

STUDENT CONDUCT POLICY AND PROCEDURES

Sponsor: Office of Academic Affairs

Contact: Director of Collegewide Student Affairs

Category: Academic and Student Affairs

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Implementation History: Revised: 2006 Approved: May 2002 Revision Approved by Senate: September 2008 Revision Approved by the College Council: December 2008 Changes to this policy are subject to approval by the appropriate governance bodies, the college president and the College Council. The provost/executive vice president for academic affairs approves procedural changes or changes required by law.

Purpose

The student conduct policy sets behavioral standards for Empire State College students and defines the relationship between the college and its students. It affirms values essential to promoting individual intellectual and personal development and for creating an effective learning community. Empire State College expects students to conduct themselves in a responsible manner that is respectful of the rights, well-being and property of all members of the college community and that supports the college's educational mission.

Definitions

1. **"Accused"** shall mean a person accused of a violation who has not yet entered an institution's judicial or conduct process.
2. **"Affirmative Consent"** is a knowing, voluntary and mutual decision among all participants to engage in sexual activity.
 - a. 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.
 - b. 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.
 - c. Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
 - d. Consent may be initially given but withdrawn at any time.
 - e. Consent cannot be given when a person is incapacitated, and a reasonable person knows or should have known that such 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.
 - f. Consent cannot be given when it is the result of any coercion, intimidation, force or threat of harm.
- g. When consent is withdrawn or can no longer be given, sexual activity must stop.
3. **"Student Conduct Committee"** means any person or persons authorized by the collegewide director for student affairs to hear a case where a student may be suspended or expelled.
4. **"Bystander"** shall mean a person who observes a crime, impending crime, conflict, potentially violent or violent behavior, or conduct that is in violation of rules or policies of an institution.
5. **"Organization"** means any number of persons who have complied with the formal requirements for college recognition/registration.
6. **"Proceedings"** refers to the activities related to an institutional disciplinary complaint, including but not limited to, fact-finding investigations, formal or informal meetings, hearings and appeals.
7. **"Reasonable Person"** refers to a hypothetical person who exercises average care, skill and judgment in conduct and who serves as a comparative standard.
8. **"Reporting Individual"** shall encompass the terms victim, survivor, complainant, claimant, witness with victim status and any other term used by an institution to reference an individual who brings forth a report of a violation.
9. **"Respondent"** shall mean a person accused of a violation who has entered an institution's judicial or conduct process.
10. **"Results"** means any initial, interim and final decision by any college official or entity authorized to resolve disciplinary matters within the institution.
11. **"Sexual Activity"** shall have the same meaning as "sexual act" and "sexual contact" as provided in 18 U.S.C. 2246(2) and 18 U.S.C. 2246(3):
 - a. contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight;
 - b. contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;
 - c. the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or
 - d. the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;
 - e. the term **"sexual contact"** means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.
12. **"Sexual Misconduct"** is sexual harassment or sexual violence and encompasses a wide range of behavior for sexual purposes that is against another's will or at the expense of another. Sexual misconduct includes, but is not limited to sexual assault, intimate partner violence, stalking of a sexual nature, or any conduct of a sexual nature that is nonconsensual, or has the effect of threatening or intimidating another.
13. **"Shall"** is used in the imperative sense.
14. **"Student"** is defined as: persons registered for courses, either full time or part time, pursuing undergraduate, graduate or professional studies, as well as nondegree seeking students; individuals who confirm their intent to enroll in programs; those attending orientation sessions; between academic terms; taking online classes; auditing

- classes; residing in the rental buildings or alternative locations; those that were enrolled on the date of an alleged incident; persons who are active but not enrolled at the college.
15. **“Student Conduct Administrator”** means any college official appointed by the director of collegewide student affairs to resolve student conduct referrals in lieu of a hearing or to review appeals.
 16. **“Student Conduct System”** means the program established to maintain the integrity of the values of the college community by reviewing alleged violations of the Student Conduct Code.
 17. **“Title IX Coordinator”** shall mean the Title IX coordinator and/or his or her designee or designees.
 18. **“College”** means the SUNY Empire State College.
 19. **“College Premises”** includes all land, buildings, facilities and other property in the possession of or owned, used or controlled by the college including adjacent streets and sidewalks.
 20. **“College Officials”** includes faculty and staff of the college, student employees who are carrying out assigned work responsibilities and college security officers.
 21. **“Policy”** means the written regulations of the college as found in college published documents.
 22. **“Claimant”** means the victim, survivor or person against whom the alleged violation was committed.
 23. **“Hearing Board Chair”** means the person designated by the director of the Office of Collegewide Student Affairs to preside over a student conduct board hearing.
 24. **“Appellate Officer”** means the provost, or his/her designee, who is authorized to decide the outcome of an appeal of a student conduct case.
 25. **“Advisor”** means any person identified by a claimant or respondent to support or assist them through the student conduct process.
 26. **“Stalking”** means intentionally and for no legitimate purpose engaging in a course of conduct (two or more acts by which the stalker directly, indirectly or through third parties follows, monitors, observes, surveils, threatens or communicates about a person or interferes with his or her property) directed at a specific person and which one knows or should reasonably know is likely to cause a reasonable person to fear for his or her safety or the safety of others or causes that person to suffer substantial emotional damage.
 27. **“Harassment”** means intentionally annoying another person:
 - a. By following that person in or about a public place or by engaging in a course of conduct or repeatedly committing acts which place a person in reasonable fear of physical injury;
 - b. By engaging in a course of conduct or repeatedly committing acts which alarm or seriously annoy another person and which serve no legitimate purpose;
 - c. By communicating or causing a communication to be initiated with a person, by any means, electronic or otherwise, that conveys a threat to cause physical harm to a person or their property; and/or
 - d. With intent to harass, annoy, threaten or alarm another person subjects that person to physical contact or threatens to do the same because of a belief or perception about that person’s race, color, sexual orientation, gender, gender identity and expression, religion, age, disability, veteran status, marital status, national origin or ancestry.
 28. **“Sexual Harassment”** means gender-based, verbal, nonverbal or physical conduct that is sexual in nature and sufficiently severe, persistent or pervasive that it unreasonably interferes with, denies or limits someone’s ability to participate in, or benefit from, the university’s educational program and/or activities, and is based on power differentials, the creation of a hostile environment or retaliation.
 29. **“Rape”** is defined as sexual intercourse with a person:
 - a. That is forced, manipulated or coerced through use of verbal coercion intimidation (emotional and/or physical), threats, physical restraint and/or physical violence; and/or
 - b. Where affirmative consent was not given.
 30. **“Sexual Assault”** is defined as a physical sexual act or acts committed against another person without consent. Sexual assault is an extreme form of sexual harassment. Sexual assault includes what is commonly known as “rape” (including what is commonly called “date rape” and “acquaintance rape”), fondling, statutory rape and incest. For statutory rape, the age of consent in New York state is 17 years old.
 31. **“Sexual Violence”** means physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent. A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse and sexual coercion.
 32. **“Dating Violence”** means any act of violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the victim’s statement and with consideration of the type and length of the relationship and the frequency of interaction between the persons involved in the relationship. Two people may be in a romantic or intimate relationship regardless of whether the relationship is sexual in nature; however, neither a casual acquaintance nor ordinary fraternization between two individuals in a business or social context shall constitute a romantic or intimate relationship. This definition does not include acts covered under domestic violence.
 33. **“Domestic Violence”** means any violent felony or misdemeanor crime committed by a current or former spouse or intimate partner of the victim, a person sharing a child with the victim or a person co-habiting with the victim as a spouse or intimate partner.
 34. **“Weapon”** means any instrument, device or object capable of inflicting physical harm or death and designed or specifically adapted for use as a weapon, or possessed, carried or used as a weapon.
 35. **“Distribute”** means to sell, exchange, give, make available or dispose of to another person or to offer or agree to do the same.
 36. **“Student Publication”** means written material including but not limited to, brochures, newspapers and special interest magazines published by students and distributed to the college community.
 37. **“Student Code”** and “code” shall refer specifically to this document.
 38. **“Student Conduct Officer”** means the judicial officer and/or his/her designee.
 39. **“Complainant”** means any person or persons who have filed disciplinary charges against a student.
 40. **“Accused Student”** means any student who has been initially identified as a person who has allegedly violated the Code of Student Conduct.
 41. **“May”** is used in the permissive sense.

Statements

Students are expected to:

- Treat students, faculty and staff of the college with civility and respect

- Represent themselves and any documentation that they may present to the college in an honest manner
- Respect college property and the activities conducted at college facilities or college-sponsored events
- Uphold college policies, SUNY policies and all applicable laws.

SUNY Empire State College students should expect the same degree of civility and respect from other students, faculty and staff.

Scope

A student is a person admitted or enrolled at SUNY Empire State College. The college has an interest in student conduct, which occurs during a student's matriculation or enrollment at the college, including any breaks in enrollment permitted by college policy. Students are responsible for their own behavior and the behavior of their guests.

The college does not normally pursue alleged conduct violations that occur away from SUNY Empire State College facilities or events, or that are not associated with the student's relationship with SUNY Empire State College. However, in situations when the safety of members of the college community may be endangered, the college may review such violations pursuant to the policy on student conduct.

College Regulations

The following behaviors by a student, or any guest of a student, whether acting alone or with any other persons, violate the policy on student conduct:

1. Conduct that threatens or endangers the mental health, physical health or safety of any person or persons, or causes actual harm, including:
 - Physical harm or threat of physical harm such as physical abuse, stalking, sexual assault, rape, any form of sexual violence, domestic violence and/or dating violence or coercion, all forms of harassment including sexual harassment and intimidation, whether physical, verbal (oral or written) or nonverbal
2. Dishonest conduct not covered by the SUNY Empire State College Academic Honesty Policy and Procedures (<http://catalog.esc.edu/undergraduate/academic-policies-procedures/academic-honesty-policy-procedures/>), including forgery, alteration, fabrication or misuse of identification cards, records, grades, diplomas, college documents or misrepresentation of any kind to a college office or official
3. Disorderly conduct that interferes with the rights of others
4. Intentional or reckless disruption or interference with the activities of the college or its members
5. Theft of personal or college property or services, or illegal possession or use of stolen property
6. Vandalism or intentional or reckless damage to personal or college property
7. Unauthorized entry, use or occupation of college facilities or the unauthorized use or possession of college equipment
8. Illegal purchase, use, possession or distribution of alcohol, drugs or other controlled substances
9. Failure/refusal to comply with a reasonable request from a college official acting within the scope of his/her duties
10. Unauthorized possession or use of firearms, explosive devices, fireworks, dangerous or illegal weapons or hazardous materials

11. Interference with or misuse of fire alarms, elevator or other safety and security equipment or programs, including, but not limited to initiating, or causing to be initiated, any false report, warning or threat of fire, explosion or other emergency¹
12. Violation of a condition or sanction imposed (or agreed upon) due to a violation of the policy on student conduct
13. Violation of any federal, state or local law that poses a threat to the health, safety or well-being of the college or its individual members.

¹ See Empire State College firearms policy (<https://www.esc.edu/policies/?search=cid%3D36201>).

Rights of the Parties

Students are entitled to equal care and fairness in the application of the policy on student conduct. A student accused of a breach of student conduct and others in the college community have equally important interests. Thus, the college takes into account the interests of all parties in order to reach a fair resolution.

1. Each party has the right to be informed of his or her rights through receipt of a copy of this policy.
2. Each party has the right to receive relevant information and documentation, including information that is favorable to the student accused of a violation or that may indicate that he or she may not be responsible.
3. Each party has the right to a meaningful opportunity to be heard and to respond to the information and documentation presented.

Consideration of Information

In both formal and informal investigations of complaints and concerns, the college may review and consider relevant information about prior complaints and their outcomes and informal steps toward changing the behavior. The college will not include information about conduct complaints for which a student was found not responsible.

Interim Suspension

1. Interim suspension is used only in the following circumstances:
 - To ensure the safety and well-being of members of the community or preservation of college property
 - If the student poses a definite threat of disruption or interference with the normal operations of the college.
2. The dean or vice provost for academics' designee may place a student on interim suspension upon making a determination that such an action is necessary to maintain safety and order. The dean or vice provost for academics' designee normally consults with the vice provost for academics and/or judicial officer before taking such action. The interim suspension remains in effect until responsibility and sanctions have been determined and any appeals have been resolved.
3. Upon placing the student on interim suspension, the dean or vice provost for academics' designee immediately forwards a formal complaint to the judicial officer. Consequently, the dean or vice provost for academics' designee is a party to the complaint.
4. The judicial officer assembles a student conduct committee as outlined and conducts the hearing within 15 calendar days of the notice to the student of the interim suspension.
5. A student placed on interim suspension may request reconsideration in writing to the dean or vice provost for academics' designee. The student must provide evidence that s/he is not a risk to safety

and order. The dean or provost's designee reviews the request and considers the information the student provides. If the dean or vice provost for academics' designee reconsiders and sustains the suspension, the student may appeal to the vice provost for academics.

Informal Resolution

Center, program and functional staff (financial aid, student accounts, business services, admissions, etc.) are expected to resolve issues around student behavior informally through discussion and advisement before moving to formal complaints. Any resolution reached through this process is binding. Staff summarize in writing both informal resolutions reached with student and attempts to resolve issues informally and send that summary to the student and any other relevant parties. In some cases, it is appropriate to move directly to a formal complaint.

Formal Complaints

The Office of Academic Affairs is responsible for administering formal student conduct procedures. A staff member within the Office of Academic Affairs serves as the college's judicial officer.

The college uses the procedures that follow only if there is a formal allegation of a breach of student conduct as defined in this policy. The procedures support investigation of alleged misconduct and hearings are an extension of that investigation and not trials.

The college's standard for finding a student responsible for a violation of the policy on student conduct is that there is a preponderance of evidence supporting the complaint.

There are three possible formal sanctions. The sanctions of expulsion and suspension result in a loss of good standing with the college. Repeated violations may be a basis for determining that a sanction of suspension or expulsion from the college is warranted.

Expulsion: A student who is expelled from the college for disciplinary reasons is permanently excluded from all college activities, functions, facilities and buildings, and may not use any college resources.

Suspension: A student who is suspended from the college is excluded from all college activities, functions, facilities and buildings and may not use any college resources for the period of the suspension. The student is restored to good standing at the end of the suspension period.

Written warning: A written warning describes the breach of conduct and directs the student not to repeat the conduct in question. A written warning indicates that the student has damaged his or her relationship with the college, but does not carry a loss of good standing. A written warning issued for a breach of conduct will be reviewed when considering any future breaches of conduct.

A suspension or written warning may be accompanied by restrictions on the use of specific college resources or facilities (e.g., use of computer resources). A restriction may be temporary or permanent. Information defining such restrictions must be included in the written notice to the student.

In addition to the sanctions specified above, the college may require the student to make restitution or compensate for any loss, damage or injury.

Applicable Legislation and Regulations

This policy complies with section 356 and 6450 of the Educational Law and section 535 of the Rules of the Board of Trustees of the State University of New York.

Related References, Policies, Procedures, Forms and Appendices

No Contact Order Policy

See "No Contact Orders" section below.

Procedures

(for cases other than Sexual Misconduct)

Formal Complaint

Any member of the college community may file a complaint alleging a breach of student conduct. The complainant(s) submits a signed, written complaint to the judicial officer within 30 calendar days of the occurrence of the event or discovery thereof. The complaint must describe the alleged violation and include any available documentation/information. The complaint may include information about previous behavior that demonstrates a recurrent pattern of behavior that is relevant to the current conduct violation. In the initial review, (described below) the judicial officer determines if the college will charge the accused with a violation of the conduct policy.

Given the role of the judicial officer in resolving behavioral concerns, the judicial officer is often aware of the full range of a student's behavior across the college and may be the most knowledgeable. Consequently, the judicial officer may initiate formal proceedings based on her/his knowledge of the student's behavior. If there is a conflict of interest the judicial officer may excuse herself/himself and the provost will appoint an alternate judicial officer.

Initial Review

The judicial officer first determines if there are grounds for the allegation and whether the allegation falls within the scope of the policy on student conduct.

1. If the judicial officer determines that the allegation is groundless or the alleged violation does not fall within the scope of this policy, the judicial officer so notifies the complainant in writing.
2. If the judicial officer determines the allegation falls within the scope of this policy, he or she determines whether a formal or informal process should be followed. If the judicial officer decides that a formal process is required, then the judicial officer charges the student with a violation of the Student Conduct Policy.

Informal Resolution

The judicial officer may address the concern through discussion with the student or other appropriate means and make an effort to resolve the matter informally. The formal process is followed if the judicial officer determines that the informal process is insufficient or inappropriate.

Formal Process

1. If the judicial officer determines that the alleged violation does not potentially warrant a sanction of suspension or expulsion from the college, but still warrants formal action, the next step is a review conference with the student.

- If the judicial officer determines that the alleged violation is serious enough to potentially warrant a sanction of suspension or expulsion from the college, the next step is referral to the Student Conduct Committee for a hearing. Repeated violations may be a basis for determining that a referral must be made to the Student Conduct Committee

In any case, the judicial officer notifies the student in writing within 15 calendar days of receipt of the complaint. The written notice indicates who filed the complaint, summarizes the student's alleged violation of college policy and the nature of the information and documentation presented against the student and includes a copy of the policy on student conduct. The written notice also indicates whether the next step is a discussion, a review conference or referral to the Student Conduct Committee for a hearing.

Review Conference

- The review conference includes the judicial officer and the student who has been charged with a violation and may take the form of a meeting, phone conference or video conference. The conference usually takes place within 15 calendar days of the written notice to the student.
- In the review conference, the judicial officer reviews the allegation and the college's policy on student conduct with the student and gives the student an opportunity to respond. The judicial officer may consult with others, as she/he deems necessary.
- The judicial officer makes a determination about the allegation and may:
 - Determine that the student is not responsible.
 - Determine that the student is responsible and resolve the issue administratively by mutual consent of the parties in a way that is acceptable to the judicial officer.
 - Redefine the alleged violation as potentially warranting a sanction of suspension or expulsion from the college, and refer the case to the Student Conduct Committee for a hearing.
 - Determine that the student is responsible for a violation for which a written warning is appropriate. In this case, the administrator may impose the sanction of a written warning.
- The judicial officer provides a written summary of the issue and its disposition to the student, the complainant and the student's program dean, and maintains a copy for the college's records.
- The judicial officer copies all correspondence arising from the review conference to the student's program dean, the vice provost for academics and to relevant parties as appropriate.
- The judicial officer is responsible for producing and maintaining an accurate record of the review conference.

Student Conduct Committee

- A Student Conduct Committee considers alleged violations of the policy on student conduct that may warrant a sanction of suspension or expulsion from the college.
- A SCC consists of three members, at least one Empire State College faculty member, one student service professional and, if possible, one Empire State College student. If a student is not available, another faculty member will be added. The Office of Academic Affairs establishes and maintains a list of faculty and student service professionals trained to conduct hearings. One member of the group of trained faculty and professionals serves as convener.

- The judicial officer identifies a conduct committee for a particular case and establishes a faculty or staff member of the committee as the hearing officer.
- If a member of the SCC is a party to a complaint or has a conflict of interest, he or she excuses himself or herself. The judicial officer identifies a substitute member who is not involved in the case replaces the original member.

Student Conduct Hearing

- A SCC hearing takes place within 30 calendar days of the referral, not counting college no-appointment periods. The hearing may take the form of a meeting, conference call or video conference, at the discretion of the SCC.
- The SCC is responsible for conducting a fair hearing of the facts and relevant information.
- The hearing officer is responsible for procedural decisions, correspondence and coordinating and chairing the hearing.
- The judicial officer serves as advisor to the hearing officer; either may designate additional staff support for the hearing.
- Each party has the right to have an advisor at a SCC hearing, but advisors may not question witnesses, address the SCC or participate directly in the hearing.
- Each party has the right to refuse to answer questions.
- The hearing officer must require all witnesses to swear or affirm that the information they provide will be truthful.
- A single, verbatim record (e.g., transcript or recording) is made of the hearing. It and any copies made for safekeeping remain the property of the college. The college provides supervised, post-hearing access to the record, but does not provide copies to the parties.
- The SCC is responsible for obtaining and reviewing any supporting documentation it deems necessary from the student, the complainant and/or others.
- Following the hearing, the SCC deliberates in closed session.
- The SCC is responsible for determining whether the student violated the policy on student conduct and for determining an appropriate sanction. The SCC may:
 - Determine that the student is not responsible
 - Determine that a violation has occurred which does not warrant even a written warning sanction, and refer the case back to the judicial officer for resolution through a review conference
 - Determine that the student has violated the policy on student conduct and decide on a sanction of expulsion, suspension or written warning. Since alleged violations are referred to the SCC only when a sanction of suspension or expulsion from the college is potentially warranted, an SCC finding of misconduct normally results in a decision for either of those two sanctions. However, the SCC may decide upon the lesser sanction of a written warning.
- The SCC transmits its written decision and rationale to student, the complainant, the student's home center or program dean and the judicial officer within 15 calendar days of the hearing. The SCC also transmits the verbatim record of the hearing session to the judicial officer within 15 calendar days of the hearing.

Sanctions and Imposition of Sanctions

The judicial officer is responsible for implementing any sanction for misconduct within seven calendar days of the SCC decision. The judicial officer provides a written notice to the student, the complainant and the

dean of the student's program and maintains a copy for the college's records.

Appeals

1. The student has the right to appeal a decision by the judicial officer or by the SCC to the vice provost. Such appeals are not a rehearing of the complaint; rather, they provide a safeguard against errors or unfairness. The student may appeal the determination of responsibility, the sanction or both.
2. Appeals are considered on one or more of the following grounds:
 - a. Significant new information not available at the time of the hearing/decision
 - b. Information/documentation presented at the hearing/decision that was disregarded
 - c. Substantive procedural violation that may have altered the outcome of the hearing/decision
 - d. Imposition of an unreasonable sanction.
3. The student must submit any appeal in writing to the vice provost within 30 calendar days of transmittal of the decision and must include an explanation or justification for the appeal.
4. The vice provost notifies other parties in the case within seven calendar days of receipt of an appeal. Those parties normally provide any written response within 15 calendar days. The vice provost for academics normally provides a written decision and rationale within seven calendar days of receipt of responses to the appeal. The vice provost's decision is final.
5. If the student files a timely appeal, no sanction is imposed until the vice provost renders a decision, except that an interim suspension imposed to maintain safety and order remains in effect.

Cases of Sexual Misconduct

Introduction

This section outlines the policy and procedures that will be followed for all cases of sexual misconduct. More information on reporting, response and resources can be found on the Sexual Violence Prevention and Response Policies.

Included in the Sexual Violence Prevention and Response Policies is a statement regarding the reporting of incidents by bystander without fear of being charged with conduct violations. Please see Sexual Violence Prevention and Response Policies (<http://www.esc.edu/policies/?search=cid%3D80187>) for details.

In the event that there is a conflict between any procedures set forth in this section with any procedures described in any other portion of this code, the procedures set forth in this section will control for cases of sexual misconduct.

Compliance with any of the below listed provisions does not constitute a violation of Section 444 of the General Education Provisions Act (20 U.S.C. 1232g, commonly known as the Family Educational Rights and Privacy Act of 1974 (FERPA))

The burden of proof in all sexual misconduct cases is a "preponderance of evidence" – whether it is more likely than not that the sexual misconduct occurred. If the evidence meets this standard, then the respondent **must** be found responsible of a violation of this code.

To request that student conduct charges be filed against the accused. Conduct proceedings are governed by the procedures set forth in the

Empire State College undergraduate and graduate catalogs (<http://www.esc.edu/academic-affairs/catalogs-guides/>), as well as federal and New York state law, including the due process provisions of the United States and New York state constitutions.

Throughout conduct proceedings, the respondent and the reporting individual will have:

- The same opportunity to be accompanied by an advisor of their choice, who may assist and advise the parties throughout the conduct process and any related hearings or meetings. Participation of the advisor in any proceeding is governed by federal law and the Student Code of Conduct.
- The right to a prompt response to any complaint and to have the 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, domestic violence, dating violence and stalking.
- The right to an investigation and 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.
- The right to receive advance written or electronic notice of the date, time and location of any meeting or hearing he or she is required or eligible to attend. Accused individuals will be told the date, time, location and factual allegations concerning the violation, a reference to the specific code of conduct provisions alleged to have been violated and possible sanctions.
- The right to due process concurrent 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 10 days, except when law enforcement specifically requests and justifies a longer delay.
- The right to offer evidence during an investigation and to review available relevant evidence in the case file, or otherwise held by the college.
- The right to present evidence and testimony at a hearing, where appropriate.
- The right to a range of options for providing testimony via alternative arrangements, including phone/video conferencing, or testifying with a room partition.
- The right to exclude prior sexual history with persons other than the other party in the conduct process, or their own mental health diagnosis or treatment that may determine responsibility. Past findings of domestic violence, dating violence, stalking or sexual assault may be admissible in the disciplinary stage that determines sanction.
- The right to ask questions of the decision maker and, via the decision maker, indirectly request responses from other parties and any other witnesses present.
- The right to make an impact statement during the point of the proceeding, where the decision maker is deliberating on appropriate sanctions.
- The right to 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 sanctions.

- The right to written or electronic notice about the sanction(s) that may be imposed on the accused, 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.
- Access to at least one level of appeal of a determination before a panel, which may include one or more students, that is fair and impartial and does not include individuals with a conflict of interest.
- The right to access to a full and fair record of a student conduct hearing, which shall be preserved and maintained for at least five years.
Office of Collegewide Student Services
2 Union Ave.
Saratoga Springs, NY 12866-4309
CollegewideStudentServices@esc.edu; 518-587-2100, ext. 2463
- The right to choose whether to disclose or discuss the outcome of a conduct hearing.
- 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.

Student Bill of Rights

- Make a report to campus security, local law enforcement and/or state police;
- Have disclosures of domestic violence, dating violence, stalking and sexual assault treated seriously;
- 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 from the institution;
- Participate in a process that is fair, impartial and provides adequate notice and a meaningful opportunity to be heard;
- Be treated with dignity and to receive from the institution courteous, fair counseling services, where available;
- 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;
- Describe the incident to as few institutional representatives as practicable and not to be required to unnecessarily repeat a description of the incident;
- Be free from retaliation by the institution, the accused, and/or the respondent, and/or their family, friends and acquaintances within the jurisdiction of the institution;
- Access to at least one level of appeal of a determination;
- Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or respondent throughout the judicial or conduct process including during all meetings and hearings related to such process;

Exercise civil rights and practice of religion without interference by the investigative, criminal justice or judicial or conduct process of the college.

Sanctions

Sanctions for incidents involving sexual harassment, domestic violence, dating violence or stalking include suspension or expulsion from the

college. When facts and circumstances justify mitigating to a lesser sanction of probation, students found responsible also may be subject to required educational activities, limitations on campus activities, restricted access to locations and/or other sanctions.

Students found responsible for harassment that is targeted at a person or group based on factors such as perceived race, color, sexual orientation, gender, gender identity and expression, religion, age, disability, veteran status, marital status, national origin or ancestry may be subject to more severe sanctions.

For cases in which students are found responsible for sexual assault, the available sanctions are suspension with additional requirements and expulsions/dismissal.

No Contact Orders

When the accused is a student, the claimant may request to have the college issue a "No Contact Order," meaning the continuing to contact the protected individual is a violation of college policy subject to additional conduct charges; if the accused and a protected person observe each other in a public place, it is the responsibility of the accused to leave the area immediately and without directly contacting the protected person. When a No Contact Order is put in place, in cases involving domestic violence, dating violence, sexual assault or stalking, both the respondent and the claimant may request a prompt review of the need for and terms of the No Contact Order. Parties may submit evidence in support of their request.

Maintaining Records

The Office of Academic Affairs maintains judicial records for five years from the date of last enrollment or graduation date, whichever is later, except in cases resulting in suspension or expulsion, in which case the record is maintained indefinitely. If a student matriculates into another program at Empire State College, the record remains active.

In accordance with NYS Law, conduct involving crimes of violence, including, but not limited to sexual violence, and crimes that meet the reporting requirements pursuant to the federal Clery Act established in 20 U.S.C. 1092 (f) (I) (F) (i) –(VIII), including murder, rape, fondling, incest and statutory rape; robbery; aggravated assault; burglary; motor vehicle theft; manslaughter and arson) shall result in a transcript notation of suspension or expulsion from the college.

A notation will be placed on the transcript of students found responsible of such conduct after a conduct process found that they were suspended or expelled after a finding of responsibility for a code of conduct violation. For the respondent who withdraws from the institution while such conduct charges are pending, and declines to complete the disciplinary process, a notation will be made on the transcript that they "withdrew with conduct charges pending." Appeals seeking removal of a transcript notation for suspension should be submitted, in writing to the Director Student Life. Such notation shall not be removed prior to one year after the conclusion of the suspension. Notations for expulsion shall not be removed. If a finding of responsibility is vacated for any reason, any such transcript notation shall be removed.