

Finger Lakes Community College
Title IX Grievance Policy:
Procedures for Sex-Based Harassment
Complaints for Students and Employees



Academic Year 2024-2025

Approved by Board of Trustees: August 7, 2024

Finger Lakes Community College

Title IX Grievance Policy: Procedures for Sex-Based Harassment Complaints for Students and Employees

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

This Grievance Procedure applies to incidents that occur on or after August 1, 2024. Any incidents reported under this Grievance Procedure that occurred on or before July 31, 2024, will be processed through the institution's Student Code of Conduct, Non-Discrimination and Sexual Harassment Response and Prevention Policy, or Title IX Grievance Policy.

Should any portion of the 2024 Title IX Final Rule (89 Fed. Reg. 33474 (Apr. 29, 2024)), be stayed or held invalid by a court of law, or if the 2024 Title IX Final Rule is withdrawn or modified to not require elements of this Grievance Procedure, the Grievance Procedures in their entirety, or the invalidated elements of this Procedure, they will be deemed revoked as of the publication date of the opinion or order from the Court and for all reports after that date, as well as any elements of the process that occur after that date if a case is not complete by the date of the opinion or order publication by the Court. If this Procedure is revoked in this manner, any conduct covered under this Procedure shall be investigated and adjudicated under the previous 2020 Title IX Grievance Policy and/or Student Code of Conduct and/or Non-Discrimination and Sexual Harassment Response and Prevention Policy. Finger Lakes Community College will update this Grievance Procedure as soon as practicable to reflect any court rulings or changes that invalidate parts of the Grievance Procedure, if applicable.

II. Scope of Procedure

Sex-Based Harassment is considered discrimination on the basis of sex if it includes harassment due to actual or perceived sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and/or gender identity.

III. Jurisdiction of Procedure

Finger Lakes Community College's Title IX Coordinator or designee will determine if this Grievance Procedure applies to a Complaint. This Grievance Procedure will apply when the following elements are met, in the reasonable determination of the Title IX Coordinator or designee:

- The conduct alleged occurred on or after August 1, 2024;
- The conduct alleged occurred in the United States;

- The conduct alleged occurred on campus, off campus, or while studying abroad;
- The conduct alleged occurred in Finger Lakes Community College’s Education Program or Activity; and
- The conduct alleged, if true, would constitute Sex-Based Harassment as defined in this Grievance Procedure.

NOTE: Finger Lakes Community College 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 Finger Lakes Community College’s Education Program or Activity, or outside of the United States. Finger Lakes Community College’s Title IX Coordinator will work with all Complaints to assess such Complaints that may fall under these criteria, and direct to appropriate Finger Lakes Community College Policies and Procedures that may apply if this Grievance Procedure does not. Finger Lakes Community College will communicate all such decisions in writing to the Complainant. Any such dismissals shall be subject to appropriate appeal rights under this Grievance Procedure as outlined in the Dismissals section.

Conduct that occurs under Finger Lakes Community College’s Education Program or Activity includes but is not limited to conduct that occurs in a building owned or controlled by the College or affiliated entities may be subject to Finger Lakes Community College’s disciplinary authority under this policy or the Student Code of Conduct.

If all elements of jurisdiction are met, Finger Lakes Community College will investigate the allegations according to this Grievance Procedure as appropriate, or unless there are grounds for dismissal of the Complaint.

IV. Non-Discrimination in Application

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

V. Students' Bill of Rights¹

All Students have the right to:

1. Make a report to local law enforcement and/or state police;
2. Have disclosures of Domestic Violence, Dating Violence, Stalking, and Sexual Assault treated seriously;
3. Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure by the institution;
4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
5. Be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services, where available;
6. Be free from any suggestion that the Reporting Individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
7. Describe the incident to as few institution representatives as practicable and not be required to unnecessarily repeat a description of the incident;
8. Be protected from Retaliation by the institution, any Student, the Accused and/or the Respondent, and/or their friends, family and acquaintances within the jurisdiction of the institution;
9. Access to at least one level of appeal of a determination;
10. Be accompanied by an advisor of choice who may assist and advise a Reporting Individual or Complainant, Accused, or Respondent throughout the judicial or conduct process including during all meetings and hearings related to such process; and
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the institution.

VI. Disability Accommodations

Generally

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

¹ New York State Education Law § 6443

specifically requested by the Parties, even where the Parties may be receiving accommodations in other institutional programs and activities.

Requests for Reasonable Accommodations During the Title IX Grievance Procedure

If the Complainant or Respondent discloses a disability, the Title IX Coordinator or designee may consult, as appropriate, with Human Resources or Disability Services in the Academic Success & Access Programs Office to provide support to individuals with disabilities to determine how to comply with applicable law including, without limitation, Section 504 of the Rehabilitation Act of 1973 in the implementation of any Supportive Measures, or any other reasonable accommodations requested during the Grievance Procedure.

VII. Policy for Alcohol and/or Drug Use Amnesty

The health and safety of every student at Finger Lakes Community College is of utmost importance. Finger Lakes Community College 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. Finger Lakes Community College 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 Finger Lakes Community College's officials or law enforcement will not be subject to Finger Lakes Community College's Student 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.

VIII. Basic Requirements of the Grievance Procedure

Finger Lakes Community College is required to:

- Treat Complainants and Respondents equitably;
- Ensure that any person designated by Finger Lakes Community College 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;
- 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 this procedure, including both inculpatory and exculpatory evidence, and provide that credibility determinations must not be based on a person's status as a Complainant, Respondent or Witness;
- Exclude impermissible evidence from consideration as defined in the Grievance Procedure; and
- Clearly articulate principles for how Finger Lakes Community College will determine which policies and procedures apply if not all such Complaints are handled under this institutional Grievance Procedure;
- Single Investigator Model - 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.

STUDENTS¹: Per New York State Law, Finger Lakes Community College is also required to additionally ensure that student Complainants are advised of their right to:

- *Notify Finger Lakes Community College Campus Police, local law enforcement, and/or state police;*
- *Have emergency access to a Title IX Coordinator or other appropriate official trained in interviewing victims of sexual assault who shall be available upon the first instance of disclosure by a Complainant to provide information regarding options to proceed, and, where applicable, the importance of preserving evidence and obtaining a sexual assault forensic examination as soon as possible, and detailing that the criminal justice process utilizes different standards of proof and evidence and that any questions about whether a specific incident violated New York Penal Law should be addressed to law enforcement or to the district attorney, who shall also explain whether he or she is authorized to offer the reporting individual confidentiality or privacy, and shall inform the Complainant of other reporting options;*
- *Disclose confidentially the incident to institution representatives, who may offer confidentiality pursuant to applicable laws and can assist in obtaining services for Complainants;*
- *Disclose confidentially the incident and obtain services from the state or local government;*
- *Disclose the incident to institution representatives who can offer privacy or confidentiality, as appropriate, and can assist in obtaining resources for reporting individuals;*

¹ New York State Education Law § 6441(2)(a).

- *File a report of sexual assault, domestic violence, dating violence, and/or stalking and the right to consult the Title IX Coordinator and other appropriate institution representatives for information and assistance, ensure that Complainants know that reports shall be investigated in accordance with this Grievance Procedure and/or any other institutional policies that may be applicable, and ensure that a Complainant's identity will remain private at all times if said Complainant wishes to maintain privacy;*
- *Disclose, if the accused is an employee of Finger Lakes Community College, the incident to Finger Lakes Community College's Human Resources Department or the right to request that a confidential or private employee assist in reporting to the appropriate representative for the Human Resources Department, at which point, such referral shall be handled according to the appropriate College policies and procedures, including but not limited to this Title IX Grievance Procedure;*
- *Receive assistance from appropriate Finger Lakes Community College representatives in initiating legal proceedings in family court or civil court; and*
- *Withdraw a complaint or involvement from Finger Lakes Community College's Grievance Procedure at any time.*

IX. Reporting Sex-Based Harassment to the Institution

Non-Confidential Reports

Any person may report sex discrimination, including Sex-Based Harassment (whether or not the person reporting is the person alleged to be the victim of the conduct that may constitute sex discrimination or Sex-Based Harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, Deputy Title IX Coordinators, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.

Contact Information for the Title IX Coordinator and Deputy Title IX Coordinators at Finger Lakes Community College:

The College's mailing address is: 3325 Marvin Sands Drive, Canandaigua, New York, 14424

Name: Title IX Coordinator

Title: Chief Human Resource Officer

Office Address: Room 1340

Email Address: titleix@flcc.edu

Telephone Number: 585-785-1428

Name: Sarah Whiffen, Deputy Title IX Coordinator

Title: Associate Vice President of Student Affairs

Office Address: Room 2153 Student Center

Email Address: Sarah.Whiffen@flcc.edu

Telephone Number: 585-785-1284

Name: Jennifer Parsons, Deputy Title IX Coordinator

Title: Assistant Director, Talent Management

Office Address: Human Resources, Room 1350

Email Address: jennifer.parsons@flcc.edu

Telephone Number: 585-785-1466

Confidential Reports

The following officials at Finger Lakes Community College 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 other employees at Finger Lakes Community College that are not designated as confidential resources

The following officials at Finger Lakes Community College may provide confidentiality:

- Janette Aruck R.N., Director of Student Health Services; Room 3260; 585-785-1298; Janette.Aruck@flcc.edu
- Cherie Dewater R.N., Student Health Service; Room 3260; 585-785-1612; Cherie.Dewater@flcc.edu
- Kylie Harms N.P., Student Health Services; Room 3260, 585-785-1612
- Kayla Henderson LMSW, Licensed Counselor; Room 3260; 585-785-1578
- TBD; Director of Counseling; Room 3260; 585-785-1211

There are other confidential options available for crisis intervention, resources and referrals, but these are not reporting mechanisms to the institution, meaning that disclosure to one of these hotlines/resources does not provide any information to Finger Lakes Community College.

- Safe Harbors of the Finger Lakes - Hotlines
 - Seneca & Ontario Counties: 800-247-7273
 - Yates County: 315-536-2897
- Victim's Resource Center of the Finger Lakes
 - Hotline: 866-343-8808

More resources can be found at [Finger Lakes Community College Safety: Prevention & Response](#) webpage, [New York State Coalition Against Sexual Assault](#) website, and [SUNY Sexual Assault & Violence Response](#) website.

Privacy vs. Confidentiality

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

X. Supportive and Interim Measures

Providing Supportive Measures

Complainants who report allegations of Sex-Based Harassment have the right to receive Supportive Measures from Finger Lakes Community College regardless of whether they file a Complaint. Supportive Measures are non-disciplinary and non-punitive. Supportive Measures may vary depending upon what is reasonably available at Finger Lakes Community College.

As appropriate, Supportive Measures may include without limitation:

- Counseling services
- Extensions of deadlines or other course-related adjustments
- Modifications of work or class schedules
- Campus escort services, as available
- Restrictions on contact applied to one or more Parties (no contact orders)
- Changes in class, work, housing, or extracurricular or any other activity, regardless of whether there is or is not a comparable alternative
- Leaves of absence
- Increased security and monitoring of certain areas of the campus
- Training and education programs related to Sex-Based Harassment
- If applicable, assistance by Finger Lakes Community College's Campus Police, or other officials in obtaining an order of protection or, if outside of New York state, an equivalent protective or restraining order.

Supportive Measures must not unreasonably burden either Party and must be designed to protect the safety of the Parties or Finger Lakes Community College's educational environment, or to provide support during Finger Lakes Community College's Sex-Based Harassment grievance procedure under this policy.

Finger Lakes Community College may modify or terminate Supportive Measures at the conclusion of the grievance procedure or may continue them beyond that point within Finger Lakes Community College's discretion.

Finger Lakes Community College 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 Finger Lakes Community College's education program or activity, or there is an exception that applies, such as:

- Finger Lakes Community College has obtained prior written consent from a person with the legal right to consent to the disclosure;
- When the information is disclosed to an appropriate third Party with the legal right to receive disclosures on behalf of the person whose personally identifiable information is at issue;
- To carry out the purpose of the policy when it is necessary to address conduct that reasonably may constitute Sex-Based Harassment under Title IX in Finger Lakes Community College'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).

Note – Orders of Protection

If Finger Lakes Community College receives an Order of Protection it will be held by the Finger Lakes Community College Campus Police Department. Staff from Campus Police, Human Resources or Title IX will be made available to assist in explaining the order and answer questions about it.

Process for Review of Supportive Measures

Finger Lakes Community College provides for a Complainant or Respondent to seek modification or reversal of Finger Lakes Community College's decision to provide, deny, modify or terminate a supportive measure. Grounds for challenge of supportive measures include, but are not limited to:

- Whether a Supportive Measure is reasonably burdensome;

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

Request for a modification or reversal of a supportive measure must be timely and should be submitted within five business days. Finger Lakes Community College will conduct a fact specific inquiry into the request.

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

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

Emergency Removal

Finger Lakes Community College retains the authority to remove a Respondent from all or part of Finger Lakes Community College's education program or activity on an emergency basis, where Finger Lakes Community College (1) undertakes an individualized safety and risk analysis, and (2) determines that an imminent and serious threat to the health or safety of a Complainant or any students, employees, or other persons arising from the allegations of Sex-Based Harassment justifies removal.

Finger Lakes Community College will provide the Respondent with notice and an opportunity to challenge the decision immediately following the removal. The Respondent should submit their challenge within five business days to the Title IX Coordinator, who will then assign a decisionmaker. The decisionmaker who hears a challenge to an emergency removal must not be involved in any decision regarding responsibility or appeal of a determination.

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

Administrative Leave

Finger Lakes Community College retains the authority to place a non-student employee Respondent on administrative leave/suspension during the Title IX Grievance Procedures, consistent with Collective Bargaining Agreements and NYS employment law.

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

XI. The Title IX Grievance Procedure for Allegations of Sex-Based Harassment

A. Filing a Complaint

Who can make a Complaint?

- A Complainant (as defined in Appendix A); or
- The Title IX Coordinator.

Note on Title IX Coordinator initiated Complaints: In the absence of a Complaint or the withdrawal of any or all of the allegations in a Complaint, 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;¹
- The Complainant's reasonable safety concerns regarding initiation of a Complaint;
- The risk that additional acts of Sex-Based Harassment would occur if a Complaint is not initiated;
- The severity of the alleged Sex-Based Harassment, including whether the Sex-Based Harassment, if established, would require the removal of a Respondent from campus or imposition of another disciplinary sanction to end the Sex-Based Harassment and prevent its recurrence;

¹ Complainant(s) who fail to respond to reasonable requests to meet with the Title IX Coordinator, or designee, may have their case dismissed. If this occurs, the individual(s) may request to have the case re-opened at a later date.

- The age and relationship of the Parties, including whether the Respondent is an employee of Finger Lakes Community College;
- 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 Finger Lakes Community College 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 an imminent and serious threat to the health or safety of the Complainant or other person, or that the conduct as alleged prevents Finger Lakes Community College from ensuring equal access on the basis of sex to its education program or activity, the Title IX Coordinator may initiate a Complaint.

If the Title IX Coordinator does initiate the Complaint after making this determination, the Title IX Coordinator must notify the Complainant prior to doing so and appropriately address reasonable concerns about the Complainant's safety or the safety of others, including by providing Supportive Measures as listed in Section X (10) of these procedures.

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

As defined in Section IX (9) of these procedures, a Complaint can be an oral or written request to Finger Lakes Community College that objectively can be understood as a request for Finger Lakes Community College to investigate and make a determination about alleged Sex-Based Harassment at the institution.

Who can I report a Complaint to?

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

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

Affiliated Individuals at Finger Lakes Community College 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.

What is the timeframe for Finger Lakes Community College 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 this Grievance Procedure 10 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 the Grievance Procedure even if I have made a complaint to law enforcement?

Yes. Finger Lakes Community College 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.

Note for Students: Per New York state law, it is required that Finger Lakes Community College's process run concurrently with a criminal justice investigation and proceeding, however, temporary delays are allowed as requested by external municipal entities while law enforcement gathers evidence. Temporary delays should not last more than ten days except when law enforcement specifically requests and justifies a longer delay.

B. Multi-Party Situations and Consolidation of Complaints

Finger Lakes Community College may consolidate Complaints alleging Sex-Based 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 Sex-Based Harassment arise out of the same facts or circumstances.

Finger Lakes Community College 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.

C. Allegations Potentially Falling Under Two Policies

If the alleged conduct, if true, includes conduct that would constitute covered sexual harassment and conduct that would not constitute covered sexual harassment, the Title IX Grievance Process will be applied in the investigation and adjudication of all of the allegations.

D. Dismissal of a Complaint

Grounds for Dismissal

Finger Lakes Community College may dismiss a Complaint of Sex-Based Harassment for any of the following reasons:

- Finger Lakes Community College is unable to identify the Respondent after taking reasonable steps to do so;
- The Respondent is not participating in Finger Lakes Community College's education program or activity and is not employed by Finger Lakes Community College;
- The Complainant voluntarily withdraws any or all of the allegations in the Complaint, the Title IX Coordinator declines to initiate a Complaint through this Grievance Procedure, and Finger Lakes Community College determines that, without the Complainant's withdrawn allegations, the conduct that remains alleged in the Complaint, if any, would not constitute Sex-Based Harassment under Title IX or this Grievance Procedure even if proven; or
- Finger Lakes Community College determines that the conduct alleged in the Complaint, even if proven, would not constitute Sex-Based Harassment under Title IX or these procedures.

Note: Finger Lakes Community College must make reasonable efforts to clarify the allegations with the Complainant before dismissing under this basis.

Notice of Dismissal

If Finger Lakes Community College dismisses a Complaint, Finger Lakes Community College is required to promptly notify the Complainant of the basis for dismissal.

If the dismissal of the Complaint occurs before a Notice of Allegations is issued to the Respondent, the Title IX Coordinator does not need to notice the Respondent at that time. However, if the Complainant appeals the dismissal, the Respondent will need to be noticed of the Complaint allegations and given an opportunity to respond to the dismissal. If the dismissal occurs after the Respondent has been notified of the allegations, then Finger Lakes Community College must notify the Respondent and Complainant of the dismissal and the basis for the dismissal simultaneously in writing.

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

Appeals of Dismissals

Finger Lakes Community College must notify the Complainant that a dismissal may be appealed and provide the Complainant with an opportunity appeal the dismissal of a Complaint on the following grounds:

- ***Procedural irregularity***: Procedural irregularity that affected the outcome of the matter (i.e., a failure to follow Finger Lakes Community College’s own policy to a degree that had material effect on the outcome of the matter);
- ***New evidence***: New evidence that would change the outcome and that was not reasonably available when the determination whether Sex-Based Harassment occurred or dismissal of the Complaint was made; and
- ***Bias or Conflict of Interest***: The Title IX Coordinator, investigator(s), or decisionmaker(s) 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 of the matter.

If the dismissal occurs after the Respondent has been notified of the allegations, then Finger Lakes Community College must also notify the Respondent that the dismissal may be appealed on the grounds set out above.

The submission of appeal stays (or pauses) any sanctions for the pendency of an appeal.

Supportive Measures and remote learning opportunities remain available during the pendency of the appeal.

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

Appeals should be submitted in electronic form to the email address TitleIX@flcc.edu.

Appeals will be decided by an appeal board, who will be free of conflict of interest and bias, and will not serve as investigator, Title IX Coordinator, or hearing decisionmaker in the same matter.

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

E. Notice of Allegations

Upon initiating Finger Lakes Community College's Grievance Procedure, the Title IX Coordinator shall provide a Notice of Allegations in writing to the Parties whose identities are known. Such notice will occur as soon as practicable after Finger Lakes Community College receives a Complaint, if there are no extenuating circumstances. Finger Lakes Community College will provide the Notice of Allegations within 10 business days after receiving a Complaint.

What does the Notice of Allegations Include?

The written Notice of Allegations must include:

- Finger Lakes Community College'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 Finger Lakes Community College;
- A statement that the Parties are entitled to:
 - an equal opportunity to access the Relevant and not otherwise impermissible evidence; or
 - an accurate description of the Relevant and not otherwise impermissible evidence, with an equal opportunity for the Parties to access the underlying Relevant and not otherwise impermissible evidence upon request of any Party;
- A statement that the Respondent is presumed not responsible for the alleged Sex-Based Harassment until a determination is made at the conclusion of Finger Lakes Community College'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 decisionmaker;
- Parties may have an advisor of their choice, and that the advisor may be, but is not required to be, an attorney;
- Finger Lakes Community College's Student Code of Conduct prohibits knowingly making false statements or knowingly submitting false information during Finger Lakes Community College's Grievance Procedure; and
- If, in the course of an investigation, Finger Lakes Community College 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, Finger Lakes Community College is required to provide written notice of any additional allegations to the Parties whose identities are known.

What if Finger Lakes Community College decides to investigate additional allegations of Sex-Based Harassment?

If, in the course of an investigation, Finger Lakes Community College 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, Finger Lakes Community College 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 Finger Lakes Community College has reasonable concerns for the safety of any person as a result of providing a written Notice of Allegations, Finger Lakes Community College through the Title IX Coordinator, 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.

F. 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 that Finger Lakes Community College cannot limit the choice of who that advisor may be or their presence for the Parties in any meeting or proceeding unless such advisor does not follow Finger Lakes Community College's established rules of decorum and rules around participation.

G. Investigation

General Rules of Investigations

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

Finger Lakes Community College, and not the Parties, have 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 Finger Lakes Community College and does not indicate responsibility.

Finger Lakes Community College 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. Finger Lakes Community College 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.

Notice of participation

Finger Lakes Community College 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

Finger Lakes Community College 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.

The advisor is restricted regarding the extent to which the advisor may participate in the Grievance Procedure. Advisors are allowed to attend all meetings and proceedings but are restricted from speaking or speaking on behalf of the Complainant or Respondent. These restrictions are applicable to all Parties.

Additional Support Persons Beyond Advisors of Choice

Parties may have one person other than the advisor of the Parties' choice present during any meeting or proceeding. The same restrictions apply to the additional support person that the advisor must adhere to (i.e. restricted from speaking or speaking on behalf of the Complainant or Respondent). In rare cases, at the sole discretion of the College, additional advisors may be permitted to participate in the process.

Character Witnesses

Finger Lakes Community College allows Parties to call character witnesses to testify. Character witnesses are limited to no more than three for each Party. While the character witnesses will be allowed to testify, the decisionmaker will be instructed to afford very low weight to any non-factual character testimony of any witness.

Access to and Review of the Investigative Report

The Title IX Coordinator and/or investigator designated by the Title IX Coordinator 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 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 the live hearing.

Finger Lakes Community College 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 Finger Lakes Community College Student Code of Conduct, if applicable and other Finger Lakes Community College policies and/or procedures that may apply.

Note: Disclosures of information and evidence for purposes of administrative proceedings or litigation related to the Complaint of Sex-Based Harassment are authorized and not considered unauthorized disclosures potentially subject to other disciplinary action.

Review and Access to Relevant and Not Otherwise Impermissible Evidence

Each Party will have an equal opportunity to present 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. 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.

Each Party and their advisors of choice will have an equal opportunity to review and access the evidence that is Relevant to the allegations of Sex-Based Harassment and not otherwise impermissible regardless of relevance prior to the conclusion of the investigation. The Title IX Coordinator and/or investigator designated by the Title IX Coordinator will provide each Party with a reasonable opportunity to respond to the evidence. Both Parties will have the opportunity to respond to the evidence prior to the live hearing.

Finger Lakes Community College 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 Finger Lakes Community College Student Code of Conduct, if applicable and other Finger Lakes Community College policies and/or procedures that may apply.

Note: Disclosures of information and evidence for purposes of administrative proceedings or litigation related to the Complaint of Sex-Based Harassment are authorized and not considered unauthorized disclosures potentially subject to other disciplinary action.

Relevant Evidence

Evidence is Relevant when it is related to the allegations of Sex-Based Harassment under investigation as part of this Grievance Procedure.

Questions are Relevant when they seek evidence that may aid in showing whether the alleged Sex-Based Harassment occurred, and evidence is Relevant when it may aid a decisionmaker in determining whether the alleged Sex-Based Harassment occurred.

Impermissible Evidence

The following types of evidence, and questions seeking that evidence, are excluded as impermissible (i.e., must not be accessed or considered, except by Finger Lakes Community College to determine whether an exception applies, must not be disclosed, and must not otherwise be used) regardless of whether they are Relevant:

- Evidence that is protected under a privileged as 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 Finger Lakes Community College obtains that Party's or witness's voluntary, written Consent for use in Finger Lakes Community College's Grievance Procedure; and
- Evidence that relates to the Complainant's sexual interests or prior sexual conduct, unless evidence about the Complainant's prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant's prior sexual conduct with the Respondent that is offered to prove Consent to the alleged Sex-Based Harassment. Note: the fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or

imply the Complainant's Consent to the alleged Sex-Based Harassment or preclude determination that Sex-Based Harassment occurred.

Timeframes

Finger Lakes Community College will take all reasonable measures to ensure a prudent investigation. An investigation shall take no more than 130 calendar days to complete. If there are any delays or extensions, the Title IX Coordinator must appropriately notify the Parties in writing, as detailed below.

Extensions and Delays

Finger Lakes Community College 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.

H. Single Investigator Model

Finger Lakes Community College does not provide for a live hearing under this Grievance Procedure. However, Title IX requires that there be live questioning by the investigator/decisionmaker 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.

I. Determination Regarding Responsibility

Standard of Proof

Finger Lakes Community College uses the preponderance of the evidence standard of proof to determine whether or not Sex-Based Harassment occurred. This means that the investigation and hearing determine whether it is more likely than not that a violation of the Grievance Procedure occurred.

General Considerations for Evaluating Evidence and Testimony

The decisionmaker is required to evaluate Relevant and not otherwise impermissible evidence for its persuasiveness. 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.

Character Witnesses

Finger Lakes Community College allows Parties to call character witnesses to testify. Character witnesses are limited to no more than three for each Party. While the character witnesses will be allowed to testify, the decisionmaker will be instructed to afford very low weight to any non-factual character testimony of any witness.

Where a Party or witness' conduct or statements demonstrate that the Party or witness is engaging in retaliatory conduct, including without limitation, witness tampering and intimidation, the decisionmaker may draw an adverse inference as to that Party or witness' credibility.

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 Finger Lakes Community College used to evaluate the allegations;
- The decisionmaker's evaluation of the Relevant evidence and determination on whether Sex-Based Harassment occurred;
- Any Disciplinary Sanctions Finger Lakes Community College will impose on the Respondent, whether Remedies other than the imposition of Disciplinary Sanctions will be provided by Finger Lakes Community College to the Complainant, and, to the extent appropriate, other Students identified by Finger Lakes Community College to be experiencing the effects of Sex-Based Harassment, if there is a finding that Sex-Based Harassment occurred; and
- Finger Lakes Community College'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 Finger Lakes Community College within no more than 20 business days of the completion of the hearing.

Determination of Disciplinary Sanctions After a Finding of Responsibility

Per New York state law, past findings of domestic violence, dating violence, stalking, or sexual assault may be admissible in the disciplinary stage that determines sanction. However, it is not admissible prior to determination of responsibility. Past Finger Lakes Community College conduct finding may be admissible in the disciplinary stage that determines sanction. It is not admissible prior to determination of responsibility.

In addition, the Complainant will have an opportunity to make an impact statement during the point of the proceeding where the decisionmaker is deliberating on appropriate sanctions.

Finality of Determination

The determination regarding responsibility becomes final either on the date that Finger Lakes Community College 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.

Disclosures of Outcome by the Parties

The Complainant and Respondent have the right to choose whether to disclose or discuss the outcome of a conduct or judicial process related to sexual assault, dating violence, domestic violence, or stalking and all other sex-based harassment.

The Complainant and Respondent (if both students) have the right to have all information obtained during the course of the conduct or judicial process be protected from public release until the appeals panel makes a final determination unless otherwise required by law.

Finger Lakes Community College complies with the Family Educational Rights and Privacy Act (FERPA) related to student records. The College will take all reasonable measures to ensure the privacy and integrity of the grievance process and those individuals involved in the process.

J. Appeals

Each Party may appeal a determination regarding responsibility. To appeal, a Party must submit their written appeal within ten business days of being notified of the decision, indicating the grounds for appeal.

For appeals resulting from the dismissal of a Complaint, please see the section on *Dismissal of Complaints*.

Grounds for Appeal

The limited grounds for appeal available are as follows:

- Procedural irregularity that would change the outcome;
- New evidence that would change the outcome and that was not reasonably available when the determination whether Sex-Based Harassment occurred or 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.

Procedures for Appeal Process: Students

Finger Lakes Community College will notify the Parties of any appeal, provide the Parties a reasonable and equal opportunity to make a statement in support of, or challenging, the outcome, and will notify the Parties of the result of the appeal and the rationale for the result.

The submission of an appeal stays (or pauses) any sanctions for the period during which an appeal determination is being assessed. Supportive Measures and remote learning opportunities remain available while an appeal is being deliberated and before a final decision has been made.

Appeals should be submitted in electronic form to the email address TitleIX@ficc.edu. Appeals will be decided by an appeal board, who will be free of conflict of interest and bias, and will not serve as investigator, Title IX Coordinator, or hearing decisionmaker in the same matter. Outcome of appeal will be provided in writing simultaneously to both Parties and include rationale for the decision.

Procedures for Appeal Process: Employees

Appeals of formal disciplinary sanctions imposed upon employees who are covered by a Collective Bargaining Agreement (CBA) with the College shall be made in accordance with the discipline procedures set forth in that CBA. For all other matters, written appeals, including any supporting documentation, must be submitted to and received by the College President within 15 days of the party's notice of the investigation findings. Appeals may be submitted by both the Reporting and Responding Party within the timeframes set forth herein. Upon receipt of an appeal, notification that an appeal has been submitted shall be provide to the opposing Reporting or Responding Party.

The College President shall issue a determination within the timeframes set forth in the applicable CBA, or within 15 days of receipt of the appeal(s) if no CBA applies.

If any component of the appeal procedures set forth herein conflicts with a disciplinary procedures set forth in the applicable CBA, the CBA shall govern the process.

All responding parties are expected to comply with conduct sanctions, responsive actions and corrective actions within the timeframe specified by the Title IX Coordinator, appropriate cabinet member, CRCO or Deputy Title IX Coordinators and/or Investigators. Failure to abide by these conduct sanctions, responsive actions and corrective actions by the date specified, whether by refusal, neglect, or any other reason, may result in additional responsive/corrective actions, up to and including termination.

K. Transcript Notations

For crimes of violence, including, without limitation, sexual violence, defined as crimes that meet the reporting requirements pursuant to the Clery Act (20 U.S.C. 1092(f)(1)(F)(i)(I)-(VIII)), Finger Lakes Community College is required to make a notation on the transcript of a student found responsible where suspension, dismissal or expulsion are sanctioned per New York State Education Law § 6443.

L. Retaliation

When Finger Lakes Community College has information about conduct that reasonably may constitute Retaliation under Title IX or its Grievance Procedure, Finger Lakes Community College is obligated to initiate its Grievance Procedure.

Finger Lakes Community College 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 Finger Lakes Community College'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 Finger Lakes Community College's Title IX Grievance Procedure.

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 Finger Lakes Community College's Grievance Procedure.

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 Student 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.

Please refer to Finger Lakes Community College's amnesty policy.

Complaints alleging Retaliation may be filed according to Finger Lakes Community College's Student Code of Conduct and/or Non-Discrimination Policy.

M. Sanctions

The determination of whether the responding individual is found responsible for the offense shall be made on the basis of whether or not there is evidence which supports the finding of a violation,

using the standard of evidence, a preponderance of evidence (more likely than not). Students will be notified of this decision within a timely manner by electronic delivery. If there is a significant delay, the student will be notified of such delay. Sanctions of suspensions or dismissals for students may be delivered by a method deemed reasonable by the Senior Director, Center for Student Well-Being, the AVP of Student Affairs and/or the Provost, VP of Academic and Student Affairs. The most common sanctions are defined below and any additional sanctions, if appropriate, will be defined in the student's outcome/decision letter. Employee sanctions will be in consort with the Collective Bargaining Agreements and Human Resources.

Potential Sanctions for Students: *(For a full description of sanctions, please see Appendix B)*

- A. No Action**
- B. Informal Warning**
- C. Written Warning**
- D. Ongoing Conduct Requirements/Restrictions**
- E. Community Service**
- F. Conduct**
- G. Conduct Suspension**
- H. Conduct Dismissal.**
- I. Housing Conduct Requirements/Restrictions**
- J. Housing Probation**
- K. Housing Suspension**
- L. Housing Removal/Dismissal**
- M. Permanent Transcript Notation**
- N. Sanctions for Alcohol and Other Drug Violations**
- O. DWI/DUI**
- P. Persona Non-Grata Status**

Potential Sanctions for Employees: *(Any applicable provision in Collective Bargaining Agreements shall apply to the imposition of formal disciplinary measures)*

The College is responsible for prompt, effective, remedial and equitable action in response to a finding of sexual harassment, discrimination, or retaliation. Because each situation will contain many variables, the College's response will be varied. Responsive actions for an employee who has engaged in sexual harassment, Title XI, discrimination and/or retaliation may include.

- **Warning (verbal or written)**
- **Performance Improvement/management process**
- **Required counseling**
- **Required training or education**
- **Probation**
- **Loss of annual pay increase**

- **Loss of oversight or supervisory responsibility**
- **Demotion**
- **Suspension with pay, or without**
- **Termination**
- **Other appropriate remedies**

APPENDIX A: DEFINITIONS

1. **Accused** means a person accused of a violation who has not yet entered an institution’s judicial or conduct process.
2. **Admission** means selection for part-time, full-time, special, associate, transfer, exchange, or any other registration, membership, or matriculation in or at an education program or activity operated by Finger Lakes Community College.
3. **Bystander** means a person who observes a crime, impending crime, conflict, potentially violent or violent behavior, or conduct that is in violation of the rules or policies of an institution.
4. **Consent¹** 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. Consent to any sexual act or prior consensual sexual activity between or with any Party does not necessarily constitute Consent to any other sexual act. Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol. Consent may be initially given but withdrawn at any time. Consent cannot be given when a person is incapacitated. Incapacitation occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot Consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to Consent. Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm. When Consent is withdrawn or can no longer be given, sexual activity must stop. “Consent” and “affirmative consent” may be used interchangeably under the Student Code of Conduct, Title IX Grievance Policy, and Non-Discrimination Policy.
5. **Complainant** means:
 - (1) a student or employee who is alleged to have been subjected to conduct that could constitute Sex-Based Harassment as defined in this Grievance Procedure and who was participating or attempting to participate in Finger Lakes Community College’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-Based Harassment under this Grievance Procedure and

¹ This definition of consent is taken from New York State Education Law § 6441(2)(a).

who was participating or attempting to participate in Finger Lakes Community College's Education Program or Activity at the time of the alleged Sex-Based Harassment.

6. **Complaint** means an oral or written request to Finger Lakes Community College that objectively can be understood as a request for Finger Lakes Community College to investigate and make a determination about alleged Sex-Based Harassment at the institution.
7. **Confidential Employee** means:
 - (1) an employee of Finger Lakes Community College 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 Finger Lakes Community College whom the institution has designated as confidential for the purpose of providing services to persons related to Sex-Based Harassment. If the employee also has a duty not associated with providing those services, the employee's confidential status is only with respect to information received about Sex-Based Harassment in connection with providing those services; or
 - (3) an employee of Finger Lakes Community College who is conducting an Institutional Review Board-approved human-subjects research study designed to gather information about Sex-Based Harassment. The employee's confidential status is only with respect to information received while conducting the study.
8. **Disciplinary Sanctions** means consequences imposed on a Respondent following a determination under this Grievance Procedure that the Respondent violated Finger Lakes Community College's prohibition Sex-Based Harassment.
9. **Education Program or Activity** means any academic, extracurricular, research, occupational training or other Education Program or Activity operated by Finger Lakes Community College.
10. **Party** means Complainant or Respondent.
11. **Peer Retaliation** means Retaliation by a Student against another Student.
12. **Pregnancy or related conditions** means
 - 1) Pregnancy, childbirth, termination of pregnancy, or lactations;
 - 2) *Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactations; or*
 - 3) *Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.*
13. **Relevant** means related to the allegations of Sex-Based Harassment under investigation as part of this Grievance Procedure. Questions are Relevant when they seek evidence that may aid in

showing whether the alleged Sex-Based Harassment occurred, and evidence is Relevant when it may aid a decisionmaker in determining whether the alleged Sex-Based Harassment occurred.

14. **Remedies** means measures provided, as appropriate, to a Complainant or any other person Finger Lakes Community College identifies as having had their equal access to Finger Lakes Community College'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 Finger Lakes Community College's Education Program or Activity after Finger Lakes Community College determines that Sex-Based Harassment occurred.
15. **Respondent** means a person who is alleged to have violated Finger Lakes Community College's prohibition on Sex-Based Harassment.
16. **Retaliation** means intimidation, threats, coercion, or discrimination by any person, by Finger Lakes Community College, a Student, or an employee or other person authorized by Finger Lakes Community College to provide aid, benefit, or service under Finger Lakes Community College's Education Program or Activity, for the purpose of interfering with any right or privileged secured by Title IX, or because the person has reported information, made a Complaint, testified, assisted or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Grievance Procedure.
17. **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 Finger Lakes Community College'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 Finger Lakes Community College'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 Finger Lakes Community College's Education Program or Activity;
 - (ii) the type, frequency, and duration of the conduct;
 - (iii) the Parties' ages, roles within Finger Lakes Community College'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 Finger Lakes Community College'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 crimes committed by a person who: (A) is a current or former partner of the victim under the family or Domestic Violence laws of New York State, or a person similarly situated to a spouse of the victim; (B) is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner; (C) shared a child in common with the victim; or (D) commits acts against a youth or adult victim who is protected from those acts under the family or Domestic Violence laws of New York State; or

(6) *Stalking* means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (A) fear for the person's safety or the safety of others; or (B) suffer substantial emotional distress.

18. ***Student*** means a person who has registered for classes.
19. ***Student Code of Conduct*** means the written policies adopted by an institution governing student behavior, rights, and responsibilities while such student is registered at the institution.
20. ***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 Finger Lakes Community College's Education Program or Activity, including measures that are designed to protect the safety of the Parties or Finger Lakes Community College's educational environment; or
 - 2) Provide support during Finger Lakes Community College's Grievance Procedure for Sex-Based Harassment.

APPENDIX B: SANCTION DEFINITIONS

A. No Action

No action indicates a student is found not responsible for violating the Code. *[Not eligible to appeal.]*

B. Informal Warning

An informal warning indicates that a student's behavior may have violated the Code, but no sanctions are being assigned by the College at this time. *[Not eligible to appeal.]*

C. Written Warning

A Written Warning is an official notification that the behavior of the student is unacceptable and violated the Code. If the student violates the Code or Association Rules & Regulations again or if the student is found responsible for any future policy violations, the student may receive more severe disciplinary actions. Written Warnings are placed in the student's official conduct file. *[Not eligible to appeal.]*

D. Ongoing Conduct Requirements/Restrictions

Conduct requirements may be imposed with or without suspension or probation. Conduct requirements include, but are not limited to:

- a) restrictions from participating in intercollegiate athletics and extra-curricular activities;
- b) restrictions of access to some or all campus facilities/areas;
- c) removal from class(es);
- d) monetary payments for purpose of restitution, conduct fines, or to cover the expense of educational sanctions;
- e) no contact orders;
- f) denial of financial assistance from programs funded by the College;
- g) required attendance at educational/assessment programs such as behavioral management workshops, counseling services, and comprehensive substance abuse assessments;
- h) administrative hold on access to specified College documents;
- i) loss of on campus employment opportunities, including but not limited to, student aide and Resident Assistant positions;
- j) prohibition/revocation of campus employment;
- k) requirement to complete specific coursework; and
- l) restrictions on completion of coursework (e.g., online only, etc.).

E. Community Service

Students may be assigned community service in a manner consistent with their violation (e.g. – a conduct violation in the Cafeteria may result in community service in the Cafeteria). Community service sanctions include, but are not limited to, participating in a designated service project or giving an identified community or agency (on or off campus) a number of service hours to be completed within a specified time period.

F. Conduct Probation

Conduct probation indicates to a student that their behavior has resulted in a sanction close to suspension. It is imposed for a definite period of time and includes the likelihood of more severe conduct sanctions, including suspension or dismissal, if the student is found to be violating or to have violated any section of the Code during the probationary period, and may include ongoing conduct requirements. A student on probation may be required to meet periodically with a person designated by the Senior Director, Center for Student Well-Being.

G. Conduct Suspension

Suspension prohibits the student from attending FLCC for a designated period of time, which shall not exceed a period of more than five calendar years following the effective date. While on suspension the student is, in most cases, restricted from being on college property. The Senior Director, Center for Student Well-Being or designee will determine the effective dates of the suspension. If required by the suspension, a student who has been suspended must petition for re-enrollment through the Office of the Associate Vice President of Student Affairs and/or Admissions Review Board. Notice of suspension is kept permanently in the student's official college record maintained by the Registrar's Office and by the Center for Student Well-Being Office.

H. Conduct Dismissal

Conduct Dismissal permanently separates the student from the institution, prohibits the student from ever attending Finger Lakes Community College and, in most cases restricts a person from being on college property. A student may not be readmitted to the College after dismissal. Dismissals are usually accompanied by Permanent Transcript Notations (see PTN section). Notice of Conduct Dismissal is kept permanently in the student's official college record maintained by the Registrar's Office and the Center for Student Well-Being Office.

I. Permanent Transcript Notation

Permanent Transcript Notations (PTN) indicating disciplinary action taken will be placed on student records where students have been found responsible for violating the Code of Conduct in instances including but not limited to, behavior that leads to death or serious physical injury of another person, sexual assault, hazing, or conduct dismissal. Finger Lakes Community College reserves the right to determine additional serious violations that will result in a PTN. A PTN will appear on a student's official academic transcript as grades of AW (Administrative Withdrawal) for the classes during the semester in which the sanction is imposed and a brief comment on the transcript noting the sanction and date(s).

For crimes of violence, including, but not limited to sexual violence, defined as crimes that meet the reporting requirements pursuant to the federal Clery Act¹ established in 20 U.S.C. 1092(f)(1)(F)(i)(I)-(VIII), institutions shall make a notation on the transcript of students found responsible after a conduct process that they were "suspended after a finding of responsibility for a code of conduct violation" or "dismissed/expelled after a finding of responsibility for a code of conduct violation". If a respondent withdraws from the institution while such conduct charges are pending and an outcome has not yet been determined and declines to complete the disciplinary process, institutions shall make a notation on the transcript of such students that indicates the student "withdrew with conduct charges pending".

A student may appeal to remove a PTN from their transcript no sooner than one calendar year from the original sanction date. Requests for removal should be sent to the Associate Vice President of Student Affairs and should include a rationale for the request. Appeals will be reviewed by the AVP of Student Affairs and/or the Provost and a decision will be rendered within 30 calendar days from the receipt of the appeal.

J. Sanctions for Alcohol and Other Drug Violations

The College treats each student and each situation individually. Therefore, the certainty of sanctions cannot be assured prior to a Conduct Conference occurring. The sanction descriptions below provide *general* guidelines for a Hearing Officer and student reference. These sanctions may, at the discretion of the Hearing Officer, or in consultation with College Officers, be changed and/or added to, based upon the analysis of each student and situation. It is important to remember that while even a single violation can lead to Conduct Suspension or Conduct Dismissal from FLCC, that not all students charged with Code of Conduct violations receives actions.

Alcohol

First Violation - Students found responsible for violating the respective section of the Code of Conduct will receive sanctions commensurate with their involvement in the situation. Students present in an area where policy violations occurred *may* receive a written warning, an educational assignment, and/or an online evaluation; while students responsible for hosting an event, or supplying alcohol for an event, *may* receive conduct probation, an educational assignment, parental notification (if under 21), a substance abuse evaluation, and/or an online education and/or evaluation.

Second Violation – Students found responsible for violating the respective section of the Code of Conduct a second time will receive sanctions commensurate with their involvement in the situation. Students present in an area where policy violations occurred *may* receive conduct probation, parental notification (if under 21), an educational assignment, and/or a substance abuse evaluation; while students responsible for hosting an event, or supplying alcohol for an event, *may* receive conduct suspension, parental notification (if under 21), a substance abuse education and/or evaluation, an online evaluation, and/or conditions necessary for readmission.

Third Violation - Students found responsible for violating the respective section of the Code of Conduct a third time will receive sanctions commensurate with their involvement in the situation. Students present in an area where policy violations occurred *may* receive conduct suspension, a permanent transcript notation, parental notification (if under 21), a substance abuse evaluation, and/or conditions necessary for readmission, while students responsible for hosting an event, or supplying alcohol for an event, *may* receive conduct dismissal, a permanent transcript notation, parental notification (if under 21), a substance abuse evaluation, an online evaluation, and/or conditions necessary for readmission.

Fourth Violation - Students found responsible for violating the respective section of the Code of Conduct a fourth time will receive sanctions commensurate with their involvement in the situation. Students present in an area where policy violations occurred *may* receive conduct dismissal, a permanent transcript notation, parental notification (if under 21), a substance abuse evaluation, an

online evaluation, and/or conditions necessary for readmission.

Other Drugs*

First Violation - Students found responsible for violating the respective section of the Code of Conduct will receive sanctions commensurate with their involvement in the situation. Students present in an area where policy violations occurred *may* receive conduct probation, an educational assignment, parental notification (if under 21), a substance abuse evaluation, and/or an online evaluation, while students involved in hosting an event, or supplying drugs for an event *may* receive conduct suspension, parental notification (if under 21), substance abuse education and/or evaluation, and/or conditions necessary for readmission.

Second Violation - Students found responsible for violating the respective section of the Code of Conduct a second time will receive sanctions commensurate with their involvement in the situation. Students present in an area where policy violations occurred *may* receive conduct suspension, parental notification (if under 21), a substance abuse education and/or evaluation, while students involved in hosting an event, or supplying drugs for an event *may* receive conduct dismissal, a permanent transcript notation, parental notification (if under 21), a substance abuse education and/or evaluation, and/or conditions necessary for readmission.

Third Violation - Students found responsible for violating the respective section of the Code of Conduct a third time will receive sanctions commensurate with their involvement in the situation. Students present in an area where policy violations occurred *may* receive conduct dismissal, parental notification (if under 21), a substance abuse evaluation, an online evaluation, and/or conditions necessary for readmission.

**Note: the sale or distribution of drugs or unlawful controlled substances may result in interim (immediate) suspension prior to a conduct conference occurring.*

DWI/DUI

First Violation – Students found responsible for violating the respective sections of the Code of Conduct, while operating a motor vehicle, will receive sanctions commensurate with their involvement in the situation. Students who are not responsible for property or personal damages *may* receive conduct probation, an educational assignment, parental notification (if under 21), a substance abuse education and/or evaluation, while students who are responsible for property or personal damages *may* receive conduct suspension, parental notification (if under 21), a substance abuse evaluation, and/or conditions necessary for readmission.

If a student is suspended as a result of alcohol and/or other drug violations and subsequently returns to FLCC, another violation of alcohol or other drug parts of the Code of Conduct will likely result in conduct dismissal from the College. For very serious or multiple violations of the Student Code, additional sanctions may be warranted and imposed in accordance with normal college conduct procedures.

K. Persona Non-Grata Status

Persona non grata status refers to an individual who is prohibited from entering or remaining

on any property owned or controlled by Finger Lakes Community College at any time, for any reason, without specific written reauthorization from the Center for Student Well-Being, AVP of Student Affairs and/or Office of Campus Police. Should an individual fail to comply with the terms of this directive, they will be considered a trespasser and will be subject to arrest and criminal prosecution.