



Title IX Grievance Procedure for Employees

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Note: This procedure is to be used for Title IX Sex Discrimination and Sex-Based Harassment only. For Non-Title IX related Discrimination, Harassment, and/or Retaliation, Upstate's Harassment Prevention Policy and Non-Discrimination and Equal Opportunity Policy will apply.

Summary

SUNY Upstate Medical University ("SUNY Upstate" or "Upstate") is committed to maintaining a learning and workplace environment free from sexual harassment, sex-based harassment and unlawful discrimination. In its continuing effort to seek equity in education and employment, and in support of Federal and State anti-discrimination legislation, SUNY Upstate has adopted this complaint procedure for the prompt and equitable investigation and resolution of allegations of unlawful discrimination on the basis of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, domestic violence victim status, criminal conviction, or any other characteristic protected by applicable state or federal law. Harassment on the basis of the above protected categories is one form of unlawful discrimination. SUNY Upstate will take steps to prevent discrimination and harassment, to prevent the recurrence of discrimination and harassment, and to remedy its discriminatory effects on the victim(s) and others, if appropriate. Sex discrimination includes sexual harassment and sexual and interpersonal violence and may be addressed under this policy or Upstate's Title IX of the Education Amendments of 1972 ("Title IX"), depending on whether the alleged conduct meets the definition found at 34 C.F.R. § 106.2. Retaliation against a person who files a complaint, serves as a witness, or assists or participates in any manner in this procedure is strictly prohibited and may result in disciplinary action.

Process

Applicability

SUNY Upstate's Discrimination Procedures have three different tracks, and may be used by any student or employee, applicants for employment, interns, whether paid or unpaid, volunteers, contractors and persons conducting business with SUNY Upstate, as well as other third parties who are participating in a SUNY Upstate-sponsored program or activity. Complaints alleging *Title IX Sex-Based Harassment* involving students will be investigated and adjudicated in accordance with the applicable Title IX Grievance Procedure. Employee grievance procedures established through negotiated contracts, academic grievance procedures, student disciplinary processes, and any other procedures defined by policy or contract will generally operate independently from this procedure but may be used to give effect to findings where appropriate.

Furthermore, this procedure does not in any way deprive a complainant of the right to file with outside enforcement agencies including, without limitation, the New York State Division of Human Rights ("SDHR"), the Equal Employment Opportunity Commission ("EEOC"), the Office for Civil Rights of the United States Department of Education ("OCR"), and the Office

of Federal Contract Compliance Programs of the United States Department of Labor (OFCCP).

Definitions Applicable to Title IX Sex Discrimination and Sex-Based Harassment

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.

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.

Complainant means:

- (1) a Student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination or Sex-Based Harassment as defined in these Grievance Procedure and who was participating or attempting to participate in SUNY Upstate's Education Program or Activity; or
- (2) a person other than a Student or employee who is alleged to have been subjected to conduct that could constitute sex discrimination or Sex-Based Harassment under these Grievance Procedures and who was participating or attempting to participate in SUNY's Education Program or Activity at the time of the alleged sex discrimination or Sex-Based Harassment.

Complaint means an oral or written request to SUNY Upstate that objectively can be understood as a request for SUNY to investigate and make a determination about alleged sex discrimination or Sex-Based Harassment at the institution.

Confidential Employee means:

- (1) an employee of SUNY 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 Upstate whom the institution has designated as confidential for the purpose of providing services to persons related to sex discrimination or 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 discrimination or Sex-Based Harassment in connection with providing those services; or

- (3) an employee of SUNY Upstate who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about sex discrimination or Sex-Based Harassment. The employee's confidential status is only with respect to information received while conducting the study.

Disciplinary Sanctions means consequences imposed on a student Respondent following a determination under this Grievance Procedure that the Respondent violated SUNY Upstate's prohibition on sex discrimination or Sex-Based Harassment.

Discrimination on the Basis of Sex Under Title IX means discrimination on the basis of sex, sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity.

Education Program or Activity means any academic, extracurricular, research, occupational training, or other Education Program or Activity operated by SUNY that receives Federal financial assistance.

Party means Complainant or Respondent.

Peer Retaliation means Retaliation by a Student against another Student.

Relevant means related to the allegations of sex discrimination and Sex-Based Harassment under investigation as part of these Grievance Procedures. Questions are Relevant when they seek evidence that may aid in showing whether the alleged sex discrimination or Sex-Based Harassment occurred, and evidence is Relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination or Sex-Based Harassment occurred.

Remedies means measures provided, as appropriate, to a Complainant or any other person SUNY Upstate identifies as having had their equal access to SUNY Upstate'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 Upstate's Education Program or Activity after SUNY Upstate determines that sex discrimination or Sex-Based Harassment occurred.

Respondent means a person who is alleged to have violated SUNY Upstate's prohibition on sex discrimination Sex-Based Harassment.

Retaliation means intimidation, threats, coercion, or discrimination by any person at SUNY Upstate, a Student, or an employee or other person authorized by SUNY Upstate to provide aid, benefit, or service under SUNY Upstate'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 under these Grievance Procedure.

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 Upstate'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'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: (i) the degree to which the conduct affected the Complainant's ability to access SUNY's Education Program or Activity; (ii) the type, frequency, and duration of the conduct; (iii) the Parties' ages, roles within SUNY's Education Program or Activity, previous interactions and other factors about each Party that may be Relevant to evaluating the effects of the conduct; (iv) the location of the conduct and the context in which the conduct occurred; and (v) other Sex-Based Harassment in SUNY's Education Program or Activity;
- (3) *Sexual Assault* (as defined in the Clery Act, 20 U.S.C. 1092(f)) 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 crime 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, 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; 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.

Student means a person who has gained Admission.

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's Education Program or Activity, including measures that are designed to protect the safety of the Parties or SUNY's educational environment; or (2) provide support during SUNY's Grievance Procedures for Sex Discrimination and Sex-Based Harassment.

Title IX Procedures

I. Provisions Applying to all Title IX Procedures Related to Employees

Effective Date

These Procedures apply to incidents that occur on or after August 1, 2024. Any incidents reported under these Procedures that occurred on or before July 31, 2024, will be processed through the institution's 2020 Title IX Grievance Policy and other applicable policies at the time when the reported incident occurred.

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 these Grievance Procedures, these Grievance Procedures in their entirety, or the invalidated elements of these Procedures, 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 these Procedures are revoked in this manner, any conduct covered under these Procedures shall be investigated and adjudicated under the previous 2020 Title IX Grievance Policy at the local institutional level and/or the local institution's student Code of Conduct and/or Sexual Misconduct Policies and/or procedures, as applicable. SUNY will update these Grievance Procedures as soon as practicable to reflect any court rulings or changes that invalidate parts of these Grievance Procedures, if applicable.

Scope of Procedures

SUNY Upstate has adopted grievance procedures that provide for the prompt and equitable resolution of sex discrimination and sex-based harassment 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, 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 Complaints of sex-based harassment involving a student Respondent, the institution will utilize the local institution's Sex-Based Harassment Grievance Procedure for students and student respondents.

Jurisdiction of Procedure

This Procedure applies to all sex discrimination and sex-based harassment involving employee respondents occurring under SUNY Upstate's Education Program or Activity in the United States.

Conduct that occurs under SUNY Upstate'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 Upstate and conduct that is subject to Upstate's disciplinary authority.

SUNY Upstate 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 Upstate 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.

Allegations Potentially Falling Under More Than One Policy or Procedure

If the alleged conduct, if true, includes conduct that would constitute sex discrimination as covered by these procedures, and/or sex-based harassment complaints against an employee respondent under these procedures, as well as conduct not covered by these procedures, the Title IX Grievance Procedures will be applied to investigation and adjudication of only the allegations that constitute sex discrimination, retaliation and/or sex-based harassment involving employee-respondents covered under these procedures, and any other conduct will be referred to other appropriate policies and procedures of the institution for appropriate evaluation, investigation and determination.

Disability Accommodations

Generally

These Procedures do not alter any institutional obligations under federal and 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 Procedures 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.

Supportive Measures

If the Complainant or Respondent discloses a disability, the Title IX Coordinator may consult, as appropriate, with Upstate's Office for Student Accommodations to provide support to students with disabilities to determine how to comply with Section 504 of the Rehabilitation Act of 1973 and/or other applicable laws in the implementation of any supportive measures. In the case of employees, the Title IX Coordinator will work with SUNY Upstate's Office of Human Resources to provide appropriate reasonable accommodations as necessary under employment laws.

Reporting Sex Discrimination to the Institution

Complaints

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.

Upstate will display the contact information for their Title IX Coordinator directly on their website and in their local procedures, if any, which will include the Title IX Coordinator's name, title, office address, email address, and telephone number, as demonstrated below:

Contact Information for the Title IX Coordinator at SUNY Upstate:

Kate Nearpass
Interim Co-Director, Office of Institutional Equity
SUNY Upstate Medical University
(585) 204-2029
NearpassK@upstate.edu

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

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

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 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 could end the alleged sex-based harassment and prevent its recurrence without initiating these grievance procedures.

If after considering these and other relevant factors, the Title IX Coordinator determines that the conduct as alleged presents 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 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.

Confidential Reports

The following officials at SUNY Upstate 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;
- All employees not designated as confidential under the Procedures.

The following officials at SUNY Upstate may provide confidentiality:

- Counselors at the Psychological Counseling Center on campus;
- Employees in the Student Health Center;
- Others that may be designated by the institution on the local level in accordance with the applicable definitions.

Is there a particular format that the Complaint needs to be in?

A Complaint can be an oral or written request to Upstate that objectively can be understood as a request for Upstate to investigate and make a determination about alleged Sex Discrimination, Sex-Based Harassment and/or retaliation under Title IX at the institution.

Who can I report a Complaint to?

Any reports of Sex Discrimination or Sex-Based Harassment or Retaliation under Title IX may be made directly to the Title IX Coordinator, whose contact information is listed in these Grievance Procedures. There are other ways in which a Party may report a Complaint.

Upstate requires that any employee who is not a Confidential Employee and who either has authority to institute corrective measures on behalf of Upstate or has responsibility for administrative leadership, teaching, or advising in SUNY'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 Upstate employees 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.

Note: If an employee has personally been subject to conduct that reasonably may constitute sex discrimination or sex-based harassment under Title IX or any institutional policy or these

Grievance Procedures, these requirements do not apply to an employee reporting a personal Complaint.

What is the timeframe for Upstate to evaluate if the Title IX Coordinator is initiating an investigation under this Grievance Procedure?

The Title IX Coordinator must evaluate whether the Complaint falls under these Grievance Procedures within seven (7) business days after the Complaint is made and must issue the Notice of Allegations as soon as practicable after the Complaint is evaluated. If there are any delays or extensions, the Title IX Coordinator must appropriately notice the Parties in writing, on a case-by-case basis, with good cause and the rationale for the extension or delay.

Can I make a Complaint and request initiation of these Grievance Procedures even if I have made a complaint to law enforcement?

Yes. Upstate has an obligation to appropriately evaluate all Complaints, regardless of whether there is a concurrent Complaint before law enforcement. This process is an administrative process that is different from the criminal justice process.

Multi-Party Situations and Consolidation of Complaints

Upstate may consolidate Complaints alleging sex discrimination, Sex-Based Harassment and/or Retaliation against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against the other Party, where the allegations of sex discrimination, Sex-Based Harassment or retaliation 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.

SUNY Upstate can consider factors when making this fact-specific determination, which include, but are not limited to:

- The facts and circumstances of the particular Complaints when deciding whether to consolidate, including the toll of separate proceedings on the Parties; and
- Any risks to the fairness of the investigation or outcome.

Supportive and Interim Measures

Providing Supportive Measures

Complainants who report allegations of sex discrimination, sex-based harassment and/or retaliation have the right to receive supportive measures from Upstate regardless of whether they file a Complaint. Supportive measures are non-disciplinary and non-punitive.

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 Upstate; 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 Upstate's educational environment, or to provide support during a Upstate's grievance procedures.

Upstate may modify or terminate supportive measures at the conclusion of grievance procedures or may continue them beyond that point within its discretion.

Upstate 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 Upstate's Education Program or Activity, or there is an exception that applies, including, without limitation:

- Upstate 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 discrimination, sex-based harassment, and/or retaliation under Title IX in SUNY Upstate'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 Upstate provides for a Complainant or Respondent to seek modification or reversal of its decision to provide, deny, modify or terminate a supportive measure.

This review will be done by an impartial employee of Upstate, who did not make the challenged decision on the original supportive measure request. The impartial employee of 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 (e.g., two-way no contact orders).

Emergency Removal

Upstate retains the authority to remove a Respondent from its Education Program or Activity on an emergency basis, where Upstate (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 discrimination, sex-based harassment and/or retaliation justifies removal. For any SUNY Upstate employee, this will be consistent with current Human Resource policy or practice and provisions of any applicable collective bargaining agreement.

Upstate will provide the Respondent with notice and an opportunity to challenge the decision immediately following the removal. The Respondent must provide any challenge to Upstate within 2 business days of receipt of the emergency removal, in writing. Upstate will hear the challenge within 3 business days of receipt of the challenge to the emergency removal. SUNY Upstate will issue a decision within 2 business days of hearing the challenge.

Note: The individual who hears the challenge to the removal determination should not be involved in any decision regarding responsibility or appeal of that decision regarding responsibility.

Administrative Leave or Alternate Assignment

Upstate retains the authority to place a non-student employee Respondent on alternate assignment during the Title IX Grievance Procedures, consistent with current Human Resource policy or practice and the applicable collective bargaining agreement.

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

Dismissal of a Complaint

Bases for Dismissal

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

- Upstate is unable to identify the Respondent after taking reasonable steps to do so;
- The Respondent is not participating in SUNY Upstate's Education Program or Activity

and is not employed by Upstate;

- 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 Upstate determines that, without the Complainant's withdrawn allegations, the conduct that remains alleged in the Complaint, if any, would not constitute sex discrimination, sex-based harassment, and/or retaliation under Title IX or these grievance procedures even if proven; or
- Upstate determines that the conduct alleged in the Complaint, even if proven, would not constitute sex discrimination, sex-based harassment, and/or retaliation under Title IX or these procedures. Note: Upstate must make reasonable efforts to clarify the allegations with the Complainant before dismissing under this basis.

Notice of Dismissal

Upon dismissal, Upstate 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 Upstate 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.

Upstate 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 Upstate 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.

Appeal of Dismissals and Determinations

SUNY Upstate offers the following process for appeals from a dismissal of a complaint or a determination whether sex discrimination, sex-based harassment and/or retaliation occurred:

A. If the dismissal of a complaint or determination is appealed, Upstate 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.

B. When a Complaint is dismissed, Upstate 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 Upstate'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, Upstate 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 will be decided by the local institution's appeal decisionmaker or decision-making body, 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. Decisions relating to an appeal shall take up to fourteen (14) business days from the date of submission of the appeal. The determination of the Appeal Decision-making Body is final.

Evidence and Evidentiary Standards

Standard of Proof

SUNY Upstate uses the preponderance of the evidence standard of proof to determine whether or not sex discrimination, Sex-Based Harassment or retaliation occurred. This means that the investigation and hearing determine whether it is more likely than not that alleged sex discrimination, sex-based harassment, and/or retaliation occurred.

Relevant Evidence

Evidence is Relevant when it is related to the allegations of sex discrimination, Sex-Based Harassment or retaliation 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, Sex-Based Harassment or retaliation occurred, and evidence is Relevant when it may aid a decisionmaker in determining whether the alleged sex discrimination, Sex-Based Harassment or retaliation occurred.

Relevant but Always 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 Upstate 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 Upstate 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 discrimination or 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 sex-based harassment or preclude determination that sex discrimination or sex-based harassment occurred.

Retaliation

SUNY Upstate prohibits retaliation, including peer retaliation, in its Education Program or Activity. 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 SUNY Upstate's Grievance Procedures.

Any intimidation, threats, coercion, or discrimination, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations constitutes Retaliation. This includes any charges filed against an individual for Code of Conduct violations that do not involve sex discrimination or 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. Upon receiving a Complaint alleging retaliation or upon receiving information about conduct that reasonably may constitute retaliation under Title IX, Upstate will initiate the appropriate grievance procedure.

Upstate 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 Upstate's Title IX Grievance Procedure, 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 Upstate's Title IX Grievance Procedure.

II. Track 1: The Title IX Grievance Procedure for Sex Discrimination Other than Sex-Based Harassment for Students and Employees, Title IX Retaliation for Students and Employees, and Sex-Based Harassment Occurring Between Employees

Basic Requirements

- a) *Equitable Treatment*: SUNY Upstate will treat Complainants and Respondents equitably.
- b) *Conflicts and Bias*: SUNY Upstate 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 Upstate 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 Upstate has established timeframes for the major stages of the grievance procedures: Evaluation (i.e., the decision whether to dismiss or investigate a Complaint shall take up to seven (7) business days; investigation shall take up to forty-five (45) business days; determination shall take up to fourteen (14) business days; and appeal shall take up to fourteen (14) business days).
- e) *Extensions*: SUNY Upstate 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. Any delay will be provided to both parties in writing.
- f) *Privacy*: SUNY Upstate 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 Upstate 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*: Impermissible evidence, and questions seeking that evidence, are not allowed under the 2024 Title IX regulations (*i.e.*, will not be accessed or considered, except by SUNY Upstate 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.

Written Notice of Allegations

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

- SUNY Upstate's Title IX grievance procedure;
- 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, sex-based harassment, and/or retaliation, 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 an accurate description of this evidence. The Parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence upon the request of any Party.

If, in the course of an investigation, Upstate 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 Upstate will notify the Parties of the additional allegations.

Investigation

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

Upstate 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.

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

Upstate will provide an equal opportunity to access an accurate description of this evidence to each Party in the form of an investigative report. Upstate will also provide the Parties with

an equal opportunity to access the relevant and not otherwise impermissible underlying evidence in the Investigative Report, upon the request of any Party.

The Title IX Coordinator and/or investigator designated by the Title IX Coordinator and the Human Resources Officer and/or their designee, will provide each Party and their advisors of choice with a reasonable opportunity to respond to the investigative report. Both Parties will have the opportunity to respond to the investigative report prior to a decision.

The Investigative Report is not intended to catalog all evidence obtained by the investigator, but only to provide a fair summary of the relevant evidence. Only relevant evidence will be referenced in the Investigative Report. The investigator may redact irrelevant information from the Investigative Report when that information is contained in documents or evidence that is/are otherwise relevant.

Upstate 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.

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 meeting.

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.

Any questioning of the Respondent that is a SUNY Upstate employee will occur in conjunction with Human Resources or employee/labor relations office and consistent with the applicable collective bargaining agreement.

Determination Regarding Responsibility

Following an investigation and evaluation of all relevant and not otherwise impermissible evidence, Upstate 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 Upstate identifies as having had equal access to SUNY Upstate's Education Program or Activity limited or denied by sex discrimination, sex-based harassment, or retaliation;
 - Coordinate the imposition of any disciplinary sanctions on a Student 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 Upstate's Education Program or Activity.
- Comply with this Grievance Procedure before the imposition of any disciplinary sanctions against a student Respondent; and
- Not discipline a Party, witness, or others participating in the grievance procedure for making a false statement or for engaging in consensual sexual conduct based solely on the determination whether sex discrimination occurred.
- Additionally, for employees both not in a collective bargaining unit and in a collective bargaining unit, discipline will not be communicated in this determination. This determination will only include the finding and referral to the president or designee for further disciplinary action under the appropriate Human Resources policies and/or procedures and applicable collective bargaining agreements.
 - *For employees (including student employees) not in a collective bargaining unit:* The president or designee may take such administrative action as they deem appropriate under their authority as the chief administrative officer of the college, including but not limited to, termination, demotion, reassignment, suspension, reprimand, or training.
 - *For employees in collective bargaining units:* The president or designee may determine that sufficient information exists to refer the matter to their designee for disciplinary action, or other action as may be appropriate under the applicable collective bargaining agreement. Potential outcomes may include a reprimand, suspension, termination, training, fine, demotion, or informal or formal counseling.

III. Track 2: Procedure for Sex-Based Harassment Complaints by Student Complainants Against Employee-Respondents

Basic Requirements of the Grievance Procedure

Upstate is required to:

- Treat Complainants and Respondents equitably;
- Ensure that any person designated by Upstate 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;
- 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;
 - o *Reasonably Prompt Timeframes*: SUNY Upstate has established timeframes for the major stages of this track of the grievance procedure: Evaluation (i.e., the decision whether to dismiss or investigate a Complaint shall take up to seven (7) business days; investigation shall take up to forty-five (45) business days; determination shall take up to fourteen (14) business days; and appeal shall take up to fourteen (14) business days.
- 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 such does not result in Retaliation), consult with their family members, confidential resources, or advisors, or otherwise prepare for or participate in this Grievance Procedure;
- Ensure an objective evaluation of all evidence that is Relevant and not otherwise impermissible under these procedures, 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; and
- Clearly articulate principles for how Upstate will determine which policies and procedures apply if not all such Complaints are handled under this institutional Grievance Procedure.

Note: The decisionmaker may be the same person as the Title IX Coordinator or investigator as allowed by the 2024 Title IX Regulations; no inference of bias or conflict of interest can be drawn solely because the decisionmaker is the same person as the Title IX Coordinator or investigator in a case.

Note on Student employees: when a Complainant or Respondent is both a Student and an employee of Upstate, Upstate must make a fact-specific inquiry to determine whether these procedures apply to that Student employee. Upstate will consider if the Complainant or Respondent's primary relationship with Upstate is to receive an education and whether the alleged Sex-Based Harassment occurred while the Party was performing employment-related work.

Written Notice of Allegations

Upon initiating SUNY Upstate's Grievance Procedure, the Title IX Coordinator shall provide a Notice of Allegations in writing to the Parties whose identities are known. SUNY Upstate will provide a Notice of Allegation up to seven (7) business days after it receives a Complaint, if there are no extenuating circumstances.

What does the Notice of Allegations Include?

The written Notice of Allegations must include:

- Upstate's Grievance Procedure;
- 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-Based Harassment under the Grievance Procedure, and the date(s) and location(s) of the alleged incident(s), to the extent that information is available to Upstate;
- A statement that the Parties are entitled to 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;
- A statement that the Respondent is presumed not responsible for the alleged Sex-Based Harassment until a determination is made at the conclusion of Upstate's Grievance Procedure and that prior to the determination, the Parties will have an opportunity to present Relevant and not otherwise impermissible evidence to a trained, impartial investigator/decisionmaker;
- Parties may have an advisor of their choice, and that the advisor may be, but is not required to be, an attorney;
- Upstate's Student Code of Conduct and applicable policies for employees that prohibit knowingly making false statements or knowingly submitting false information during Upstate's Grievance Procedure; and
- If, in the course of an investigation, Upstate decides to investigate additional allegations of Sex-Based Harassment by the Respondent toward the Complainant that are not included in the original written Notice of Allegations provided, Upstate is required to provide written notice of any additional allegations to the Parties whose identities are known.

What if Upstate decides to investigate additional allegations of Sex-Based Harassment?

If, in the course of an investigation, Upstate decides to investigate additional allegations of Sex-Based Harassment by the Respondent toward the Complainant that are not included in the original issued written Notice of Allegations, or that are included in a Complaint that is consolidated under this Grievance Procedure, Upstate shall provide notice of the additional allegations to the Parties whose identities are known.

What if I have safety concerns about a Notice of Allegations being issued to a Respondent?

To the extent that Upstate has reasonable concerns for the safety of any person as a result of providing a written Notice of Allegations, Upstate, through the Title IX Coordinator (or designee), may reasonably delay providing the written Notice of Allegations in order to address the safety concern appropriately. Reasonable concerns must be based on individualized safety and risk analysis and not on mere speculation or stereotypes.

Advisor of Choice and Participation of Advisor of Choice

A Party's advisor of choice may accompany the Party to any meeting or proceeding, and Upstate cannot limit the choice of who that advisor may be or their presence for the Parties in any meeting or proceeding. For employees in applicable collective bargaining units, the advisor of choice may also be such employee's union representative.

Investigation

General Rules of Investigations

The Title IX Coordinator and/or an investigator designated by the Title IX Coordinator, in conjunction with the designee from Human Resources, will perform an investigation of the conduct alleged to constitute Sex-Based Harassment in a reasonably prompt timeframe, after issuing the Notice of Allegations.

Upstate, and not the Parties, has the burden to conduct an investigation that gathers sufficient evidence to determine whether Sex-Based Harassment occurred under this Grievance Procedure. This burden does not rest with either Party, and either Party may decide not to share their account of what occurred, or may decide not to participate in the investigation or hearing. This does not shift the burden of proof away from Upstate and does not indicate responsibility.

Upstate cannot access, consider, or disclose medical records without a waiver from the Party (or parent, if applicable) to whom the records belong, or of whom the records include information. Upstate will provide an equal opportunity for the Parties to present witnesses, including fact and expert witnesses, and other inculpatory or exculpatory evidence, as described below.

Any questioning of the Respondent who is an Upstate employee will occur in conjunction with Human Resources or employee/labor relations office and consistent with any applicable collective bargaining agreement.

Notice of participation

Upstate will provide written notice of the date, time, location, participants, and purpose of all meetings or proceedings with sufficient time for the Party to prepare to participate, if a Party is invited or expected to participate in any such meeting or proceeding.

Advisors of Choice and Participation of Advisors of Choice

Upstate will provide the Parties with the same opportunities to be accompanied to any meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of the advisor for the Complainant or Respondent in any meeting or proceeding.

Access to and Review of the Investigative Report

The Title IX Coordinator and/or investigator designated by the Title IX Coordinator and the Human Resources officer and/or their designee, will provide each Party and their advisors of choice with an equal opportunity to access and review an accurate description of the Relevant evidence collected throughout the investigation that is not otherwise impermissible in the form of an investigative report.

The Parties and their advisors of choice will also have an equal opportunity to access and review the underlying Relevant and not otherwise impermissible evidence summarized in the investigative report upon the request of any Party.

The Title IX Coordinator and/or investigator designated by the Title IX Coordinator and the Human Resources officer and/or their designee, will provide each Party and their advisors of choice with a reasonable opportunity to respond to the investigative report.

Upstate will take reasonable steps to prevent and address the Parties' and their advisors of choice's unauthorized disclosure of information and evidence obtained solely through this Grievance Procedure. Participating individuals who engage in the unauthorized disclosure of information and evidence obtained solely through this Grievance Procedure may be subject to Upstate's institution's Student Code of Conduct, if applicable, and other Upstate policies and/or procedures that may apply.

Review and Access to Relevant and Not Otherwise Impermissible Evidence

Each Party will have an equal opportunity to suggest fact witnesses and other inculpatory and exculpatory evidence that are Relevant and not otherwise impermissible, to the Title IX Coordinator and/or an investigator designated by the Title IX Coordinator and designee from Human Resources through the investigative process. The Title IX Coordinator and/or investigator designated by the Title IX Coordinator will review all evidence gathered through the investigation and determine what evidence is Relevant and what evidence is impermissible regardless of relevance, consistent with this Grievance Procedure.

Upstate will take reasonable steps to prevent and address the Parties' unauthorized disclosure of information and evidence obtained solely through this Grievance Procedure. Participating individuals who engage in the unauthorized disclosure of information and evidence obtained solely through this Grievance Procedure may be subject to Upstate Student Code of Conduct and other Upstate policies and/or procedures that may apply.

Upstate does not provide for a live hearing under this Grievance Procedure. However, Title IX requires that there be live questioning to assess a Party's or witness's credibility to the extent

credibility is both in dispute and Relevant to evaluating one or more allegations of Sex-Based Harassment.

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-Based Harassment. 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 below 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.

Timeframes

An investigation shall take up to forty-five (45) business days to complete. If there are any delays or extensions, the Title IX Coordinator (or designee) will appropriately notice the Parties in writing, as detailed below.

Extensions and Delays

Upstate 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.

Determination Regarding Responsibility

General Considerations for Evaluating Evidence and Testimony

The decisionmaker is required to evaluate Relevant and not otherwise impermissible evidence for its persuasiveness and whether it meets the standard of proof of preponderance of the evidence. If the decisionmaker is not persuaded under the applicable standard by the evidence that Sex-Based Harassment occurred, whatever the quantity of the evidence is, the decisionmaker must not determine that Sex-Based Harassment occurred.

Determinations regarding responsibility may be based in part, or entirely, on documentary, audiovisual, and digital evidence, as warranted in the reasoned judgment of the decisionmaker. Decisionmakers shall not draw inferences regarding a Party or witness' credibility based on the Party or witness' status as a Complainant, Respondent, or witness, nor shall it base its judgments in stereotypes about how a Party or witness would or should act under the circumstances.

Generally, credibility judgments should rest on the demeanor of the Party or witness, the plausibility of their testimony, the consistency of their testimony, and its reliability in light of corroborating or conflicting testimony or evidence. However, credibility judgments should not rest

on whether a Party or witness' testimony is non-linear or incomplete, or if the Party or witness is displaying stress or anxiety.

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

A witness' testimony regarding third-Party knowledge of the facts at issue will be allowed, but will generally be accorded lower weight than testimony regarding direct knowledge of specific facts that occurred.

Communication of the Determination in Writing

All determinations on whether Sex-Based Harassment occurred will be communicated to the Parties in writing, simultaneously.

The written determination will include:

- A description of the alleged Sex-Based Harassment;
- Information about the policies and procedures that Upstate used to evaluate the allegations;
- The decisionmaker's evaluation of the Relevant evidence and determination on whether Sex-Based Harassment occurred;
- Whether Remedies other than the imposition of Disciplinary Sanctions will be provided by Upstate to the Complainant, and, to the extent appropriate, other Students identified by Upstate to be experiencing the effects of Sex-Based Harassment, if there is a finding that Sex-Based Harassment occurred; and
- Upstate's procedures for Complainant and Respondent to appeal.

Timeline of Determination Regarding Responsibility

If there are no extenuating circumstances, the determination regarding responsibility will be issued by Upstate up to fourteen (14) business days of the completion of the investigation.

Finality of Determination

The determination regarding responsibility becomes final either on the date that Upstate provides the Parties with the written determination of the result of any appeal, or, if no Party appeals, the date on which an appeal would no longer be considered timely.

Referral to Human Resources for Further Disciplinary Action

- For employees (including student employees) not in a collective bargaining unit:* The president or designee may take such administrative action as they deem appropriate under their authority as the chief administrative officer of the college, including but not limited to, termination, demotion, reassignment, suspension, reprimand, or training.

- *For employees in collective bargaining units:* The president or designee may determine that sufficient information exists to refer the matter to their designee for disciplinary action, or other action as may be appropriate under the applicable collective bargaining agreement. The potential outcomes may include a reprimand, suspension, termination, training, fine, demotion, or informal or formal counseling.
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