

# STUDENT CONDUCT SYSTEM (PROCEDURE)

**Sponsor:** Student Success

**Contact:** Vice Provost for Student Success

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## Purpose

The Student Conduct System (Procedure) ensures fair and consistent processes and provides procedures for addressing Complaints that allege violation(s) of the Student Conduct Policy (<https://www.sunyempire.edu/policies/reg-docs/reg-docs-html/student-conduct-policy.php>). It serves to protect the legal rights of Students and applies to all Students of SUNY Empire.

Complaints of Sexual Misconduct will be reported to SUNY Empire's Title IX Coordinator, who shall determine if the Title IX Grievance Procedures apply. For sexual misconduct complaints that do not fall under the Title IX Grievance Procedures, this document provides separate procedures. Section II: Student Conduct Procedures of this document apply to alleged violations of the Student Conduct Policy. In addition to Section II, Section III of this document applies for cases of sexual misconduct including domestic violence, dating violence, stalking, sexual exploitation, and sexual assault, adjudicated through the Student Conduct System.

The SUNY Empire Student Conduct System is completely independent of either civil or criminal proceedings but may act simultaneously with civil and/or criminal proceedings.

## Definitions

In addition to the definitions outlined in the Student Conduct Policy, the following Definitions apply to the Student Conduct system:

**Appeal Review Panel.** A panel of at least two members, one of whom may be a student, that is fair and impartial and does not include individuals with a conflict of interest and bias, and will not serve as investigator, Title IX Coordinator, or hearing decision maker in the same matter.

**Confidential/Confidentiality.** References made to confidential, or confidentiality mean that the identified confidential resource is not required to report crimes and violations to law enforcement or university officials without permission, except for extreme circumstances, such as a health and/or safety emergency or child abuse. Most employees are required to report sexual misconduct or harassment and will provide privacy but not confidentiality.

**Finding.** The determination made through the conduct process: There are only findings of 'responsible' and 'not responsible'.

**Graduate/Graduation.** Refers to the fulfillment of all academic requirements for the program in which a student is enrolled. The official graduation date is based upon the date that all requirements are fulfilled. Participation in a Commencement Ceremony does not necessarily mean a student has graduated.

**Referring Party.** Any faculty member, staff member, or student who files a Complaint or Student Conduct Referral for an alleged violation of the code of conduct. If a complaint is submitted by a person who is not a

faculty member, staff member, or student, then a University Official will serve as the Referring Party.

**Sexual Misconduct.** Refers to cases that fall into Items 5. Intimate Partner Violence; 6. Stalking; 8. Sexual Harassment; and/or 9. Sexual Assault and Sexual Exploitation listed in Section F. Prohibited Conduct under Policy Statement in the Student Conduct Policy

**Title IX Coordinator.** Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. Sec., 1681, et seq., states that all students have equal educational opportunity free from sex discrimination, including sexual harassment and sexual assault. The Title IX coordinator is responsible for the university's compliance with this regulation including, but not limited to, systematically monitoring and evaluating policy and procedures that effectively and efficiently respond to complaints of sex discrimination.

**Title IX Grievance Policy.** Defines the way SUNY Empire handles complaints that fall under the federal definition of Title IX. If an alleged act of sexual misconduct occurs, the Title IX Grievance Policy takes precedence in addressing the complaint. If a complaint about a student does not fall in the scope of the Title IX Grievance policy, the Title IX Coordinator will refer it to the Student Conduct Director.

**Private/Privacy.** References made to privacy mean SUNY Empire offices and employees 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.

**Prohibited Behavior/Conduct.** Any of the actions or behaviors listed in Part F: Prohibited Conduct, under the Policy Statements heading in the Student Conduct Policy.

**Student Conduct Referral/Referral.** – The SUNY Empire Student Conduct System Standard Case Form that includes a description of alleged misconduct and specific Student Conduct Policy items alleged to be violated

**Student Conduct Agreement.** A document that records the respondent's acceptance of the findings and sanctions, as well as a waiver of the right to a hearing and any appeal.

## Statements

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Should suspension or dismissal take place as a result of the disciplinary process, these sanctions supersede a withdrawal from SUNY Empire.

7. Instructions on eligibility for an appeal and how to file an appeal are provided in the decision letter.
8. Pursuant to SUNY Policy, a Student who is suspended or expelled for disciplinary reasons prior to the end of an academic term shall be liable for all tuition and fees due for that term. Registration, tuition, and fees for any forthcoming term affected by the suspension or expulsion that has not yet started will be removed.
9. If a Student who has completed degree requirements is charged with a violation prior to Graduation, the student will be ineligible to Graduate until student conduct action on the case is completed and eligibility to Graduate is confirmed. If the student conduct action results in suspension, the student will be ineligible to Graduate until the term of the suspension has been served. If the student is expelled, it means the student will not be admitted to another program at the university and may be ineligible for Graduation at the discretion of the Student Conduct Body.

### B. Complaints

1. Any member of the SUNY Empire Community may file a complaint when there are allegations that a Student has violated the Student Conduct Policy.
2. A complaint shall be prepared in writing and directed to the Student Conduct Director or designee(s). While there is no limit to the time within which to submit a complaint, any complaint should be submitted as soon as possible after the incident takes place, bearing in mind charges cannot be brought against an individual who is no longer a student, and that evidence may be difficult to gather as time moves forward.
3. The complaint must set forth allegations of misconduct in writing with sufficient detail to support a referral which includes, without limitation, a description of the incident, any relevant evidence, witnesses, and the alleged Student Conduct Policy violation(s). The individual filing the complaint may elect to meet with the Student Conduct Director or designee(s) for a consultation prior to submitting a complaint.
4. Once the complaint is received, the Student Conduct Director or designee(s), will review the complaint, may meet with other individuals involved, and will then make a determination regarding whether or not the complaint is within the scope of the Student Conduct Policy and has grounds and to move forward with a Student Conduct Referral.

### C. Initial Review and Referral

1. A Referral to the Student Conduct System is made by the Student Conduct Director based upon the information in the complaint and a subsequent review, which may include gathering additional information.

The Student Conduct Director or designee(s) determines if there are grounds for the allegation and whether the allegation falls within the scope of the Student Conduct Policy or if it should follow other procedures. Grounds for a complaint exist if the complaint and other information generally describe the behaviors of the Respondent that appear to violate the Student Conduct Policy, regardless of whether complaint has been, or can be, proven. The following options are available:

- a. If there are grounds for the complaint and the alleged violations are within the scope of the Student Conduct Policy, the Student Conduct

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## Student Conduct Procedures

### A. Introduction

The Student Conduct System provides procedures for the resolution of student conduct matters, attends to due process rights, provides orderly review and consideration of the facts, and considers the impact of any violations on SUNY Empire and the victim(s). The following apply to the resolution of student conduct matters:

1. The Student Conduct Director develops procedures for the administration of the Student Conduct System and procedural rules for the conduct of hearings, consistent with the provisions of the Student Conduct Policy and the procedures herein.
2. SUNY Empire will communicate via mail to the respondent and complainant/reporting individual's mailing addresses along with proof of delivery on all matters pertaining to the Student Conduct System. Students are responsible for the mail sent to their mailing address.
3. The Student Conduct System utilizes a "preponderance of evidence" standard of proof. A preponderance of evidence standard evaluates whether it is more likely than not that a violation occurred (greater than 50% likelihood).
4. All deadlines and time requirements in the Student Conduct System may be extended for good cause, as determined at the sole discretion of the Student Conduct Director or designee(s). Both the Respondent and the Complainant/Reporting Individual will be notified in writing of the extension, and the reason for extension, and will be provided the date of the new deadline or event. Extensions requested by one party will generally not exceed five (5) business days.
5. Multiple incidents may be resolved with one referral at the discretion of the Student Conduct Director or designee(s).
6. The student conduct process may be initiated regardless of a student's current enrollment status so long as the proposed violation occurred while the individual was a student. This includes conduct that occurs before classes begin, after classes end, during the academic year, and/or during periods between terms of actual enrollment. If a student withdraws from SUNY Empire, SUNY Empire can pursue the student conduct process following the withdrawal.

Director makes a Student Conduct Referral and provides the course of action.

- b. If the Student Conduct Director or designee(s) determines that the allegation is groundless, the Student Conduct Director so notifies the complainant in writing.
- c. If the alleged violation does not fall within the scope of this policy, the Student Conduct Director makes the appropriate referral and so notifies the complainant in writing.

## D. Referrals

1. All Referrals to the Student Conduct System shall be presented to the Respondent in writing via mail to the mailing address with proof of delivery along with a copy of the Student Conduct Policy and the procedures. Additionally, the Respondent will have the opportunity to meet with a Student Conduct Administrator to:

- Review the Student Conduct Referral which includes the alleged Student Conduct Policy violation(s) (charges);
- Learn about the student conduct process and have questions answered;
- Give their perspective about the incident and provide relevant evidence;
- Provide witness information, if applicable;
- Sign the Student Conduct Referral indicating the referral and possible sanction outcomes have been reviewed; and
- Receive a copy of the Student Conduct Referral.

2. During this meeting, and throughout the student conduct process, the Respondent may have one advisor of their choice. The advisor shall not represent or speak for the Respondent and shall not participate directly in the student conduct process. The advisor may be present and speak privately with the Respondent during any meeting.

3. After the Respondent has received a copy of the Student Conduct Referral and has had the opportunity to meet with the Student Conduct Director, the Respondent may have 3 business days to review the Student Conduct Referral and decide whether to accept responsibility for the charges or not. The Respondent must communicate their decision to the Student Conduct Director in writing.

4. The Student Conduct Director determines whether the incident can be resolved a) with an administrative agreement b) by administrative determination, or c) with a hearing.

## E. Administrative Resolutions

### 1. Administrative Agreement

- a. If the substantive facts, finding of responsibility and sanctions can be agreed upon by the Student Conduct Director or designee(s), and the Respondent(s), a Student Conduct Agreement may be prepared and signed by the parties. A signed Student Conduct Agreement shall constitute an acceptance of the finding and sanctions, as well as a waiver of the right to a hearing and any appeal.
- b. If the substantive facts and outcomes and redress cannot be agreed upon, the matter shall be referred to a hearing.
- c. Sexual Misconduct Referrals will not be resolved by Administrative Agreement.

### 2. Administrative Determination

- a. If the Respondent does not wish to accept responsibility for violation(s) and/or an appropriate sanction from the Student Conduct Director, but the preponderance of evidence standard

has been met, a finding of responsibility and sanctions will be imposed.

- b. Administrative Determinations may also be imposed if the Respondent fails to meet or communicate with the Student Conduct Administrator, provided that there is a preponderance of evidence to make such a determination. If the Student Conduct Director or designee(s) learns that the Respondent's failure to participate is for good cause, the Student Conduct Director or designee(s) may, in their sole discretion, rescind the decision and review the Respondent's presentation.
- c. The Respondent maintains the right to file one appeal of the original decision as outlined in Section VI.A.
- d. Administrative Determinations may only be applied in referrals where sanctions will not result in Suspension or Expulsion; in cases where Suspension or Expulsion is a possible Sanction, a hearing before a Student Conduct Body will be scheduled. Sexual Misconduct referrals will not be resolved by Administrative Determination.

## F. Hearing

### 1. Student Conduct Hearing Before a Student Conduct Body

When a referral cannot be resolved by and Administrative Agreement or Determination, a Student Conduct Hearing will be scheduled. A Student Conduct Hearing provides the Student Conduct Body the opportunity to hear both sides of the issue in considerable detail. When a sanction of suspension or expulsion is possible, the Student Conduct Referral must be adjudicated in a hearing unless the Respondent waives a hearing in writing.

For cases of alleged Sexual Misconduct, Section III: Procedures for Sexual Misconduct Cases also applies and supersedes any contradictory information in this section. In cases of Sexual Misconduct adjudicated through the Student Conduct System a hearing cannot be waived.

Hearings are conducted by a Student Conduct Body according to the following guidelines:

- a. Hearings are scheduled as soon as practicable, generally within twenty (20) business days from receipt of complaint, to give students as well as SUNY Empire time to prepare.
- b. The Student Conduct Body will provide formal written notice of the time, date, place of the hearing no less than four (4) business days in advance of the hearing, which will include a list of the specific Prohibited Conduct outlined in the Student Conduct Policy that the Respondent has allegedly violated. A copy of any written report(s) that will be used at the hearing will be made available to the Respondent, upon request, by contacting the Student Conduct Director.
- c. In hearings involving more than one Respondent, at the sole discretion of the Student Conduct Director or designee(s), SUNY Empire may permit the hearings concerning each student to be conducted together or separately.
- d. The Complainant(s) and the Respondent(s) must represent themselves.
- e. Hearings are confidential and closed to all except the participants in the hearing. Admission of any other person to the hearing shall be at the discretion of the Student Conduct Body and the Student Conduct Hearing Officer.
- f. The Complainant(s) and the Respondent(s) each may have one advisor present, at their own expense. The advisor may be an attorney. The Complainant(s) and/or the Respondent(s) are

responsible for presenting their own evidence, and, therefore, advisors are not permitted to speak or to participate directly in any hearing before a student conduct body. Students may request a break to consult with their advisor of choice privately.

- g. The Student Conduct Director and/or designee(s) appoint the Student Conduct Body for each hearing. A Student Conduct Body for each hearing is composed of one student and two faculty and/or staff, drawn from a pool of trained faculty, staff, and students. The Student Conduct Body is assisted by a Student Conduct Hearing Officer appointed by the Student Conduct Director or designee(s).
- h. The Student Conduct Body, with the advice of the Student Conduct Hearing Officer, organizes the hearing, hears both sides of the issue in considerable detail to determine responsibility, and assigns appropriate sanctions.
- i. The Student Conduct System relies on full and open discussion of referrals with all parties concerned in order to render a fair judgement. The Student Conduct System is administrative in nature and, as such, is not considered a court of law.
- j. The Complainant and the Respondent may: provide opening statements; present witnesses who have direct knowledge of the incident; question witnesses and each other; and make a closing statement.
- k. The Student Conduct Body may ask questions of the Complainant, Respondent and Witnesses.
- l. If any party repeatedly disrupts a hearing (e.g., by shouting, repeatedly interrupting others, verbally or physically threatening individuals involved in the hearing, or other behavior deemed disruptive by the Student Conduct Hearing Officer), and fails to heed a warning, the Student Conduct Hearing Officer has the right to remove the disruptive individual from the hearing. The hearing shall continue in the absence of any removed, disruptive party.
- m. Pertinent records, exhibits, and/or written statements may be accepted as evidence for consideration by a Student Conduct Body. All evidence and witness lists from either party must be submitted to the Student Conduct Director or designee(s) by 9 am two (2) business days before the scheduled hearing. The Student Conduct Hearing Officer, in consultation with the Student Conduct Director and Title IX Officer, as needed, will make the final decision as to the relevancy and admissibility of all evidence. The evidence and witness lists will be shared with the opposing party.
- n. In extraordinary circumstances, witness lists and/or evidence not submitted within this timeline may be considered, subject to final approval of the Student Conduct Hearing Officer. Production of substantive evidence submitted after the deadline may lead to a delay of the remainder of the hearing.
- o. All procedural questions are subject to the final decision of the Student Conduct Hearing Officer of the Student Conduct Body, in consultation with the Student Conduct Director or designee(s).

## **2. Deliberation and Determination of Findings**

- a. After the hearing, the Student Conduct Body shall meet in private to determine, item-by-item (by majority vote), whether the Respondent(s) has violated the Student Conduct Policy as charged.

- b. The Student Conduct Body's determination shall be made based on whether there is a preponderance of evidence that supports the finding of a violation.

- c. The respondent will be notified in writing via mail to the mailing address, with proof of delivery, of the final decision of the Student Conduct Body within ten (10) business days of the hearing, barring extenuating circumstances.

## **3. Hearing Record**

- a. SUNY Empire will create a single, verbatim record, such as a tape recording, of all hearings. The record shall be the exclusive property of SUNY Empire State and will not be duplicated or released. Participants are prohibited from making any recording or images of the hearing. The Student Conduct Director, or designee(s), must establish a procedure for a Respondent (where applicable) and Complainant/Reporting Individual to have supervised access to this record for the purpose of filing an appeal. Copying, photographing, or transcribing the recording is not permissible.

## **G. Sanctions**

1. Sanctions will be assigned if a Respondent is found to have violated the Student Conduct Policy. Sanctions are intended to have developmental as well as punitive impact on those who engage in Prohibited Conduct. Sanctions are based on the severity of the incident in question and are not necessarily progressive. Any previous interactions a student may have had with the SUNY Empire's Student Conduct System, may be considered in determining any sanction.

Additionally, if during the conduct process, the Student Conduct Body determines that conduct violation or behavior was motivated by bias, they may consider it as an aggravating factor when recommending sanctions.

2. One of the following sanctions shall be imposed on a student found responsible for violating the Student Conduct Policy as outlined under Prohibited Conduct:

- **Disciplinary Warning.** A notice to the student that their actions are inappropriate, and that the individual must act more responsibly in the future. This does not carry a loss of good standing, but indicates that a student has damaged their relationship with SUNY Empire.
- **Disciplinary Suspension.** The separation of the student from SUNY Empire State for a definite period of time, after which the student is eligible to return. The Student will be barred from all campus locations and activities, including courses, study groups, residencies, and meetings, for the duration of the Disciplinary Suspension. The Office of Safety and Security may also file a Person Non Grata based upon a Disciplinary Suspension. Conditions for the lifting of disciplinary suspension may be specified, pending appeal.
- **Disciplinary Expulsion.** The permanent separation of the student from SUNY Empire, pending appeal. The Office of Safety and Security may also file a Person Non Grata based upon a Disciplinary Expulsion.

3. Suspensions and Expulsions take place immediately, pending the determination of any appeal. The student will be withdrawn from all courses and forfeits all tuition and fees. The individual is restricted from all SUNY Empire grounds, facilities, classes, activities, or related functions for the duration of the separation. The student is considered to have lost good standing with SUNY Empire. In cases where transcript annotation is required (see Section VI. Required Transcript Annotation),

'Disciplinary Suspension' or 'Disciplinary Expulsion' shall be noted on the student transcript.

4. In addition to one of the above sanctions, any of the following, singularly or in combination, may be imposed with the approval of the Student conduct Director:

a. Loss of Privileges. Denial of specified privileges for a designated period of time. These include, but are not limited to:

- A restriction from possessing items at SUNY Empire locations and/or events (e.g., radios, bicycles, automobiles, etc.).
- A restriction from being in or entering one or more specified SUNY Empire locations.
- A restriction from utilization of SUNY Empire services and resources (e.g., reserving rooms for student club functions; interacting with certain staff members, use of technology resources, etc.)
- Other restrictions, as approved by the Student Conduct Director or designee(s).

b. Restitution. Monetary or material compensation for loss, damage, and/or injury.

c. Mandated Counseling Assessment. The Student must complete a release, attend an assessment and/or session with a licensed counselor and provide record thereof by a specific date. Unless otherwise stated by the Student Conduct Director or designee(s), the student is required to follow all recommendations made by the counselor as a result of the assessment.

5. Failure to complete sanctions by the assigned deadline will result in a "Hold" on a student's SUNY Empire records prohibiting further course enrollment, Graduation, diploma, and/or transcripts. The "Hold" will remain in effect until all assigned Sanctions are completed.

6. Sanctions will not be imposed that infringe upon the rights of Students in the Student Conduct Policy and Related Policies.

7. Other than required Disciplinary Suspension and Disciplinary Expulsion notations, disciplinary sanctions shall not be made part of the student's permanent academic record but shall become part of the student's confidential disciplinary record maintained by the Student Conduct Director as per SUNY record retention policies.

designee may be the Referring Party for Referrals of Sexual Misconduct to the Student Conduct System.

Compliance with any of the below listed provisions does not constitute a violation of the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99).

The burden of proof in all sexual misconduct cases is a "preponderance of the evidence", meaning that the determination is whether it is more likely than not that the Sexual Misconduct occurred. If the evidence meets this standard, then the Respondent shall be found responsible of a violation of the Student Conduct Policy.

## B. Students' Bill of Rights

SUNY Empire is committed to providing options, support, and assistance to members of our community affected by sexual assault, sexual exploitation, sexual harassment, intimate partner violence, and/or stalking, regardless of whether the crime occurred on campus, off campus, or while studying abroad. The rights enumerated in the Student Bill of Rights (available here: <https://www.sunyempire.edu/policies/?search=cid%3D142018>) are afforded to all students reporting sexual violence, as well as all student respondents of sexual violence, regardless of race, color, national origin, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, or criminal conviction.

## C. Reporting and Review

1. When a complaint of sexual misconduct is brought to a SUNY Empire State official, that individual will provide the information contained in the Students' Bill of Rights, including the right to choose when and where to report, to be protected by the SUNY Empire from retaliation, and to receive assistance and resources from SUNY Empire. The official will clearly disclose that they are private, and not confidential, resources and may still be required by law and SUNY Empire policy to inform one or more SUNY Empire officials about the incident, including but not limited to the Title IX coordinator.

2. Complaints of Sexual Misconduct brought to the Student Conduct Director or designee(s) will be referred to the SUNY Empire Title IX Coordinator, who conducts intake, may investigate, and determines jurisdiction.

3. The Reporting Individual has the right to a prompt response and timely review for all complaints of Sexual Misconduct. Promptness is determined by SUNY Empire's Title IX Coordinator in view of the circumstances of the case, personnel availability, complexity of the Complaint, and evidence/information submitted.

- a. The preliminary review of all complaints, including any necessary interviews to be conducted and any necessary interim measures to be put in place, will usually be completed within seven (7) business days of receipt of the complaint.
- b. Absent extenuating circumstances, the complete review, investigation, and resolution via a hearing or administrative determination, and appeal determination is expected to take place within 180 calendar days from receipt of the complaint. This provides time for the Title IX investigation and referral back to the Student Conduct System if necessary (see the next section).
- c. The above timeframes may be extended for good cause as determined by the Title IX Coordinator or the Student Conduct Director, or their designee(s).

# Procedures for Sexual Misconduct Cases

## A. Introduction

In addition to procedures described in other sections of the Student Conduct System, this section outlines the procedures that will be followed for all cases of sexual misconduct involving a student respondent that are not under the jurisdiction of the Title IX Grievance Procedure, including domestic violence, dating violence, stalking, sexual exploitation, sexual assault, or sexual harassment. If there is a conflict between other procedures outlined in this document, the procedures and stipulations in this section will control for cases of sexual misconduct. In this section, and elsewhere in the document, Reporting Individual refers to the victim/survivor related to cases of rape, sexual assault, domestic violence, dating violence, and stalking. The Title IX Coordinator or their

## D. Title IX Referral to the Student Conduct System

1. The Title IX Coordinator must refer any complaint that was investigated but found not to be in the scope of the Title IX Grievance Procedures to the Student Conduct Director or designee(s) to determine if a violation of the Student Conduct Policy has occurred.

2. Reporting Individuals have the right to request that student conduct charges be filed against the accused. Conduct proceedings are governed by the procedures set forth in this document as well as federal and New York State law, including the due process provisions of the United States and New York State Constitutions.

3. In cases where SUNY Empire's Title IX Coordinator determines that SUNY Empire's Title IX Grievance Procedures do not apply, SUNY Empire retains discretion to determine if a violation of the Student Conduct Policy has otherwise occurred.

4. SUNY Empire will promptly send notice that the matter is being referred to the Student Conduct Director. This section outlines procedures that will be followed for all cases of sexual misconduct that are so referred (i.e., not subject to the SUNY Empire's Title IX Grievance Procedures).

## E. Rights of the Parties Throughout Sexual Misconduct Proceedings

Throughout the proceedings for the adjudication of sexual misconduct, the Respondent and the Reporting Individual have the right to:

1. Be assisted by any advisor they choose, at their own expense.

The advisor may be an attorney. The Reporting Individual and/or the Respondent(s) are responsible for presenting their own evidence and, therefore, advisors are not permitted to speak or to participate directly in any hearing before a student conduct body. Students may request a break to consult with their advisor privately.

2. Have their complaint investigated and adjudicated in an impartial, timely, and thorough manner by individuals who receive annual training in

- conducting investigations of sexual violence,
- the effects of trauma,
- impartiality,
- the rights of the Respondent, including the right to a presumption that the Respondent is, "not responsible" until a finding of responsibility is made, and
- other issues related to sexual assault, sexual exploitation, domestic violence, dating violence, and stalking.

3. An investigation and adjudication process conducted in a manner that recognizes the legal and policy requirements of due process (including fairness, impartiality, and a meaningful opportunity to be heard) and is not conducted by individuals with a conflict of interest.

4. Receive advance written or electronic notice of the date, time, and location/method of any meeting or hearing they are required to, or are eligible to, attend. Respondents will also be told the factual allegations concerning the violation, a reference to the specific Prohibited Behavior alleged to have been violated, and possible sanctions.

5. Have a conduct process run concurrently with a criminal justice investigation and proceeding, except for temporary delays as requested by external municipal entities while law enforcement gathers evidence. Temporary delays should not last more than ten (10) days except when law enforcement specifically requests and justifies a longer delay.

6. Present evidence, witnesses, and statements and to review available relevant evidence in the case file or other information held by SUNY Empire.

7. Request for a range of options for providing testimony via alternative arrangements, including telephone/video conferencing, or testifying with a room partition.

8. Exclude prior sexual history with persons, other than with the other party in the conduct process, their own mental health diagnosis, or treatment, from admittance in SUNY Empire's disciplinary stage that determines responsibility. Past findings of domestic violence, dating violence, stalking, sexual exploitation, or sexual assault may be admissible in the disciplinary stage that determines sanctions.

9. Ask questions of the decision maker and, via the decision maker, indirectly request responses from other parties. In other words, the Respondent and Reporting Individual cannot directly question each other and will be expected to ask questions in writing through the Student Conduct Body.

10. Make an impact statement during the point of the proceeding where the decision maker is deliberating on appropriate sanctions.

11. Be provided with simultaneous (among the parties) written or electronic notification of the outcome of a conduct proceeding, including the decision, any sanctions, and the rationale for the decision and any sanctions.

12. Be provided with written or electronic notice about the sanction(s) that may be imposed on the Respondent based upon the outcome of the conduct proceeding. For students found responsible for sexual assault, the available sanctions are suspension with additional requirements and expulsion/dismissal.

13. Have access to at least one level of appeal of a determination before a panel that is fair and impartial and does not include individuals with a conflict of interest (see Section 7.4)

14. Have access to a full and fair record of a student conduct hearing.

15. Choose whether to disclose or discuss the outcome of a conduct hearing.

16. 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.

## F. Sanctions for Sexual Misconduct

The following outlines the available sanctions for cases that fall into prohibited conduct items 5. Intimate Partner Violence; 6. Stalking; 8. Sexual Harassment; and/or 9. Sexual Assault and Sexual Exploitation.

1. When an individual is found responsible for any part of prohibited conduct item 9. Sexual Assault and Sexual Exploitation the following sanction is available:

- a. disciplinary expulsion

2. When an individual is found responsible for any part of prohibited conduct items 5. Intimate Partner Violence; 6. Stalking; and/or 8. Sexual Harassment the following sanctions are available:

- a. disciplinary expulsion
- b. disciplinary suspension for 1 term, 2 terms, 3 terms, 4 terms, 5 terms, 6 terms, 7 terms, 8 terms, 9 terms, or 10 terms.

3. In addition to suspension, any of the following, singularly or in combination, may be imposed as approved by the Student Conduct Director or designee(s):

- a. Loss of Privileges. Denial of specified privileges for a designated period of time, upon return. These include, but are not limited to:
  - a. A restriction from possessing particular items at SUNY Empire locations and/or events (e.g., radios, bicycles, automobiles, etc.).
  - b. A restriction from being in or entering one or more specified SUNY Empire locations.
  - c. A restriction from utilization of SUNY Empire services or resources (e.g., reserving rooms for student club functions; interacting with certain staff members, use of technology tools, etc.)
  - d. Other restrictions,
- b. Restitution. Compensation for loss, damage, and/or injury.
- c. Mandated Counseling Assessment. The Student must complete a release, attend an assessment and/or session with a licensed counselor and provide record thereof by a specific date. Unless otherwise stated by the Student Conduct Director or designee(s), the student is required to follow all recommendations made by the counselor as a result of the assessment.
- d. Continuation of No Contact Order with the reporting individual in accordance with SUNY Empire policy.

The Office of Safety and Security may file a Persona Non Grata order in relation to a suspension or expulsion or a restriction from entering one or more specified SUNY Empire locations.

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## Interim Restrictions and Directives

The Student Conduct Director or designee(s), or the Title IX Coordinator, may impose interim measures prior to, and pending, a hearing and outcome thereof. These measures may include interim suspension and loss of privileges, which may include no contact orders and other reasonable measures. Interim restrictions and directives shall be delivered in writing via mail to the mailing address, with proof of delivery.

### 1. Interim Suspension

- a. Based upon the judgment of the Student Conduct Director or the Title IX Coordinator, Interim suspensions shall be imposed:
  - a. To ensure the safety and well-being of members of the community and/or preservation of SUNY Empire property.
  - b. To ensure the Student's own physical or emotional safety and well-being; and/or
  - c. If the student poses a definite threat of disruption of, or interference with, the normal operations of SUNY Empire.
- b. Violation of any condition of the interim suspension shall be grounds for expulsion from SUNY Empire.
- c. Notice of interim suspension will be made to the Student's mailing Address, with proof of delivery.

- d. Students have the right to challenge the terms of the interim measure(s), or request a modification, by submitting a letter and any supporting documents to the Vice Provost for Student Success or designee(s) within three (3) business days. A decision will be made within five (5) business days of receipt of the request. The decision of the Vice Provost is final.
- e. During this period the interim suspension, the Student shall not, without prior written permission of the Student Conduct Director or designee(s), enter or remain on SUNY Empire property or participate in online or virtual activities, other than to attend the hearing. A Persona Non Grata may also be filed with the local police department.

## 2. No Contact Order

No contact orders may be issued by the Office of Safety and Security based upon the recommendation of the Student Conduct Director or designee(s) in the appropriate circumstances. For more information. Please refer to the policy on No Contact Orders available at: <https://www.sunyempire.edu/policies/?search=cid%3D104608>.

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## Required Transcript Annotation

For violent behavior including, but not limited to, sexual violence, defined as crimes that meet the reporting requirements pursuant to the federal Clery Act established in 20 U.S.C. 1092(f)(1)(F)(i)(I)-(VIII), SUNY Empire will make a notation on the transcript of students found responsible after a conduct process that they were "Disciplinary Suspension" or "Disciplinary Expulsion." For the respondent who withdraws from the SUNY Empire while such conduct charges are pending, and declines to complete the disciplinary process, SUNY Empire shall make a notation on the transcript of such students that they "withdrew with conduct charges pending."

Notations of expulsion cannot be removed unless a finding of responsibility is vacated through the prescribed appeals process.

Students may make a request to the Vice Provost for Student Success or designee(s) to have the notation of suspension removed under the following conditions:

- It has been at least 12 months since the conclusion of the suspension; and,
- The student supplies a rationale for the removal of the suspension that demonstrates considerable progress in addressing the behavior(s) that resulted in the suspension

Removal of the suspension notation is at the discretion of the Vice Provost for Student Success or designee(s). The decision is final and cannot be appealed.

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## Appeals

An appeal is the process to request a review of the original student conduct referral outcome, which includes the Findings and Sanctions. An appeal will be considered only on the following grounds:

1. Procedural Error. The respondent may believe a procedural error occurred, where the policies and/or procedures outlined in SUNY Empire's Student Conduct Policy and/or Student Conduct System

were not followed and, as a result, the outcome of the case was significantly impacted.

2. **Disproportionate Sanction.** The respondent may believe that sanction(s) imposed were not appropriate for the violation of the Student Conduct Policy that the student was found to have committed.
3. **New Evidence.** The respondent may have new evidence that was unavailable during the original hearing, the investigation, or a scheduled meeting with a Student Conduct Director or designee(s), that could significantly impact the original finding or sanction. New evidence does not include information available but not disclosed, by choice, to the Student Conduct Body or Student Conduct Director or designee(s) or forfeiting the option to present evidence.

Accordingly, the appeal does not result in a rehearing of the student conduct case, but rather, the process is limited to review of the verbatim record of the proceedings, supporting documents, and/or new evidence.

## A. Appeal Procedure for Non-Sexual Misconduct

The Respondent has the right to submit one appeal of the original decision and may appeal a decision reached or sanction imposed within five (5) business days of initial written receipt of the decision and sanction based upon the appeal grounds delineated above. An appeal may not be submitted by a third party.

### 1. Appeal Submission

Appeals shall be in writing and delivered to the Student Conduct Director or the designee(s). The appeal shall describe the reason for the appeal.

- a. Any procedural error(s), if applicable, must be identified explicitly and the impact of the error(s) on the case outcome must be clearly described.
- b. If the appeal includes a request to reconsider a sanction, the reason that the respondent believes the sanction is inappropriate must be explained.
- c. If there is new evidence that the respondent believes should be considered, the basis or rationale for asking to have the new evidence considered along with a summary of the new evidence and its potential impact must be included.
- d. The written appeal shall not be longer than 10 double spaced typed pages in length with 12-point font and 1-inch margins, or 2500 words. When a student appeals under "New Evidence" any evidence submitted shall not be counted toward the page limitation. Further, video submissions are not considered as part of written page length and may be submitted as supporting information.

### 2. Appeal Review

- a. The imposition of any sanctions will be deferred during the determination of any appeal(s).
- b. The appeal, original conduct referral, verbatim record, and the outcome of the administrative determination or the original Student Conduct Body's decision are reviewed by the Vice Provost or designee(s) to ensure they meet the criteria established above for the filing of an appeal.
- c. The original decision will be upheld if the appeal is not timely or does not meet the grounds for appeal.
- d. If an appeal is timely and meets the grounds, the Vice Provost, or their designees, may take any of the following actions:
  - a. Affirm or modify the findings for one or more of the alleged violations
  - b. Affirm or modify the sanction originally determined.

- c. Reverse all decisions made by the Student Conduct Body or Student Conduct Director, overturning the entire original decision regarding responsibility and sanctions.
- d. Remand the case to the original Student Conduct Body or the Student Conduct Director who heard the referral for a specific reconsideration, or to be reheard, in part or in entirety.
- e. Remand the case to an alternative Student Conduct Body or Student Conduct Director for the referral to be reheard.
- f. The Vice Provost makes the final decision. A written notification of the appeal decision will be sent via mail to the mailing address, with proof of delivery to the Respondent. This decision is final.

## B. Appeal Procedures for Cases of Sexual Misconduct

In cases of sexual misconduct, both the Respondent and the Reporting Individual have the right to one appeal of the original decision and may appeal a decision reached, or sanction imposed, within five (5) business days of initial written receipt of the decision and sanction, based upon the appeal grounds delineated above. An appeal may not be submitted by a third party.

### 1. Appeal Submission

Appeals shall be in writing and delivered to the Student Conduct Director or the designee(s). The appeal shall describe the reason for the appeal.

- a. Any procedural error(s), if applicable, must be identified explicitly and the impact of the error(s) on the case outcome must be clearly described.
- b. If the appeal includes a request to reconsider a sanction, the reason that the Respondent or Reporting Individual believes the sanction is inappropriate must be explained.
- c. If there is new evidence that the Respondent or Reporting Individual believes should be considered, the basis or rationale for asking to have the new evidence considered, along with a summary of the new evidence and its potential impact, must be included.
- d. The written appeal shall not be longer than 10 double spaced typed pages in length with 12-point font and 1-inch margins, or 2500 words. When appeals are under "New Evidence," any evidence submitted shall not be counted toward the page limitation. Further, video submissions are not considered as part of written page length and may be submitted as supporting information.
- e. After the five (5) business-day period, the Respondent and Reporting Individual will be notified regarding if an appeal was submitted or not by the opposing party.

### 2. Appeal Review

- a. The imposition of any sanctions will be deferred during the determination of any appeal(s).
- b. The appeal, original conduct referral, verbatim record, and the outcome of the administrative determination or the original Student Conduct Body's decision are reviewed by the Appeal Review Panel to ensure they meet the criteria established above for the filing of an appeal.
- c. The original determination and sanction will be upheld if the appeal is not timely or does not meet the grounds for appeal.
- d. If the appeal is timely and meets the grounds, the Appeal Review Panel, may take the following actions:
  - a. Affirm or modify the findings for one or more of the alleged violations
  - b. Affirm or modify the sanction originally determined.



- c. Reverse all decisions made by the Student Conduct Body or Student Conduct Director, overturning the entire original decision regarding responsibility and sanctions.
- d. Remand the case to the original Student Conduct Body or the Student Conduct Director who heard the referral for a specific reconsideration, or to be reheard, in part or in entirety.
- e. Remand the case to an alternative Student Conduct Body or Student Conduct Director for the referral to be reheard.
- f. The Appeal Review Panel makes the final decision. A written notification of the appeal decision will be simultaneously sent via mail to the mailing addresses of the Respondent and the Reporting Individual, with proof of delivery. This decision is final.

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## Disciplinary Files and Records

The Student Conduct Director maintains disciplinary records and a disciplinary tracking system that shall include, without limitation, the Respondent's name and related information, description of the incident, parties involved, Student Conduct Policy violations, sanctions, and other data deemed relevant by the Student Conduct Director. Such information shall be maintained in accordance with the provisions of the Family Educational Rights and Privacy Act (FERPA). Disciplinary records may be made available to Student Conduct Bodies and SUNY Empire Officials as necessary.

Students may arrange to review their own disciplinary records by contacting the Student Conduct Director.

Except as provided in the Student Conduct Policy, or otherwise allowable by FERPA, SUNY Empire shall not communicate a student's disciplinary record and related information to any person or agency without the prior written consent of the student with the exception of the indicated transcript notation.

Student disciplinary records are retained in accordance with SUNY Records Retention Policy (accessible at [https://www.suny.edu/sunyp/documents.cfm?doc\\_id=650](https://www.suny.edu/sunyp/documents.cfm?doc_id=650)). Student records for major Student Conduct Policy violations and drug and alcohol violations are retained for a minimum of seven (7) years after the end of the academic year of said violation(s) to comply with federal recordkeeping requirements and while the student is enrolled at the SUNY Empire. Records of minor Code of Student Conduct violations will be retained for a minimum of three (3) years after the end of the academic year of said violation(s) and while the student is enrolled at SUNY Empire. Cases involving Disciplinary Suspension will be retained permanently and may only be expunged upon successful application to the Vice Provost for Student Success or designee(s). Case files involving Expulsion will be retained permanently.

A disciplinary records request can be made in writing to:

SUNY Empire State  
 Attn: Student Conduct Director  
 111 West Avenue  
 Saratoga Springs, NY 12866

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## Applicable Legislation and Regulations Related References, Policies, Procedures, Forms and Appendices

Discrimination Complaint Procedures. (<https://www.sunyempire.edu/policies/?search=cid%3D89279>)

Non-Discrimination/Anti-Harassment Policy. (<https://www.sunyempire.edu/policies/reg-docs/reg-docs-html/non-discriminationanti-harassment.php>)

Sexual Harassment Policy. (<https://www.sunyempire.edu/policies/reg-docs/reg-docs-html/sexual-harassment-policy.php>)

Sexual Violence Prevention and Response Policies. (<https://www.sunyempire.edu/policies/reg-docs/reg-docs-html/sexual-violence-prevention-and-response-policies.php>)

Title IX Grievance Policy. (<https://www.sunyempire.edu/policies/reg-docs/reg-docs-html/title-ix-grievance-policy-.php>)

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## Interpretation and Revision

Any question of interpretation regarding the Student Code shall be referred to the Student Conduct Director or designee(s) for final determination.