



**PROCEDURES PURSUANT TO
BOV POLICY # 05 (2023) – TITLE IX SEXUAL HARASSMENT
POLICY**

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I. APPLICABILITY OF PROCEDURES

- A. These procedures apply to any Title IX matter, including prior versions of BOV Policy #5.

II. RESPONSE TO A FORMAL COMPLAINT

- A. Reports of violations of Board of Visitors Policy #05, Title IX Sexual Harassment Policy (Policy), should be made promptly as follows:

1. Reports of Sexual Harassment or other violations of this Policy falling under Title IX should be made to the Title IX Coordinator;
2. Reports of violations of this Policy involving the Title IX Coordinator or the Title IX Coordinator's designee should be made to the Vice President of Operations;

- B. Any reporting individual who believes that an immediate threat of harm exists to self or others or that an individual has violated federal, state, or local law, may immediately contact law enforcement.

- C. The Title IX Coordinator shall promptly contact the Complainant to:

1. Discuss the availability of Supportive Measures,
2. Consider the Complainant's wishes with respect to Supportive Measures,
3. Inform the Complainant of the availability of Supportive Measures with or without the filing of a Formal Complaint, and
4. Explain to the Complainant the process for filing a Formal Complaint.¹

- D. Although reports of violations of this policy should be made promptly, there is no time limitation on the filing of reports. If the Respondent is no longer subject to NSU's jurisdiction or significant time has passed since the alleged incident, NSU's ability to investigate may be more limited.

Additional information on reporting options can be found on NSU's website, at <https://nsu.guardianconduct.com/incident-reporting>.

III. RESPONSE TO A FORMAL COMPLAINT

- A. In response to a Formal Complaint, NSU shall follow a grievance process that complies with the Title IX regulations.²

¹ 106.44(a).

² 106.44(b)(1).

With or without a Formal Complaint, NSU must comply with Section II of these procedures.³

Early in the investigation, the Title IX Coordinator, or their designee, will seek to determine if the Complainant wishes to pursue a Hearing Process, or an Informal Resolution, or does not wish to pursue resolution of any kind.

If the Complainant does not wish to pursue any resolution, requests that no action be taken, requests that the report remain confidential, or elects not to participate in the process, NSU may still respond to the report. NSU's ability to respond may be limited if a Complainant wishes to remain anonymous. While no guarantee can be made to a Complainant regarding confidentiality, the Title IX Coordinator will seriously consider every request for confidentiality but cannot guarantee that every request for confidentiality may be granted.

A request for confidentiality will be considered in conjunction with NSU's legal obligation to ensure a living and learning environment free from sex discrimination and ensure the due process rights of the Respondent to be informed of the allegations and their source. The Complainant's request may be weighed against the following factors in considering how to respond:

- the frequency, nature, and severity of the alleged Sexual Harassment,
- the age, disability status, and other characteristics of the parties,
- whether the alleged conduct was physically threatening,
- whether the alleged conduct was directed at more than one person,
- whether the alleged conduct arose in the context of other conduct prohibited under other policies,
- whether the alleged conduct unreasonably interferes with the Complainant's educational or work performance and/or NSU Education Programs or Activities,
- whether there have been other reports of Sexual Harassment against the same Respondent,
- whether the alleged conduct involves the use of any weapons,
- whether the alleged conduct concerns the use of any drugs to limit a Complainant's capacity, and
- the Respondent's right to receive information about the allegations if the information is maintained by Norfolk State University as an "education record" under the Family Educational Rights and Privacy Act (FERPA).

IV. INFORMAL RESOLUTION

- A. The Title IX Coordinator will inform the Complainant who submits a Formal Complaint that any time prior to reaching a determination regarding responsibility, NSU may facilitate an informal resolution process such as mediation that does not involve a full investigation and adjudication as long as both parties provide voluntary, written consent to the informal resolution process. The Title IX Coordinator may elect

³ 106.44(b)(1).

not to pursue an informal resolution process if it is deemed not in the best interest of the involved parties or in NSU's best interest.

The Title IX Coordinator shall provide written notice to both parties that an informal resolution is never available to resolve allegations of Sexual Harassment by an employee against a student, and that any party has the right to withdraw from the informal resolution process and resume the Hearing Process with respect to the Formal Complaint.

The Title IX Coordinator also shall provide written notice to the parties that records and statements made during an informal resolution process will be maintained by NSU pursuant to the recordkeeping provisions in this Policy and that a party may choose to share records exchanged or provided during an informal resolution process with the investigator if the parties choose to resume the grievance process.

V. EMERGENCY REMOVAL AND ADMINISTRATIVE LEAVE

A. Emergency Removal

NSU may remove a Respondent from NSU's Education Program or Activity on an emergency basis, provided that NSU undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Harassment justifies removal, and provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal.⁴ This provision may not be construed to modify any rights under the Individuals with Disabilities in Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act.⁵

B. Administrative Leave

NSU may place a non-student employee Respondent on administrative leave during the pendency of the grievance process for Formal Complaints of Sexual Harassment.⁶ This provision may not be construed to modify any rights under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.⁷

VI. GRIEVANCE PROCESS FOR FORMAL COMPLAINTS OF SEXUAL HARASSMENT

A. NSU's grievance process shall:

1. Treat Complainants and Respondents equitably by providing remedies to a Complainant where a determination of responsibility for Sexual Harassment has been made against the Respondent, and by following its grievance process

⁴ 106.44(c).

⁵ 106.44(c).

⁶ 106.44(d).

⁷ 106.44(d).

set forth in this section before the imposition of any disciplinary sanctions or other actions that are not Supportive Measures against a Respondent. Remedies must be designed to restore or preserve equal access to NSU's Education Program or Activity. Such remedies may include the same individual services described as Supportive Measures; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.⁸

2. Require an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence – and provide that credibility determinations may not be based on a person's status as a Complainant, Respondent, or witness.⁹
3. Require that any individual designated by NSU as a Title IX Coordinator, investigator, or decision-maker, not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.¹⁰
4. NSU shall ensure that the Title IX Coordinators, investigators, and decision-makers receive training on the definition of Sexual Harassment, the scope of NSU's Education Program or Activity, how to conduct an investigation and grievance process including hearings and appeals, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.¹¹
5. NSU shall ensure that decision-makers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, as set forth in Section VI.¹²
6. NSU must ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.¹³
7. Any materials used to train Title IX Coordinators, investigators, and decision-makers must not rely on sex stereotypes and must promote impartial investigations and adjudications of Formal Complaints of Sexual Harassment.¹⁴

⁸ 106.45(b)(1)(i).

⁹ 106.45(b)(1)(ii).

¹⁰ 106.45(b)(1)(iii).

¹¹ 106.45(b)(1)(iii).

¹² 106.45(b)(1)(iii).

¹³ 106.45(b)(1)(iii).

¹⁴ 106.45(b)(1)(iii).

8. Include a presumption that the Respondent is not responsible for the Sexual Harassment until a determination regarding responsibility is made at the conclusion of the grievance process.¹⁵
9. Include reasonably prompt time frames for conclusion of the grievance process, which will typically be 120 business days, including reasonably prompt time frames for filing appeals, which will be 10 business days, and resolving appeals, which will typically be 30 business days, and a process that allows for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the Complainant and the Respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as 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.¹⁶
10. Describe the range of possible disciplinary sanctions that NSU may implement following any determination of responsibility.¹⁷
11. State that the standard of evidence to be used to determine responsibility is the preponderance of the evidence standard and apply the same standard of evidence for Formal Complaints against students as for Formal Complaints against employees, including faculty, and apply the same standard of evidence to all Formal Complaints of Sexual Harassment.¹⁸
12. Include the procedures and permissible bases for the Complainant and Respondent to appeal.¹⁹
13. Describe the range of Supportive Measures available to Complainants and Respondents.²⁰
14. Not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.²¹

A. Notice of Allegations

1. Upon receipt of a Formal Complaint, NSU must provide the following written notice to the parties who are known:²²

¹⁵ 106.45(b)(1)(iv).

¹⁶ 106.45(b)(1)(v).

¹⁷ 106.45(b)(1)(vi).

¹⁸ 106.45(b)(1)(vii).

¹⁹ 106.45(b)(1)(viii).

²⁰ 106.45(b)(1)(ix).

²¹ 106.45(b)(1)(x).

²² 106.45(b)(2).

- a. Notice of NSU’s grievance process.²³
 - b. Notice of the allegations of Sexual Harassment, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview.²⁴
 - c. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting Sexual Harassment, and the date and location of the alleged incident, if known.
 - d. The written notice must include 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.
 - e. The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and that the parties along with their advisors may inspect and review evidence as described in this policy.
 - f. The written notice must inform the parties of any provision of NSU’s code of conduct, handbook, or policy or procedure that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.²⁵
2. If, in the course of an investigation, NSU decides to investigate allegations about the Complainant or Respondent that are not included in the notice provided pursuant to this section (Section VI.A), NSU must provide notice of the additional allegations to the parties whose identities are known.

B. Dismissal of a Formal Complaint

1. NSU *must* investigate the allegations in a Formal Complaint.²⁶

If the conduct alleged in the Formal Complaint would not constitute Sexual Harassment even if proved, did not occur in NSU’s Education Program or Activity, or did not occur against a person in the United States, then NSU must dismiss the Formal Complaint with regard to that conduct.²⁷

Such a dismissal does not preclude action under another provision of NSU’s code of conduct, handbook, or policy or procedure.²⁸

²³ 106.45(b)(2)(A).

²⁴ 106.45(b)(2)(B).

²⁵ 106.45(b)(2)(B).

²⁶ 106.45(b)(3)(i).

²⁷ 106.45(b)(3)(i).

²⁸ 106.45(b)(3)(i).

2. NSU *may* dismiss the Formal Complaint or any allegations therein, if at any time during the investigation or hearing.²⁹
 - a. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;
 - b. The Respondent is no longer enrolled or employed by NSU; or
 - c. Specific circumstances prevent NSU from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.³⁰

Upon a dismissal required or permitted as described in this section, NSU must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.³¹

C. Consolidation of Formal Complaints

NSU may consolidate Formal Complaints as to allegations of 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 Sexual Harassment arise out of the same facts or circumstances.³²

Where a grievance process involves more than one Complainant or more than one Respondent, reference in this document to the singular “party,” “Complainant,” or “Respondent” include the plural, as applicable.³³

D. Investigation of a Formal Complaint

1. When investigating a Formal Complaint and throughout the grievance process, NSU must.³⁴
 - a. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on NSU and not on the parties, provided that NSU cannot access, consider, disclose, or otherwise use a party’s records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional’s or paraprofessional’s capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless NSU obtains that party’s voluntary, written consent to do so for a grievance process (if a party is not an “eligible student” as defined in 34

²⁹ 106.45(b)(3)(ii).

³⁰ 106.45(b)(3)(ii).

³¹ 106.45(b)(3)(iii).

³² 106.45(b)(4).

³³ 106.45(b)(4).

³⁴ 106.45(b)(5).

C.F.R. § 99.3, then NSU must obtain the voluntary, written consent of a “parent,” as defined in 34 C.F.R. § 99.3).³⁵

- b. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.³⁶
 - c. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.³⁷
 - d. Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related 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 advisor for either the Complainant or Respondent in any meeting or grievance proceeding; however, NSU may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties.³⁸
 - e. 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 sufficient time for the party to prepare to participate.³⁹
 - f. Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a Formal Complaint, including the evidence upon which NSU does not intend to rely on in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.⁴⁰
2. Prior to completion of the investigative report, NSU must send to each party and the party’s advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 business days to submit a written response, which the investigator will consider prior to completion of the investigative report.⁴¹

³⁵ 106.45(b)(5)(i).

³⁶ 106.45(b)(5)(ii).

³⁷ 106.45(b)(5)(iii).

³⁸ 106.45(b)(5)(iv).

³⁹ 106.45(b)(5)(v).

⁴⁰ 106.45(b)(5)(vi).

⁴¹ 106.45(b)(5)(vi).

3. NSU must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.⁴²
4. Create an investigative report that fairly summarizes relevant evidence and, at least 10 business days prior to a hearing or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.⁴³

E. Hearings

1. NSU's grievance process must provide for a live hearing.⁴⁴
2. At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.⁴⁵
3. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally, notwithstanding the discretion of NSU to otherwise restrict the extent to which advisors may participate in the proceedings.⁴⁶
4. Only relevant cross-examination and other questions may be asked of a party or witness.⁴⁷
5. Before a Complainant, Respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.⁴⁸
6. At the request of either party, NSU must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions.⁴⁹
7. If a party does not have an advisor present at the live hearing, NSU must provide without fee or charge to that party, an advisor of NSU's choice to conduct cross-examination on behalf of that party.⁵⁰
8. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior is not relevant, unless such questions and evidence about the Complainant's

⁴² 106.45(b)(5)(vi).

⁴³ 106.45(b)(5)(vii).

⁴⁴ 106.45(b)(6)(i).

⁴⁵ 106.45(b)(6)(i).

⁴⁶ 106.45(b)(6)(i).

⁴⁷ 106.45(b)(6)(i).

⁴⁸ 106.45(b)(6)(i).

⁴⁹ 106.45(b)(6)(i).

⁵⁰ 106.45(b)(6)(i).

prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove Consent.

9. Live hearings may be conducted with all parties physically present in the same geographic location or, at NSU's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.⁵¹
10. NSU must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.⁵²

F. Determination Regarding Responsibility

1. The decision-maker(s), who cannot be the same person(s) as the Title IX Coordinator or the investigator(s), must issue a written determination regarding responsibility.⁵³
2. To reach a determination, NSU must apply the preponderance of the evidence standard.⁵⁴
3. The written determination must include the following:⁵⁵
 - a. Identification of the allegations potentially constituting Sexual Harassment;⁵⁶
 - b. 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;⁵⁷
 - c. Findings of fact supporting the determination;⁵⁸
 - d. Conclusions regarding the application of NSU's Title IX Policy or any other applicable code of conduct to the facts;⁵⁹
 - e. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions NSU imposes on the Respondent, and whether remedies designed to restore or

⁵¹ 106.45(b)(6)(i).

⁵² 106.45(b)(6)(i).

⁵³ 106.45(b)(7)(i).

⁵⁴ 106.45(b)(7)(i).

⁵⁵ 106.45(b)(7)(ii).

⁵⁶ 106.45(b)(7)(ii)(A).

⁵⁷ 106.45(b)(7)(ii)(B).

⁵⁸ 106.45(b)(7)(ii)(C).

⁵⁹ 106.45(b)(7)(ii)(D).

preserve equal access to NSU's Education Program or Activity will be provided by NSU to the Complainant;⁶⁰ and

- f. NSU's procedures and permissible bases for the Complainant and Respondent to appeal.⁶¹
4. Sanctions may be imposed upon any person under NSU's jurisdiction who is found to have violated this policy. Any employee or student who is found to have violated this policy will be subject to administrative action, up to and including termination of employment or dismissal from NSU, as applicable.

Typical student sanctions that may be imposed singly or in combination include, but are not limited to the following:

- Admonition
- Warning
- Disciplinary Probation
- Restitution
- Suspension
- Expulsion

Typical employee sanctions that may be imposed singly or in combination include, but are not limited to the following:

- Discussion
- Verbal Warning
- Written Warning
- Suspension
- Termination of Employment

Any employee found responsible for violating this policy will likely face a sanction ranging from admonition/discussion to expulsion/termination of employment, depending on the severity of the incident, and taking into account any previous disciplinary violations.

⁶⁰ 106.45(b)(7)(ii)(E).

⁶¹ 106.45(b)(7)(ii)(F).

5. NSU must provide the written determination to the parties simultaneously.
6. The determination regarding responsibility becomes final either on the date that NSU provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.⁶²
7. The Title IX Coordinator is responsible for effective implementation of any remedies.⁶³

G. Appeals

1. NSU offers both parties an appeal from a determination regarding responsibility, and from NSU's dismissal of a Formal Complaint or any allegations therein, on the following bases:⁶⁴
 - a. A procedural irregularity that affected the outcome of the matter;⁶⁵
 - b. 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;⁶⁶ or
 - c. The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.⁶⁷
2. A party must file an appeal from a determination regarding responsibility, and from NSU's dismissal of a Formal Complaint or any allegations therein, no later than 10 business days after receiving the determination.
3. As to all appeals, NSU must:⁶⁸
 - a. Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;⁶⁹
 - b. Ensure that the Appeals Officer for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;⁷⁰

⁶² 106.45(b)(7)(iii).

⁶³ 106.45(b)(7)(iv).

⁶⁴ 106.45(b)(8)(i).

⁶⁵ 106.45(b)(8)(i)(A).

⁶⁶ 106.45(b)(8)(i)(B).

⁶⁷ 106.45(b)(8)(i)(C).

⁶⁸ 106.45(b)(8)(iii).

⁶⁹ 106.45(b)(8)(iii)(A).

⁷⁰ 106.45(b)(8)(iii)(B).

- c. Ensure that the Appeals Officer receive annual training on issues related to the prohibited conduct associated with the Title IX Sexual Harassment policy, the scope of NSU’s education program or activity, and on how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, while avoiding prejudgment of the facts at issue, conflicts of interest, and bias ;⁷¹
- d. Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;⁷²
- e. Issue a written decision describing the result of the appeal and the rationale for the result;⁷³ and
- f. Provide the written decision simultaneously to both parties.⁷⁴

VII. RECORDKEEPING

- 1. NSU must maintain for a period of seven years records of:⁷⁵
 - a. Each Sexual Harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required for a grievance process, any disciplinary sanctions imposed on the Respondent, and any remedies provided to the Complainant designed to restore or preserve equal access to NSU’s Education Program or Activity;⁷⁶
 - b. Any appeal and the result therefrom;⁷⁷
 - c. All materials used to train Title IX Coordinators, investigators, and decision-makers. NSU must make these training materials publicly available on its website.⁷⁸
- 2. When NSU has Actual Knowledge of Sexual Harassment in its Education Program or Activity against a person in the United States, NSU must create, and maintain for a period of seven years, records of any actions, including any Supportive Measures, taken in response to a report or Formal Complaint of Sexual Harassment.⁷⁹

⁷¹ 106.45(b)(8)(iii)(C).

⁷² 106.45(b)(8)(iii)(D).

⁷³ 106.45(b)(8)(iii)(E).

⁷⁴ 106.45(b)(8)(iii)(F).

⁷⁵ 106.45(b)(10)(i).

⁷⁶ 106.45(b)(10)(i)(A).

⁷⁷ 106.45(b)(10)(i)(B).

⁷⁸ 106.45(b)(10)(i)(D).

⁷⁹ 106.45(b)(10)(ii).

3. In each instance, NSU must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to NSU's Education Program or Activity.⁸⁰
4. If NSU does not provide a Complainant with Supportive Measures, then NSU must document the reasons why such a response was not clearly unreasonable in light of the known circumstances.⁸¹
5. The documentation of certain bases or measures does not limit NSU in the future from providing additional explanations or detailing additional measures taken.⁸²

⁸⁰ 106.45(b)(10)(ii).

⁸¹ 106.45(b)(10)(ii).

⁸² 106.45(b)(10)(ii).