investigator, or decisionmaker not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. A decisionmaker may be the same person as the Title IX Coordinator or investigator.
- c) *Presumption*: SUNY Erie presumes that the Respondent is not responsible for the alleged sex discrimination until a determination is made at the conclusion of its Grievance Procedure.
- d) *Reasonably Prompt Timeframes*: SUNY Erie has established timeframes for the major stages of the grievance procedures
- e) *Extensions*: SUNY Erie has also established 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:
- f) *Privacy*: SUNY Erie will take reasonable steps to protect the privacy of the Parties and witnesses during its grievance procedure. These steps will not restrict the ability of the Parties to obtain and present evidence, including by speaking to witnesses; consult with their family members, confidential resources, or advisors; or otherwise prepare for or participate in the grievance procedure. The Parties cannot engage in retaliation, including against witnesses.
- g) *Objectivity*: SUNY Erie will objectively evaluate all evidence that is relevant and not otherwise impermissible including both inculpatory and exculpatory evidence. Credibility determinations will not be based on a person's status as a Complainant, Respondent, or witness.
- h) *Impermissible Evidence*: The following types of evidence, and questions SUNY Erie 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 Erie obtains that Party's or witness's voluntary, written consent for use in its grievance procedures; and

⁸ 34 C.F.R. 106.45(b).

- 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.

VI. Disability Accommodations

A. Generally

This Procedure does not alter any institutional obligations under federal and New York State disability laws, including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point before or during the Title IX Grievance Procedure that do not fundamentally alter the Procedure. The Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the Parties, even where the Parties may be receiving accommodations in other institutional programs and activities.

B. Supportive Measures

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

VII. Reporting Sex Discrimination to the Institution

A. Complaints

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

- A "Complainant," which includes: a student or employee of SUNY Erie 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 Erie 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 Erie 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 Erie'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 SUNY Erie; or
- Any person other than a student or employee who was participating or attempting to participate in SUNY Erie's 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 Erie's policies or procedures discriminate on the basis of sex.⁹

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.

Laura Tesch, Special Projects-HR/Legal
tesch@ecc.edu

B. Confidential Reports

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

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

The following officials at SUNY Erie may provide confidentiality:

C. Public Awareness Events

⁹ 89 FR 33654.

When SUNY Erie '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 Erie 's campus or through an online platform sponsored by it, SUNY Erie 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 Erie 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 Erie to require its Title IX Coordinator or any other employee to attend such public awareness events.

VIII. Supportive and Interim Measures

A. Providing Supportive Measures¹⁰

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

As appropriate, supportive measures may include but not be limited to:

- 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; or
- 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 Erie's educational environment, or to provide support during SUNY Erie's sex-based harassment grievance procedure under this policy

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

¹⁰ 34 C.F.R. 106.44(g).

SUNY Erie 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 Erie's Education Program or Activity, or there is an exception that applies, such as:

- SUNY Erie 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 Erie's Education Program or Activity;
- As required by Federal law, federal regulations, or the terms and conditions of a federal award; or
- To the extent such disclosures are not otherwise in conflict with Title IX, when required by State or local law or when permitted under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g, or its implementing regulations, 34 CFR Part 99).

B. Process for Review of Supportive Measures¹¹

SUNY Erie provides for a Complainant or Respondent to seek modification or reversal of SUNY Erie's decision to provide, deny, modify or terminate a supportive measure.

This review will be done by an impartial employee of SUNY Erie who did not make the challenged decision on the original supportive measure request. The impartial employee of SUNY Erie 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 procedure as outlined above for providing supportive measures in accordance with the Title IX regulations.

Parties are only allowed to challenge their own individual supportive measures. 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).

C. Emergency Removal¹²

SUNY Erie retains the authority to remove a Respondent from SUNY Erie's Education Program or Activity on an emergency basis, where SUNY Erie (1) undertakes an individualized safety and risk analysis, and (2) determines that an imminent and serious threat to the health or safety of

¹¹ 34 C.F.R. 106.44(g)(4).

¹² 34 C.F.R. 106.44(h).

a Complainant or any students, employees, or other persons arising from the allegations of sex-based harassment justifies removal.

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

D. Administrative Leave¹³

SUNY Erie retains the authority to place a non-student employee Respondent on administrative leave during the Title IX Grievance Procedure, consistent with The College Catalog.

Note on student employees: when a Complainant or Respondent is both a student and an employee of SUNY Erie, SUNY Erie must make a fact-specific inquiry to determine whether these procedures apply to that student employee. If the Complainant or Respondent's primary relationship with SUNY Erie is to receive an education and whether the alleged sex-based harassment occurred while the Party was performing employment-related work.

IX. The Title IX Grievance Procedure for Sex Discrimination

A. Filing a Complaint¹⁴

Who can make a Complaint?

- A Complainant, which includes: a student or employee of SUNY Erie 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 Erie 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 Erie's Education Program or Activity;
- A parent, guardian, or other authorized legal representative with the legal right to act on behalf of a Complainant; or
- The Title IX Coordinator.

Title IX Coordinator initiated Complaints: In the absence of a Complaint or the withdrawal of any or all 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;

¹³ 34 C.F.R. 106.44(i).

¹⁴ 34 C.F.R. 106.45(a)(2).

- The risk that additional acts of sex-based harassment would occur if a Complaint were not initiated;
- The severity of the alleged sex-based harassment, including whether the sex-based harassment, if established, would require the removal of a Respondent from campus or imposition of another disciplinary sanction to end the sex-based harassment and prevent its recurrence;
- The age and relationship of the Parties, including whether the Respondent is an employee of the recipient;
- The scope of the alleged sex-based harassment, including information suggesting a pattern, ongoing sex-based harassment, or sex-based harassment alleged to have impacted multiple individuals;
- The availability of evidence to assist a decisionmaker in determining whether sex-based harassment occurred; and
- Whether SUNY Erie 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 Erie 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 VI of these procedures.

Format of Complaint

As defined in IV(4) of these procedures, a Complaint can be an oral or written request to SUNY Erie that objectively can be understood as a request for SUNY Erie to investigate and make a determination about alleged sex discrimination at the institution.

Who can I report a Complaint to?

Laura Tesch
tesch@ecc.edu

B. Consolidation of Complaints¹⁵

SUNY Erie 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

¹⁵ 34 C.F.R 106.45(e).

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

C. Notice of Allegations¹⁶

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

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

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

D. Investigation¹⁷

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

SUNY Erie 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 Erie will review all evidence gathered through the investigation and determine what evidence is relevant and what evidence is impermissible regardless of relevance.

SUNY Erie 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:

¹⁶ 34 C.F.R. 106.45(c).

¹⁷ 34 C.F.R. 106.45(f).

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

SUNY Erie will provide a reasonable opportunity to respond to the evidence or the accurate description of the evidence; and SUNY Erie's 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*¹⁸

The following types of evidence, and questions seeking that evidence, are impermissible (*i.e.*, will not be accessed or considered, except by SUNY Erie 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 Erie 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.

¹⁸ 34 C.F.R. 106.45(b)(7).

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. 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.¹⁹

E. Determination Regarding Responsibility

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

- Use the 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 Erie identifies as having had equal access to SUNY Erie Education Program or Activity limited or denied by sex discrimination;
 - Coordinate the imposition of any disciplinary sanctions on a Respondent, including notification to the Complainant of any such disciplinary sanctions; and
 - Take other appropriate prompt and effective steps to ensure that sex discrimination does not continue or recur within SUNY Erie's Education Program or Activity.
- Comply with the grievance procedure before the imposition of any disciplinary sanctions against a Respondent; and

¹⁹ NOTE: This section provides for a "single investigator/decisionmaker" model. If your jurisdiction requires a live hearing to assess credibility, you will need to modify this Procedure to reflect language that fits your institutional needs.

- Not discipline a Party, witness, or others participating in the grievance procedure for making a false statement or for engaging in consensual sexual conduct based solely on the determination whether sex discrimination occurred.

F. Dismissal of a Complaint

Bases for Dismissal

SUNY Erie may dismiss a Complaint of sex discrimination for any of the following reasons:

- SUNY Erie is unable to identify the Respondent after taking reasonable steps to do so;
- The Respondent is not participating in SUNY Erie's Education Program or Activity and is not employed by SUNY Erie;
- The Complainant voluntarily withdraws any or all of the allegations in the Complaint, the Title IX Coordinator declines to initiate a Complaint under the bases described in these procedures, and SUNY Erie 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 these grievance procedures even if proven; or
- SUNY Erie determines that the conduct alleged in the Complaint, even if proven, would not constitute sex discrimination under Title IX or these procedures. Note: SUNY Erie must make reasonable efforts to clarify the allegations with the Complainant before dismissing under this basis.

Notice of Dismissal

Upon dismissal, SUNY Erie will promptly notify the Complainant of the basis for the dismissal. If the dismissal occurs after the Respondent has been notified of the allegations, then SUNY Erie 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 Erie 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 Erie 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.

G. Appeal of Dismissals and Determinations²⁰

SUNY Erie offers the following process for appeals from a dismissal or a determination whether sex discrimination occurred:

If the dismissal or determination is appealed, SUNY Erie 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 Erie 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 SUNY Erie's Education Program or Activity.

The submission of appeal stays (or pauses) any sanctions for the pendency (or duration while the appeal is being deliberated and decided upon) 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 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

²⁰ 34 C.F.R. 106.45(i).

be extended unless there is evidence that technical malfunction caused the appeal document not to meet these standards.²¹

Appeals will be decided by the student appeals panel 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.

The outcome of 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 Erie prohibits retaliation, including peer retaliation, in its Education Program or Activity. Upon receiving a Complaint alleging retaliation or upon receiving information about conduct that reasonably may constitute retaliation under Title IX, SUNY Erie will initiate its grievance procedure or, as appropriate, an informal resolution process.

²¹ This can be customized by the institution to reflect different fonts, amounts, etc.