GRIEVANCE POLICY

What is the Purpose of the Title IX Grievance Policy?

Title IX of the Educational Amendments of 1972 prohibits any person in the United States from being discriminated against on the basis of sex in seeking access to any educational program or activity receiving federal financial assistance. The U.S. Department of Education, which enforces Title IX, has long defined the meaning of Title IX's prohibition on sex discrimination broadly to include various forms of sexual harassment and sexual violence that interfere with a student's ability to equally access our educational programs and opportunities.

On May 19, 2020, the U.S. Department of Education issued a Final Rule under Title IX of the Education Amendments of 1972 that:

- Defines the meaning of "sexual harassment" (including forms of sex-based violence).
- Addresses how this institution **must** respond to reports of misconduct falling within that definition of sexual harassment, and
- Mandates a grievance process that this institution **must** follow to comply with the law in these specific covered cases before issuing a disciplinary sanction against a person accused of sexual harassment.

See, 85 Fed. Reg. 30026 (May 19, 2020). The full text of the Final Rule and its extensive Preamble are available here: http://bit.ly/TitleIXReg

Based on the Final Rule, Binghamton University will implement the following Title IX Grievance Policy, effective August 1, 2023.

How does the Title IX Grievance Policy impact other campus disciplinary policies?

In recent years, “Title IX” cases have become a short-hand for any campus disciplinary process involving sex discrimination, including those arising from sexual harassment and sexual assault. But under the Final Rule, Binghamton University must narrow both the geographic scope of its authority to act under Title IX and the types of “sexual harassment” that it must subject to its Title IX investigation and adjudication process.

Binghamton University remains committed to addressing any violations of its policies, even those not meeting the narrow standards defined under the Title IX Final Rule.

Specifically, our campus has:

● A Code of Student Conduct that defines certain behavior as a violation of campus policy, including sections addressing Sexual Harassment, Sexual Assault, Domestic Violence, Dating Violence, Stalking, and related sex-based offenses. To the extent that alleged misconduct falls outside the Title IX Grievance Policy, or misconduct falling outside the Title IX Grievance Policy is discovered in the course of investigating covered Title IX misconduct, the institution retains authority to investigate and adjudicate the allegations under the policies and procedures defined within the Code of Student Conduct (/student-conduct/code.html) through a separate grievance proceeding.

The elements established in the Title IX Grievance Policy under the Final Rule have no effect and are not transferable to any other policy of the University for any violation of the Code of Student Conduct, employment policies, or any civil rights violation except as narrowly defined in this Policy. This Policy does not set a precedent for other policies or processes of the University and may not be cited for or against any right or aspect of any other policy or process. How does the Title IX Grievance Policy impact the handling of complaints? Our existing Title IX office and reporting structure remains in place. What has changed is the way Binghamton University will handle different types of reports arising from sexual misconduct, as detailed in full throughout Section 2.

The Title IX Grievance Policy

General Rules of Application

Effective Date

The Title IX Grievance Policy became effective on August 14, 2020. The 2025-2026 version of the Grievance Policy becomes effective on August 1, 2025.

Revocation by Operation of Law

Should any portion of the Title IX Final Rule, 85 Fed. Reg. 30026 (May 19, 2020), be stayed or held invalid by a court of law, or should the Title IX Final Rule be withdrawn or modified to not require the elements of this policy, this policy, or the invalidated elements of this policy, will be deemed revoked as of the publication date of the opinion or order and for all reports after that date, as well as any elements of the process that occur after that date if a case is not complete by that date of opinion or order publication. Should the Title IX Grievance Policy be revoked in this manner, any conduct covered under the Title IX Grievance Policy may be investigated and adjudicated under the existing Code of Student Conduct.

Non-Discrimination in Application

The requirements and protections of this policy apply equally regardless of sex, sexual orientation, gender identity, gender expression, or other protected classes covered by federal or state law. All requirements and protections are equitably provided to individuals regardless of such status or status as a Complainant, Respondent, or Witness. Individuals who wish to file a complaint about the institution's policy or process may contact the Department of Education's Office for Civil Rights using contact information available at https://ocrcas.ed.gov/contact-ocr

Definitions

Covered Sexual Harassment

For the purposes of this Title IX Grievance Policy, "covered sexual harassment" includes any

conduct on the basis of sex that satisfies one or more of the following:

1. An employee conditioning educational benefits on participation in unwelcome sexual conduct (i.e., quid pro quo);

2. Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the educational institution's education program or activity;

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

4. Dating violence (as defined in the Violence Against Women Act (VAWA) amendments to the Clery Act), which includes any violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship; (ii) The type of relationship; (iii) The frequency of interaction between the persons involved in the relationship.

5. Domestic violence (as defined in the VAWA amendments to the Clery Act), which includes any felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under New York State domestic or family violence laws or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of New York State.

6. Stalking (as defined in the VAWA amendments to the Clery Act), meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to-- (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.

Note that conduct that does not meet one or more of these criteria may still be prohibited under the Code of Student Conduct.

Consent

For the purposes of this Title IX Grievance Policy, “consent” means affirmative consent” - 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.

a) Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.

b) Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.

c) Consent may be initially given but withdrawn at any time.

d) Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs or other intoxicants may be incapacitated, and therefore unable to consent.

e) Consent cannot be given when it is the result of any coercion, intimidation, force or threat of harm.

f) When consent is withdrawn or can no longer be given, sexual activity must stop.

Educational Program or Activity

For the purposes of this Title IX Grievance Policy, Binghamton University's "education program or activity" includes:

- Any on-campus premises
- Any off-campus premises over which Binghamton University has substantial control. This includes buildings or property owned or controlled by a recognized student organization.
- Activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of Binghamton University's programs and activities over which Binghamton University has substantial control.

Formal Complaint

For the purposes of this Title IX Grievance Policy, "formal complaint" means a document – including an electronic submission - filed by a complainant with a signature or other indication that the complainant is the person filing the formal complaint, or signed by the Title IX Coordinator, alleging sexual harassment against a respondent about conduct within Binghamton University's education program or activity and requesting initiation of the procedures consistent with the Title IX Grievance Policy to investigate the allegation of sexual harassment.

Complainant

For the purposes of this Title IX Grievance Policy, Complainant means any individual who has reported being or is alleged to be the victim of conduct that could constitute covered sexual harassment as defined under this policy.

Respondent

For the purposes of this Title IX Grievance policy, Respondent means any individual who has been reported to be the perpetrator of conduct that could constitute covered sexual harassment as defined under this policy.

Informal Resolution

For purposes of this Title IX Grievance Policy, Informal Resolution means any resolution to a formal complaint that does not involve a full investigation and adjudication. Such resolution cannot be used to resolve allegations that an employee sexually harassed a student. Once an Informal Resolution is reached, and the claimant(s), respondent(s), and University representative provide their voluntary and written consent to the informal resolution process, the parties are precluded from resuming a formal complaint under any University policy arising from the same allegations.

Relevant evidence and questions

"Relevant" evidence and questions refer to any questions and evidence that tends to make an allegation of sexual harassment more or less likely to be true.

"Relevant" evidence and questions do not include the following types of evidence and questions, which are deemed "irrelevant" at all stages of the Title IX Grievance Process:

- Evidence and questions about the complainant's sexual predisposition or prior sexual behavior unless:
  - They are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
  - They concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. 34 C.F.R. § 106.45(6)(i).
- Evidence and questions that constitute, or seek disclosure of, information protected under a legally-recognized privilege.
- Any party's medical, psychological, and similar records unless the party has given voluntary, written consent. 85 Fed. Reg. 30026, 30294 (May 19, 2020).

Privacy vs. Confidentiality

References made to confidentiality refer to the ability of identified confidential resources to not report crimes and violations to law enforcement or University officials without permission, except for extreme circumstances, such as a health and/or safety emergency or child abuse. References made to privacy mean Binghamton University offices and employees who cannot guarantee confidentiality but will maintain privacy to the greatest extent possible, and information disclosed will be relayed only as necessary to investigate and/or seek a resolution and to notify the Title IX Coordinator or designee, who is responsible for tracking patterns and spotting systemic issues. Binghamton University will limit the disclosure as much as practicable, even if the Title IX Coordinator determines that the request for confidentiality cannot be honored.

Disability Accommodations

This Policy does not alter any institutional obligations under federal disability laws including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator or designee at any point before or during the Title IX Grievance Process that do not fundamentally alter the Process. The Title IX Coordinator or designee 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.

Shuttle Diplomacy

For the purposes of this Title IX Grievance Policy, shuttle diplomacy means negotiations conducted by a staff member of the Office of Student Conduct or designee within the context of an Informal Resolution who goes back and forth between two or more parties with the goal of reaching a mutual resolution to resolve a case.

Making a Report Regarding Covered Sexual Harassment to the Institution

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report, such as reporting to the Binghamton University Police Department (/police/), the Office of Student Conduct (/student-conduct/contact.html), the Dean of Students Office (/dean-of-students/contact.html), Residential Life (/residential-life/contact.html), or the Consultation, Advocacy, Referral and Education (CARE) Team (/services/care-team/contact.html).

Specific Contact Information for the Title IX Coordinator:

Name: Andrew R. Baker, Ph. D.

Title: Title IX Coordinator

Office Address: Couper Administration Building, Room 217

Email Address: abaker@binghamton.edu (mailto:abaker@binghamton.edu)

Telephone Number: (607) 777-2486 (direct line)

Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator.

Confidential Reporting

Contact information for the offices below can be found here. (/centers/varcc/ivp/support/resources.html)

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

- Title IX Coordinator 607-777-2486

- Dean of Students Office 607-777-2804
- Consultation, Advocacy, Referral, Education (C.A.R.E.) Team 607-777-2804
- New York State University Police – 607-777-2393 (non-emergency)
- Office of Student Conduct 607-777-6210
- Residential Life 607-777-2321
- Human Resources 607-777-2187
- Most other University faculty and/or staff members not listed below

The following Officials/Offices may provide confidentiality:

- The University Counseling Center 607-777-2772
- Decker Student Health Services 607-777-2221
- Harpur's Ferry 607-777-3333 (emergencies) 607-777-3399 (station)
- University Ombudsman 607-777-2388
- Binghamton University Interfaith Council (BUIC) 607-777-3470

Non-investigatory Measures Available Under the Title IX Grievance Policy

Supportive Measures

Complainants (as defined above), who report allegations that could constitute covered sexual harassment under this policy, have the right to receive supportive measures from Binghamton University regardless of whether they desire to file a formal complaint, which may include changes to academic, living, transportation, and working situations as appropriate. Supportive measures are non-disciplinary and non-punitive.

Emergency Removal

Binghamton University retains the authority to remove a respondent from Binghamton University's program or activity on an emergency basis, where Binghamton University (1) undertakes an individualized safety and risk analysis and (2) determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of covered sexual harassment justifies a removal. If Binghamton University determines such removal is necessary, the respondent will be provided notice and an opportunity to challenge the decision immediately following the removal.

Emergency Removal

1. Pending final action on a charge (including the appeals process), the status of the student is not altered, unless the continued presence of the student would constitute an immediate

threat to the physical health or safety of any student or other individual arising from the allegations of covered sexual harassment.

2. When the continued presence of the student on campus is deemed to constitute an immediate threat to the physical health or safety, emergency removal may take place. Emergency removal may include loss of contact with individuals, denial of access to facilities or suspension from the University pending the outcome of a hearing.
3. Students subject to emergency removal may be required to leave University facilities or property immediately and will be considered trespassing if they return. In cases involving allegations covered by this grievance policy, both the respondent and the claimant shall, upon request and consistent with Binghamton University policies and procedures, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of any measure that directly affects them, including potential modification, and shall be allowed to submit evidence in support of his or her request.
4. Students who have appealed an action must abide by the terms of this action pending the outcome of the appeal. Students will receive written notice of the outcome of their appeal.
5. Students subject to emergency removal must have written permission from a designated University official in order to have access to facilities, property or services of the University.

Administrative Leave

Binghamton University retains the authority to place a non-student employee respondent on administrative leave during the Title IX Grievance Process, consistent with applicable union contracts.

The Title IX Grievance Process

Filing a Formal Complaint

The timeframe for the Title IX Grievance Process begins with the filing of a Formal Complaint. The Grievance Process will be concluded within a reasonably prompt manner, and no longer than ninety (90) calendar days after the filing of the Formal Complaint, provided that the Process may be extended for a good reason, including but not limited to the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. The procedure for applying for extensions is described below.

To file a Formal Complaint, a complainant must provide a written, signed complaint describing the facts alleged. Complainants are only able to file a Formal Complaint under this Policy if they are currently participating in, or attempting to participate in, the education programs or activities of

Binghamton University, including as an employee. For complainants who do not meet these criteria, the University may utilize existing policy in the Code of Student Conduct (/student-conduct/code.html).

If a complainant does not wish to make a Formal Complaint, the Title IX Coordinator or designee may determine a Formal Complaint is necessary. Binghamton University will inform the complainant of this decision in writing, and the complainant need not participate in the process further but will receive all notices issued under this Policy and Process.

Nothing in the Title IX Grievance Policy or Code of Student Conduct prevents a complainant from seeking the assistance of state or local law enforcement alongside the appropriate on-campus process.

Determining Jurisdiction

- The claimant will be asked to meet with a member of the CARE Team to discuss the facts alleged
- Information gathered by the CARE Team member through the meeting with the student will be forwarded to the TIX office. The TIX office will assess this information to determine if the allegations would fall under the Code of Student Conduct and/or Title IX Grievance Policy and provide this response to the CARE Team. The Title IX Office may consult with other offices as necessary in making this determination
- Factors considered in this determination include:
    - Whether the conduct is alleged to have occurred on or after Aug. 14, 2020;
    - Whether the conduct is alleged to have occurred in the United States;
    - Whether the conduct is alleged to have occurred in Binghamton University's education program or activity; and
    - Whether alleged conduct, if true, would constitute covered sexual harassment as defined in this policy.
- Upon determination of the case type, the claimant will be informed electronically and invited to discuss options with the CARE Team
- Once the student receives the determination of the case type, they may have the option to submit a Formal Complaint under the Title IX Grievance Policy and/or proceed under the Student Code of Conduct
- A member of the CARE Team will assist the student in completing a Formal Complaint, when desired and appropriate

- Where all of the above factors are met, and the complainant submits a Formal Complaint, Binghamton University will investigate the allegations according to the Grievance Policy

Multi-Party Situations

The institution may consolidate Formal Complaints alleging covered sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of covered sexual harassment arise out of the same facts or circumstances.

Allegations Potentially Falling Under Two Policies

In addition to Title IX, the University is obligated by other state and federal laws, such as New York State Education Law 129-B, to act on reports of sexual harassment and provide rights to claimants under our Code of Conduct. Victims may simultaneously have separate rights under different laws. This may result in a situation where some alleged sexual harassment is covered by the Title IX Grievance Policy, and some alleged sexual harassment is covered under the University's Code of Conduct.

If the alleged conduct includes conduct that would constitute covered sexual harassment and conduct that would not constitute covered sexual harassment, the University will determine which process (Code of Conduct or Grievance Procedures) may commence first. This decision will be based on case-specific considerations including but not limited to the following:

- whether the accused has a history of violent behavior or known prior allegations;
- whether the incident represents escalation in behavior;
- the increased risk that the accused will commit additional acts of violence;
- whether the respondent used a weapon and/or force;
- whether the reporting individual is a minor;
- whether the institution possesses other means to obtain evidence such as video footage;
- under which policy the majority of the allegations fall;
- status of any concurrent law enforcement investigations of the same allegations or;
- whether there was other conduct that occurred on the same date/time that is substantially related

Mandatory Dismissal

If allegations in a Formal Complaint are determined to fall entirely outside of the Grievance Policy the University will notify the parties that the Formal Complaint is being dismissed for the purposes of the Title IX Grievance Policy. Each party may appeal this dismissal using the procedure outlined in "Appeals," below.

Discretionary Dismissal

The Title IX Coordinator or designee may dismiss a Formal Complaint brought under the Title IX Grievance Policy, or any specific allegations raised within that Formal Complaint, at any time during the investigation or hearing, if:

- A complainant notifies the Title IX Coordinator, or designee, in writing that they would like to withdraw the Formal Complaint or any allegations raised in the Formal Complaint;
- The respondent is no longer enrolled or employed by Binghamton University; or,
- If specific circumstances prevent Binghamton University from gathering evidence sufficient to reach a determination regarding the Formal Complaint or allegations within the Formal Complaint.

Any party may appeal a dismissal determination using the process set forth in "Appeals," below.

Notice of Dismissal

Upon reaching a decision that the Formal Complaint will be dismissed, the institution will promptly send written notice of the dismissal of the Formal Complaint or any specific allegation within the Formal Complaint, and the reason for the dismissal, simultaneously to the parties through their institutional email accounts. It is the responsibility of parties to maintain and regularly check their email accounts.

Notice of Removal

Upon dismissal for the purposes of Title IX, Binghamton University retains discretion to utilize the Code of Student Conduct (/student-conduct/code.html) to determine if a violation of the Code of Student Conduct has occurred. If so, Binghamton University will promptly send written notice of the dismissal of the Formal Complaint under the Title IX Grievance Process and removal of the allegations to the conduct process.

Notice of Allegations

The Title IX Coordinator or designee will draft and provide the Notice of Allegations to any party to the allegations of sexual harassment. Such notice will occur as soon as practicable after the institution receives a Formal Complaint of the allegations, if there are no extenuating circumstances.

The parties will be notified by their institutional email accounts if they are a student or employee, and by other reasonable means if they are neither.

The institution will provide sufficient time for the parties to review the Notice of Allegations and prepare a response before any initial interview. The Title IX Coordinator or designee may determine that the Formal Complaint must be dismissed on the mandatory grounds identified above, and will issue a Notice of Dismissal. If such a determination is made, any party to the allegations of sexual harassment identified in the Formal Complaint will receive the Notice of Dismissal in conjunction with, or in separate correspondence after, the Notice of Allegations.

Contents of Notice

The Notice of Allegations will include the following:

- Notice of the institution's Title IX Grievance Process and a hyperlink to a copy of the process.
- Notice of the allegations potentially constituting covered sexual harassment, and sufficient details known at the time the Notice is issued, such as the identities of the parties involved in the incident, if known, including the complainant; the conduct allegedly constituting covered sexual harassment; and the date and location of the alleged incident, if known.
- A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- A statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney, as required under 34 C.F.R. § 106.45(b)(5)(iv);
- A statement that before the conclusion of the investigation, the parties may inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which the institution does not intend to rely in reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a party or other source, as required under 34 C.F.R. § 106.45(b)(5)(vi);
- A statement that providing false or misleading information, including false identification, to the University or any University official is a violation of the Code of Student Conduct.
- A description of the Informal Resolution process and the rights of the parties and the University in that process

Ongoing Notice

If, in the course of an investigation, the institution decides to investigate allegations about the complainant or respondent that are not included in the Notice of Allegations and are otherwise covered "sexual harassment" falling within the Title IX Grievance Policy, the institution will notify the parties whose identities are known of the additional allegations by their institutional email accounts or other reasonable means. The parties will be provided sufficient time to review the additional allegations to prepare a response before any initial interview regarding those additional charges.

Informal Resolution

- For cases where the claimant desires an outcome that is disciplinary and would include a status sanction that is reportable and/or a transcript notation, the claimant will be informed of informal resolution options
    - At the beginning of the investigation, with information included in the Notice of Allegations, the claimant(s) and respondent(s) will be asked if they would like an informal resolution and provided information about the process
    - If the claimant(s) and respondent(s) desire to proceed with informal resolution shuttle diplomacy will be initiated once a Notice of Allegations has been sent to the claimant(s) and respondent(s)
    - Respondents will be informed that details they share about the allegations within the informal resolution process will be excluded from a formal process, should one subsequently occur
- Shuttle diplomacy includes a staff member from OSC meeting with the complainant and respondent separately to learn of what they would want/need to resolve the case, and with consideration of University Sanctioning Guidelines and state and federal laws
- Shuttle diplomacy occurs until/if there is a mutual agreement that can be reached
    - This will include but is not limited to:
        - An Administrative Agreement which includes a sanction that is agreeable to the claimant(s), respondent(s) and the University; and/or
            - An educational conversation with the respondent(s); and/or
            - Imposition of a No contact order; and/or other
            - Attendance and participation of a workshop (if applicable) and/or
            - Other mutually agreed upon outcomes
- Claimant(s) and respondent(s) have the right to withdraw from the informal resolution process and resume the formal grievance process prior to reaching an informal resolution

without consequence

- The University has discretion to remove a complaint from the informal resolution process and resume the formal grievance process following notice to the parties
- Once an Informal Resolution is reached, and the claimant(s), respondent(s), and University representative provide their voluntary and written consent to the informal resolution process, the matter is closed. The parties are precluded from resuming a formal complaint under any University policy arising from the resolved incident(s).
- If the claimant desires to proceed with the formal grievance process, the case will be assigned an investigator
- The investigator will proceed with interviewing all relevant parties and gathering evidence
- Informal resolution will remain an option until a formal grievance process hearing begins
- The formal grievance process will continue until there is a final outcome via Administrative Agreement or a grievance process hearing occurs
- The Office of Student Conduct will engage in a reasonable amount of shuttle diplomacy which shall not typically exceed 30 calendar days.
- If shuttle diplomacy fails, the Office of Student Conduct will notify the claimant(s) and respondent(s) that the formal grievance process is resuming from the point at which shuttle diplomacy had begun

Advisor of Choice and Participation of Advisor of Choice

Binghamton University will provide the parties equal access to advisors and support persons; any restrictions on advisor participation will be applied equally.

Binghamton University has a long-standing practice of requiring students to participate in the process directly and not through an advocate or representative. Students participating as Complainant or Respondent in this process may be accompanied by an Advisor of Choice to any meeting or hearing to which they are required or are eligible to attend. The Advisor of Choice is not an advocate. Except where explicitly stated by this Policy, as consistent with the Final Rule, Advisors of Choice shall not participate directly in the process as per standard policy and practice of Binghamton University.

Binghamton University will not intentionally schedule meetings or hearings on dates where the Advisors of Choice for all parties are not available, provided that the Advisors act reasonably in providing available dates and work collegially to find dates and times that meet all schedules.

Binghamton University's obligations to investigate and adjudicate in a prompt timeframe under Title IX and other University policies apply to matters governed under this Policy, and Binghamton University cannot agree to extensive delays solely to accommodate the schedule of an Advisor of

Choice. The determination of what is reasonable shall be made by the Title IX Coordinator or designee. Binghamton University will not be obligated to delay a meeting or hearing under this process more than five (5) calendar days due to the unavailability of an Advisor of Choice, and may offer the party the opportunity to obtain a different Advisor of Choice or utilize one provided by Binghamton University.

Notice of Meetings and Interviews

Binghamton University will provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with a party, with sufficient time for the party to prepare to participate.

Delays

Each party may request a one-time delay in the Grievance Process of up to five (5) calendar days for good cause (granted or denied in the sole judgment of the Title IX Coordinator, Director of Student Conduct, or designee) provided that the requestor provides reasonable notice and the delay does not overly inconvenience other parties.

For example, a request to take a five-day pause made an hour before a hearing for which multiple parties and their advisors have traveled to and prepared for shall generally not be granted, while a request for a five-day pause in the middle of investigation interviews to allow a party to obtain certain documentary evidence shall generally be granted.

The Title IX Coordinator, Director of Student Conduct, or designee, shall have sole judgment to grant further pauses in the Process.

Investigation

General Rules of Investigations

An investigator will perform an investigation under a reasonably prompt timeframe of the conduct alleged to constitute covered sexual harassment after issuing the Notice of Allegations.

Binghamton University, and not the parties, has the burden of proof and the burden of gathering evidence, i.e. the responsibility of showing a violation of this Policy has occurred. This burden does not rest with either party, and either party may decide not to share their account of what occurred or may decide not to participate in an investigation or hearing. This does not shift the burden of proof away from Binghamton University and does not indicate responsibility.

Binghamton University 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.

Binghamton University will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence, (i.e. evidence that tends to prove and disprove the allegations) as described below.

Inspection and Review of Evidence

Prior to the completion of the investigation, the parties will have an equal opportunity to inspect and review the evidence obtained through the investigation. The purpose of the inspection and review process is to allow each party the equal opportunity to meaningfully respond to the evidence prior to conclusion of the investigation.

Evidence that will be available for inspection and review by the parties will be any evidence that is directly related to the allegations raised in the Formal Complaint. It will include any:

1. Evidence that is relevant, even if that evidence does not end up being relied upon by the institution in making a determination regarding responsibility;
2. Inculpatory or exculpatory evidence (i.e. evidence that tends to prove or disprove the allegations) that is directly related to the allegations, whether obtained from a party or other source.

All parties must submit any evidence they would like the investigator to consider prior to when the parties' time to inspect and review evidence begins.

The institution will send the evidence made available for each party and each party's advisor, if any, to inspect and review through an electronic format, or other format if necessary. The Institution is not under an obligation to use any specific process or technology to provide the evidence and shall have the sole discretion in terms of determining format and any restrictions or limitations on access.

The parties will have ten (10) calendar days to inspect and review the evidence and submit a written response by email to the investigator. The investigator will consider the parties' written responses before completing the Investigative Report.

The institution will provide copies of the parties' responses to the investigator to all parties and their advisors, if any.

The University will provide the parties up to ten (10) calendar days to provide a response, after which the investigator will not be required to accept further submission. The investigator has up to ten (10) calendar days to generate a report or, alternatively, may provide the parties with written notice extending the investigation and explaining the reason for the extension.

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

Inclusion of Evidence Not Directly Related to the Allegations

Evidence obtained in the investigation that is determined in the reasoned judgment of the investigator not to be directly related to the allegations in the Formal Complaint will not be disclosed, or may be appropriately redacted before the parties' inspection to avoid disclosure of personally identifiable information of a student. Any evidence obtained in the investigation that is kept from disclosure or appropriately redacted will be documented electronically.

Investigative Report

An investigator will create an Investigative Report that fairly summarizes relevant evidence, and will provide that Report to the parties at least ten (10) calendar days prior to the hearing through an electronic format, or other format if necessary, for each party's review and written response.

The Investigative Report is not intended to catalog all evidence obtained by the investigator, but only to provide a fair summary of that evidence.

Only relevant evidence (including both inculpatory and exculpatory – i.e. tending to prove and disprove the allegations - relevant evidence) will be referenced in the Investigative Report.

The investigator may redact irrelevant information from the Investigative Report when that information is contained in documents or evidence that is/are otherwise relevant. See, 85 Fed. Reg. 30026, 30304 (May 19, 2020).

Hearing

General Rules of Hearings

Binghamton University will not issue a disciplinary sanction arising from an allegation of covered sexual harassment without holding a live hearing unless otherwise resolved through an informal resolution process.

The live hearing may be conducted with all parties physically present in the same geographic location, or, at Binghamton University's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually through the University's web conferencing technology. This technology will enable participants simultaneously to see and hear each other.

At its discretion, Binghamton University may delay or adjourn a hearing based on technological errors not within a party's control.

An official recording will be made of the proceedings. This recording is maintained by the Office of Student Conduct and will not generally be duplicated or released. Parties are prohibited from making their own recording during the hearing (including but not limited to audio, video,

photographic and/or written recording). The parties may submit a written request to Office of Student Conduct to inspect and review the recording in a supervised location on campus.

Continuances or Granting Extensions

Binghamton University may determine that multiple sessions or a continuance (i.e. a pause on the continuation of the hearing until a later date or time) is needed to complete a hearing. If so, Binghamton University will notify all participants and endeavor to accommodate all participants' schedules and complete the hearing as promptly as practicable.

Participants in the live hearing

Live hearings are not public, and the only individuals permitted to participate in the hearing are as follows:

Complainant and Respondent (The Parties)

- The parties cannot waive the right to a live hearing.
- The institution may still proceed with the live hearing in the absence of a party, and may reach a determination of responsibility in their absence,
- Binghamton University will not threaten, coerce, intimidate or discriminate against the party in an attempt to secure the party's participation.
- If a party does not submit to cross-examination, the decision-maker may rely on any prior statements made by that party in reaching a determination regarding responsibility,.
- The decision-maker cannot draw an inference about the determination regarding responsibility based solely on a party's absence from the live hearing or refusal to answer cross examination or other questions. See 34 C.F.R. §106.45(b)(6)(i).

The Decision-maker

- The hearing body will consist of a panel of three decision-makers.
- No member of the hearing body will also have served as the Title IX Coordinator, Title IX investigator, or advisor to any party in the case, nor may any member of the hearing bodyserve on the appeals body in the case.
- No member of the hearing body will have a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.
- The hearing body will be trained on topics including how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for complainants, and any technology to be used at the hearing.

- The parties will have an opportunity to raise any objections regarding a decision-maker's actual or perceived conflicts of interest or bias at the commencement of the live hearing.

Advisor of choice

- The parties have the right to select an advisor of their choice, who may be, but does not have to be, an attorney.
- The advisor of choice may accompany the parties to any meeting or hearing they are permitted to attend, but may not speak for the party, except for the purpose of cross examination.
- The parties are not permitted to conduct cross-examination; it must be conducted by the advisor. As a result, if a party does not select an advisor, the institution will select an advisor to serve in this role for the limited purpose of conducting the cross-examination at no fee or charge to the party.
- The advisor is not prohibited from having a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.
- The advisor is not prohibited from being a witness in the matter.
- If a party does not attend the live hearing, the party's advisor may appear and conduct cross-examination on their behalf.
- If neither a party nor their advisor appear at the hearing, Binghamton University will provide an advisor to appear on behalf of the non-appearing party. See, 85 Fed. Reg. 30026, 30339-40 (May 19, 2020).

Witnesses

- Witnesses cannot be compelled to participate in the live hearing, and have the right not to participate in the hearing free from retaliation. See, 85 Fed. Reg. 30026, 30360 (May 19, 2020).

Hearing Procedures

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

- The Board Chair will open and establish rules and expectations for the hearing;
- The Parties will each be given the opportunity to provide opening statements;
- The Board will ask questions of the Parties and Witnesses;
- Parties will be given the opportunity for live cross-examination after the Board conducts its initial round of questioning; During the Parties' cross-examination, the Board Chair will have

the authority to pause cross-examination at any time for the purposes of asking the Board's own follow up questions; and any time necessary in order to enforce the established rules of decorum.

- Should a Party or the Party's Advisor choose not to cross-examine a Party or Witness, the Party shall affirmatively waive cross-examination through a written or oral statement to the Board Chair. A Party's waiver of cross-examination does not eliminate the ability of the Board to use statements made by the Party.

Live Cross-Examination Procedure

Each party's advisor will conduct live cross-examination of the other party or parties and witnesses. During this live-cross examination the advisor will ask the other party or parties and witnesses relevant questions and follow-up questions, including those challenging credibility directly, orally, and in real time.

Before any cross-examination question is answered, the Board Chair will determine if the question is relevant. Cross-examination questions that are duplicative of those already asked, including by the Board may be excluded if they have been asked and answered.

Determination Regarding Responsibility

Standard of Proof

Binghamton University uses the preponderance of the evidence standard for investigations and determinations regarding responsibility of formal complaints covered under this Policy. This means that the investigation and hearing determines whether it is more likely than not that a violation of the Policy occurred.

General Considerations for Evaluating Testimony and Evidence

While the opportunity for cross-examination is required in all Title IX hearings, determinations regarding responsibility may be based in part, or entirely, on documentary, audiovisual, and digital evidence, as warranted in the reasoned judgment of the Decision-maker.

Decision-makers shall not draw inferences regarding a party or witness' credibility based on the party or witness' status as a complainant, respondent, or witness, nor shall it base its judgments in stereotypes about how a party or witness would or should act under the circumstances.

Generally, credibility judgments should rest on the demeanor of the party or witness, the plausibility of their testimony, the consistency of their testimony, and its reliability in light of corroborating or conflicting testimony or evidence.

Still, credibility judgments should not rest on whether a party's or witness' testimony is non-linear or incomplete, or if the party or witness is displaying stress or anxiety.

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

Except where specifically barred by the Title IX Final Rule, a witness' testimony regarding third-party knowledge of the facts at issue will be allowed, but will generally be accorded lower weight than testimony regarding direct knowledge of specific facts that occurred.

The Final Rule requires that Binghamton University allow parties to call "expert witnesses" for direct and cross examination. Binghamton University does not provide for expert witnesses in other proceedings. While the expert witness will be allowed to testify and be crossed as required by the Final Rule, the decision-maker will be instructed to afford lower weight to non-factual testimony of the expert relative to fact witnesses, and any expert testimony that is not directed to the specific facts that occurred in the case will be afforded lower weight relative to fact

witnesses, regardless of whether the expert witness testimony is the subject of cross examination and regardless of whether all parties present experts as witnesses.

The Final Rule requires that Binghamton University allow parties to call character witnesses to testify. Binghamton University does not provide for character witnesses in other proceedings.

While the character witnesses will be allowed to testify and be crossed as required by the Final Rule, the decision-maker will be instructed to afford very low weight to any non-factual character testimony of any witness.

The Final Rule requires that Binghamton University admit and allow testimony regarding polygraph tests ("lie detector tests") and other procedures that are outside of standard use in academic and non-academic conduct processes. While the processes and testimony about them will be allowed to be presented and be crossed as required by the Final Rule, the decision-maker will be instructed to afford lower weight to such processes relative to the testimony of fact witnesses.

Where a party or witness' conduct or statements demonstrate that the party or witness is engaging in retaliatory conduct, including but not limited to witness tampering and intimidation, the Board may draw an adverse inference as to that party or witness' credibility.

Components of the Determination Regarding Responsibility

The written Determination Regarding Responsibility will be issued simultaneously to all parties through their institution email account, or other reasonable means as necessary. The Determination will include:

1. Identification of the allegations potentially constituting covered sexual harassment;
2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
3. Findings of fact supporting the determination; Conclusions regarding which allegations constituting covered sexual harassment, if any, the respondent has or has not violated.
4. For each allegation:
5. A statement of, and rationale for, a determination regarding responsibility;
    1. A statement of, and rationale for, any disciplinary sanctions the recipient imposes on the respondent; and
    2. A statement of, and rationale for, whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant; and
6. The recipient's procedures and the permitted reasons for the complainant and respondent to appeal (described below in "Appeal").

Timeline of Determination Regarding Responsibility

If there are no extenuating circumstances, the determination regarding responsibility will be issued by Binghamton University within 14 calendar days of the completion of the hearing.

Finality

The determination regarding responsibility becomes final either on the date that the institution provides the parties with the written determination of the result of the appeal, if an appeal is filed consistent with the procedures and timeline outlined in "Appeals" below, or if an appeal is not filed, the date on which the opportunity to appeal expires. All determinations of responsibility resulting in expulsion are reviewed by the Vice President of Student Affairs, or designee.

Appeals

Each party may appeal (1) the dismissal of a formal complaint or any included allegations and/or (2) a determination regarding responsibility. To appeal, a party must submit their written appeal within ten (10) calendar days of being notified of the decision, indicating the grounds for the appeal. The

non-appealing party will be notified of the appeal and may submit a statement of their position with respect to the appeal.

The limited grounds for appeal available are as follows:

- Procedural irregularity that affected the outcome of the matter (i.e. a failure to follow the institution's own procedures);
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against an individual party, or for or against complainants or respondents in general, that affected the outcome of the matter.
- The severity of sanction(s) is grossly disproportionate to the violation
- The finding that the student violated the Grievance Policy is incorrect

The submission of appeal stays any sanctions for the pendency of an appeal. Supportive measures and remote learning opportunities remain available during the pendency of the appeal.

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

Appeals will be decided by a trained interpersonal violence panel, who will be free of conflict of interest and bias, and will not serve as investigator, Title IX Coordinator, or hearing decision maker in the same matter.

The panel reviewing an appeal may:

1. Affirm the finding and the sanction imposed by the original board.
2. Affirm the finding and reduce or increase, but not eliminate, the sanction, in accordance with "A" of this section.
3. Assign the case to a new hearing board in accordance with "B" of this section.
4. Dismiss the case in accordance with "C" of this section.

- Sanctions may only be reduced or increased if found to be disproportionate to the offense.
- Cases may be assigned to a new hearing board if specified procedural errors or errors in interpretation of University regulations were so substantial as to effectively deny the charged student a fair hearing, or if new and significant evidence became available that could not have been discovered by proper diligence before or during the original hearing.
- When a new hearing is granted, no indication or record of the previously conducted hearing will be introduced or provided to members of the hearing board, except to challenge contradictory testimony at the discretion of the board chair. The board will be directed not to repeat the specified errors that caused the case to be reheard.
- Cases may be dismissed only if the finding is determined by the panel to be arbitrary and capricious

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

Realiation

Binghamton University will keep the identity of any individual who has made a report or complaint of sex discrimination confidential, including the identity of any individual who has made a report or filed a Formal Complaint of sexual harassment under this Title IX Grievance Policy, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as permitted by the FERPA statute, 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 this Title IX Grievance Policy.

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

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

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

The health and safety of every student at the State University of New York and its state-operated and community colleges is of utmost importance. Binghamton University recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. Binghamton University strongly encourages students to report domestic violence, dating violence, stalking or sexual assault to institution officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking or sexual assault to Binghamton University officials or law enforcement will not be subject to Binghamton University's Code of Conduct action for violations of alcohol and/ or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking or sexual assault.

Complaints alleging retaliation may be filed according to the Code of Student Conduct.

- General Rules
- Definitions
- Making a Report
- Non-investigative Measures
- The Title IX Grievance Process
- Investigation (/student-conduct/investigation)
- Investigative Report
- Hearing
- Determination Regarding Responsibility
- Appeals
- Retaliation