

# SUNY POLY

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## COMMUNITY STANDARDS

**2019 – 2020 Student Code of Conduct**

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## Introduction: Student Code of Conduct

The State University of New York Polytechnic Institute (“SUNY Poly” or the “College”) is dedicated to the advancement of knowledge and learning and to the development of ethically responsible individuals. As such, students and student organizations are expected to uphold appropriate standards of behavior as outlined in the Student Code of Conduct (the “Code” or “Student Code”) and to respect the rights and privileges of others. The Student Code applies to students and student organizations. All students and student organizations are expected to conduct themselves in accordance with all federal, state and local laws, and Board of Trustees of the State University of New York (“SUNY”) rules, regulations, and policies.

The College President delegates administration of the Student Code of Conduct to the Vice President of Student Affairs, the Director of Community Standards, and their designees. SUNY Poly students are bound by this Student Code of Conduct, as well as other College policies.

This document provides SUNY Poly’s process for investigating allegations of student misconduct and the actions SUNY Poly will take in response to potential violations of the Code. For all conduct determinations, the standard of proof shall be made on the basis of whether there is a preponderance of the evidence that the respondent violated the Student Code of Conduct.

All students at SUNY Poly are provided access to the Student Code of Conduct. This document appears in its entirety in the College publication entitled Student Handbook and is also accessible on the web at <https://sunypoly.edu/sites/default/files/studentconduct/Student-Handbook2018-19.pdf>. Copies of the Student Code are also available at each residence hall, the Office of Community Standards, the Office of the Vice President for Student Affairs, University Police and the Title IX office.

## Section One: Definitions

Unless the context otherwise clearly indicates, words used throughout the Student Code of Conduct in the singular include the plural, the plural includes the singular.

1. **“Accused”** is a person accused of a violating the Student Code of Conduct who has not yet entered SUNY Poly’s conduct process.
2. **“Affirmative consent”** or **“consent”** is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant’s sex, sexual orientation, gender identity, or gender expression.
  - Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.
  - Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
  - Consent may be initially given but withdrawn at any time. When consent is withdrawn or can no longer be given, sexual activity must stop.

- Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.
  - Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
  - Consent cannot be given if any of the parties are under the age of 17.
3. **“Business days”** shall mean days in which the administrative offices of SUNY Poly are officially open for business.
  4. **“Bystander”** is 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 SUNY Poly.
  5. **“Coercion”** is the practice of forcing another person to act in an involuntary manner by the use of force or threats of force.
  6. **“College”, “Institution”, and “SUNY Poly”** shall mean the State University of New York Polytechnic Institute.
  7. **“College official”** and **“SUNY Poly official”** shall mean any person employed by SUNY Poly, performing assigned administrative or professional responsibilities. This term also includes resident advisors while acting within the scope of their duties.
  8. **“Complainant”** is a designated College official who presents the violations of the Student Code of Conduct to the Hearing Board.
  9. **“Complaint”** is a formal allegation of a conduct violation, which is typically documented in writing. A report becomes a complaint when (a) the reporting individual indicates their desire to move forward with the conduct process to a student conduct officer or Title IX Coordinator and/or (b) the College determines the report requires further action under the Code of Conduct.
  10. **“Conduct officer”** or **“student conduct officer”** is a SUNY Poly official authorized by the Vice President for Student Affairs to determine whether one or more students have violated the Student Code and recommend imposition of sanctions. Residential Life professional staff members may be designated to serve as conduct officers.
  11. **“Director of Community Standards”** refers to the Director of Community Standard and their designee(s).
  12. **“Hearing Body”** is any person or persons authorized by the President to determine whether one or more students have violated the Student Code of Conduct and recommend imposition of sanctions. “Hearing Body” includes, but is not limited to, student conduct officer in an administrative hearing, the Hearing Board and the Appellate Board.

13. **"Intimate partner violence"** shall encompass dating violence and domestic violence.
14. **"May"** is used in the permissive sense.
15. **"Member of the SUNY Poly community"** is any person who is a student, College official, employee of Research Foundation at a SUNY Poly operating location, employee of another SUNY Poly affiliated organization, or a SUNY Poly visitor. Member of the SUNY Poly community may also include vendors, tenants, and visitors to campus. A person's status in a particular situation shall be determined by the Director of Community Standards and/or Title IX Coordinator.
16. **"Personal property"** is anything of value to which a person has legal possession or title. Personal property also includes personal data and information stored on electronic or computer media and passwords.
17. **"Policy"** means the written regulations of SUNY Poly including but not limited to those found in the Student Handbook, Student Code of Conduct, graduate and/or undergraduate catalogs, and Residential Housing License.
18. **"Preponderance of the Evidence"** is the standard of proof used in SUNY Poly conduct cases, which asks whether it is more likely than not that the violation occurred. If the evidence presented meets this standard, then the respondent should be found responsible.
19. **"Reasonable Person"** is a hypothetical person that exercises average care, skill and judgment in conduct and who serves as a comparative standard.
20. **"Report"** is an account given of a particular matter related to a potential violation of the Code.
21. **"Reporting Individual"** shall encompass the terms victim, survivor, complainant, claimant, witness with victim status, and any other term used to reference an individual who experiences and brings forth a report of a violation of the Student Code of Conduct.
22. **"Respondent"** is a person accused of a violation of the Student Code of Conduct who has entered SUNY Poly's conduct process.
23. **"Retaliation"** is adverse action taken against another person because the person has engaged in protected activities. Retaliation includes harassment and intimidation, including but not limited to violence, threats of violence, property destruction, adverse educational or employment actions, and bullying.
24. **"Sex discrimination"** is any behavior or action that denies or limits a person's ability to benefit from, fully participate in the educational programs or activities, or the employment opportunities of SUNY Poly because of a person's sex or gender, including, but not limited to, all forms of sexual harassment, gender based harassment, sexual misconduct, and other sexual violence by or against employees, students, or third parties.
25. **"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).

26. **“Sexual violence”** is physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent, including, but not limited to, rape, sexual assault, sexual battery, sexual abuse, and sexual coercion.
27. **“Shall”** is used in the imperative sense.
28. **“Student”** includes all persons taking SUNY Poly courses, both full-time and part-time, matriculated and non-matriculated, pursuing undergraduate or graduate studies, continuing education and/or professional studies (credit-bearing and non-credit bearing), and certificate program participants. The term includes those who reside in SUNY Poly residence halls, as well as individuals on College premises for any purpose related to registration for enrollment. Persons who are not officially enrolled for a particular term but who have a continuing educational relationship with the College are students.
29. **“Student Organization”** is a group of students who have complied with the appropriate requirements, including both student clubs and organizations, for SUNY Poly recognition and/or registration.
30. **“SUNY Poly premises”** or **“College premises”** includes all land, buildings, space, facilities, and other property in the possession of or owned, used, or controlled by SUNY Poly (including adjacent streets and/or sidewalks) or its affiliated entities.
31. **“SUNY Poly property”** or **“College property”** means all property owned, leased, or on loan to the College. This also includes College data and information stored on electronic or computer media and passwords.
32. **“Title IX Coordinator”** refers to the Title IX Coordinator(s), Deputy Title IX Coordinator(s) and their designee(s).
33. **“Vice President for Student Affairs”** refers to the Vice President for Student Affairs or Assistant Vice President for Student Affairs.

## Section Two: Student Conduct System Authority and Jurisdiction

### Applicability Policy and Jurisdiction

The Student Code of Conduct is applicable to all SUNY Poly students regardless of the number of credits for which the person has enrolled. Students are responsible for their conduct upon their acceptance of admittance to SUNY Poly and this responsibility continues through the award of a degree.

The student conduct process may be initiated regardless of a student's current enrollment status. This includes conduct that occurs before classes begin or after classes end as well as during the academic year and during periods between terms of actual enrollment.

The Student Code of Conduct applies even if the student withdraws while a conduct matter is pending. The College can proceed with the conduct process following the withdrawal. Should suspension or expulsion take place as a result of the conduct process, these sanctions supersede a student's voluntary withdrawal from SUNY Poly. If a student who has completed degree requirements is charged with a violation prior to graduation or the conferral of the degree, the student will be ineligible to graduate until student conduct action is completed and eligibility to graduate is confirmed. If conduct action results in suspension, the student will be ineligible to graduate until the term of the suspension has been served. SUNY Poly may withhold issuing a degree, diploma or transcript pending compliance with SUNY Poly rules, regulations, or policies or pending completion of the process set forth in this Code of Conduct, including the completion of all imposed sanctions.

The Student Code of Conduct applies to conduct which occurs on SUNY Poly sites, international and exchange programs, and at SUNY Poly sponsored or supervised functions. When a nexus between the behavior and SUNY Poly exists and the College is aware of the behavior, a student or student organization may be subject to action under the Student Code of Conduct.

In cases in which the prohibited behavior occurs off campus, the conduct officer will consult the Vice President of Student Affairs, to determine if conduct action is warranted under the circumstances. SUNY Poly will consider certain factors in its decision to take action for alleged violations of the Student Code of Conduct that occur off campus when there is sufficient information available to conduct a hearing. The factors include but are not limited to:

- The incident involves endangering behavior (which includes but is not limited to physical assault, sexual misconduct, intimate partner violence, stalking, hazing, arson, distribution of illegal drugs or other serious offenses that constitute threat or harm to the personal safety of others); and/or
- The incident involves an alleged Category II violation (as defined herein); and/or
- There has been significant loss of or damage to property; and/or
- Alcoholic beverages are sold or made available to underage persons.

## Violations & Law

SUNY Poly's student conduct process may be initiated against a student charged with violation of a law. Generally, proceedings under this Student Code of Conduct will be pursued without regard to pending civil litigation or criminal prosecution.

When a student is charged by federal, state, or local authorities with a violation of law, SUNY Poly will not request or agree to special consideration for that individual because of their status as a student. If the alleged offense is also the subject of a proceeding before a hearing body under the Student Code of Conduct, SUNY Poly may advise off-campus authorities of the existence of the Student Code of Conduct and of how such matters will be handled internally within the SUNY Poly community. SUNY Poly will cooperate with law enforcement and other agencies in the enforcement of criminal law on campus and in the conditions imposed by criminal courts for the rehabilitation of student violators. Individual students and SUNY Poly community members, acting in their personal capacities, remain free to interact with governmental representatives, as they deem appropriate.

### Section Three: Prohibited Behavior

The following behaviors violate SUNY Poly's Student Code of Conduct:

1. Acts of dishonesty, including, but not limited to:
  - a. Furnishing false information to a SUNY Poly official;
  - b. Forgery, alteration, or misuse of any SUNY Poly document, record, or instrument of identification;
  - c. Tampering with, impeding, or coercively influencing the election process related to any SUNY Poly student organization.
2. Disruption, including, but not limited to:
  - a. Disruption or obstruction of teaching, research, administration, or other College sponsored or supervised functions;
  - b. Leading or inciting others to disrupt College operations or College sponsored or supervised functions;
  - c. Intentional obstruction that unreasonably interferes with freedom of movement, either pedestrian or vehicular traffic, on College premises or at College sponsored or supervised functions.
3. Harassment, which is unwelcome behavior that demeans, threatens, or offends, and results in a hostile environment for the affected person, no matter the medium (including social media). Harassing behaviors may include bullying, verbal abuse, threats, intimidation, coercion and/or other conduct which directly threatens or endangers the health or safety of any reasonable person.
4. Physical assault, which is an intentional or reckless act that causes physical injury, bodily harm, or subjects another to unwanted physical contact.
5. Hazing, which is, regardless of intent, any action that degrades, humiliates, abuses or endangers the mental, emotional, or physical health or safety of a person, or which destroys or removes public or private property, for the purpose of initiation, admission into, affiliation with, or as a condition for continued membership in a group, team or organization whether



or not officially recognized by SUNY Poly. The express or implied consent of the affected person(s) is irrelevant when determining whether or not hazing occurred.

6. Bias/hate incident, which is harassment, physical assault, or threats of violence perpetrated against another person on the basis of the person's race, color, ethnicity, national origin, ancestry, religion, religious practice, creed, sexual orientation, disability, age, sex, gender or other protected characteristics as designated under New York State and federal law.

7. Theft, damage, and/or unauthorized possession of College property, the personal property of a member of the SUNY Poly community, or other personal or public property.

8. Unauthorized possession, duplication, use or transfer of any key, I.D. badge/proximity card, key card or combination to a College building or space.

9. Trespassing and/or unauthorized use of SUNY Poly facilities and services, including but not limited to:

- a. Entering or remaining, without authorization, in any College building, facility, or space;
- b. Entering or remaining in any private space or office of a student or College official without express or implied permission of person(s) authorized to use or occupy that space.

10. Alcohol violations:

- a. Consumption under twenty-one (21) years of age;
- b. Possession under twenty-one (21) years of age;
- c. Distribution to someone under twenty-one (21) years of age;
- d. Purchase of alcoholic beverages by any persons less than twenty-one (21) years of age;
- e. Possession of alcohol paraphernalia (e.g., funnels and kegs);
- f. Participation in drinking games, contests, and other activities that induce, encourage, or result in the rapid consumption of alcohol (e.g., beer pong, flip cup);
- g. Public intoxication, regardless of age;
- h. Driving While Intoxicated (DWI) or Driving While Ability Impaired (DWAI/Alcohol) as defined in NYS Vehicle and Traffic Law.

11. Controlled substances (as defined in NYS Public Health Law 3306) violations:

- a. Unlawful possession of a controlled substance;
- b. Unlawful purchase of a controlled substance;
- c. Manufacture of a controlled substance;
- d. Distribution of a controlled substance;
- e. Sale of a controlled substance;
- f. Unlawful use or being under the influence of any controlled substance or synthetic cannabinoids;
- g. Abuse of over-the-counter drugs/medications;
- h. Possession of drug paraphernalia which includes any items that can be utilized for, designed for, or are fashioned for the use of drugs (e.g., bowls, bongs);
- i. Driving While Ability Impaired (DWAI/Drug) as defined in NYS Vehicle and Traffic Law.

### ***Good Samaritan Policy***

At SUNY Poly the health and safety of the members of the SUNY Poly community is of primary importance and all students are strongly encouraged to be active bystanders who respond in potentially dangerous situations without fear of reprisal from the College. Therefore, a student or student organization seeking medical treatment or emergency help for themselves or for any other person who is in immediate medical need, will not be subject to student conduct action related to the violation of using or possessing alcohol or other prohibited controlled substances. This policy applies to emergencies both on and off campus. The positive impact of reporting a medical emergency will always hold the highest priority when determining the appropriate response for policy violations. Repeated use of the Good Samaritan policy may be cause for concern for the well-being of the student and amnesty in such cases will be individually reviewed.

12. Illegal or unauthorized use, possession, or storage of any weapon or reasonable copy of a weapon including, but not limited to, firearms and ammunition, stun guns, air guns, paintball guns, pellet guns, bb guns, clubs, crossbows, archery equipment, slingshots, martial arts weapons, swords, knives, fireworks and other explosives, and/or dangerous chemicals is prohibited on SUNY Poly premises and at SUNY Poly sponsored or supervised functions.

13. Misuse or abuse of the College computer system, voicemail, or telephone services, including but not limited to:

- a. Unauthorized use or abuse of a SUNY Poly issued computer account, including failure to safeguard user IDs and passwords;
- b. Accessing a student, SUNY Poly official, or institutional account without authorization;
- c. Using a student, SUNY Poly official, or institutional account to send message(s) without authorization;
- d. Failure to comply with College technology policies;
- e. Illegal use of copyrighted materials including but not limited to downloading, uploading, or use of file sharing programs.

14. Fire Safety violations:

- a. Actions that cause or attempt to cause a fire or explosion;
- b. Falsely reporting a fire, explosion or an explosive device;
- c. Tampering with fire safety equipment;
- d. Inappropriate and/or unauthorized activation of the fire alarm system;
- e. Failure to evacuate SUNY Poly buildings during a fire alarm.

15. Conduct that is disorderly, lewd, indecent, or constitutes a breach of peace.

16. Category II Sexual and/or Gender Based Discrimination and Misconduct: Sexual Misconduct Violations (for the prohibited behaviors below SUNY Poly's Affirmative Consent standard shall be used)

- a. **Non-consensual sexual contact** is the touching of a person's intimate parts (defined as genitalia, groin, breast, or buttocks), however slight, with any object including but not limited to parts of a person's body, whether directly or through clothing, without affirmative consent. Non-consensual sexual contact also includes; (1) touching another person using any intimate parts without affirmative consent, or (2) forcing an unwilling person

to touch another's intimate parts, (3) disrobing of another or intentional exposure of one's intimate parts to another without affirmative consent.

b. **Non-consensual sexual intercourse** is sexual intercourse or any sexual penetration, however slight, of another person's oral, anal, or genital opening with any object (an object includes but is not limited to the parts of a person's body) without affirmative consent.

c. **Sexual exploitation** is non-consensual behavior that takes sexual advantage of another person, and does not otherwise constitute another sexual misconduct violation. Examples of sexual exploitation include but are not limited to: intentional, nonconsensual tampering with or removal of condoms, other methods of birth control and/or sexual transmitted infection (STI) prevention prior to or during sexual contact in a manner that significantly increases the likelihood of STI contraction and/or pregnancy by the non-consenting party; engaging in sexual activity with another person while knowingly infected with a STI and without informing the other person of the infection; non-consensual video taping, audio taping, or photographing sexual activity; observing others engaged in dressing/undressing or in sexual acts without their knowledge or consent; trafficking people to be sold for sex; and inducing incapacitation with the intent to initiate in sexual activity.

d. **Sexual harassment** as defined in SUNY Poly's sexual harassment policy at <https://sunypoly.edu/sites/default/files/Title%20IX/Sexual%20Harassment%20Prevention%20Policy.pdf>

17. Category II Sexual and/or Gender Based Discrimination and Misconduct: Intimate Partner Violence and Stalking Violations

a. **Dating violence** is 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 reporting individual. Dating violence can occur as a single act, or it can consist of a pattern of violent, abusive, or coercive acts that serve to exercise power and control in the context of a romantic or intimate relationship. The existence of such a relationship shall be determined based on the reporting individual'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.

b. **Domestic violence** is any violent felony or misdemeanor crime committed by a current or former spouse or intimate partner of the victim/reporting individual, by a person sharing a child with the victim/reporting individual or by a person cohabiting or has cohabitated with the victim/reporting individual as a spouse or intimate partner, by a person similarly situated to a spouse of the victim/reporting individual under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred, or by any other person against an adult or youth victim/reporting individual who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

c. **Stalking** is intentionally engaging in a course of conduct (two or more acts, in which the stalker directly, indirectly, or through third parties and by any method, device or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person or interferes with their property), directed at a specific person, which is likely to cause a reasonable person to fear for their safety or the safety of others or causes that person to suffer substantial emotional damage. Examples include, but are not limited to, repeatedly following such person(s), repeatedly committing acts that alarm, cause fear,

or seriously annoy such other person(s) and that serve no legitimate purpose, and repeatedly communicating by any means with such person(s) in a manner likely to intimidate, annoy or alarm them. Stalking does not require direct contact between parties, it may include the use of electronic media and devices.

18. Failure to comply, which includes, but is not limited to:
  - a. Failure to comply with a reasonable and lawful request or directive of a SUNY Poly official acting in performance of their duties;
  - b. Interference with a SUNY Poly official acting in the performance of their official duties;
  - c. Failure to identify oneself to a SUNY Poly official when requested to do so.
19. Abuse of the student conduct system, including, but not limited to:
  - a. Failure to comply with the instructions of a conduct officer, the Hearing Board or College official;
  - b. Disruption or interference with the orderly conduct of a student conduct proceeding;
  - c. Falsification, distortion or misrepresentation of information to the conduct officer, College official or the Hearing Board;
  - d. Discouraging an individual's participation in, or use of, the student conduct system through intimidation;
  - e. Retaliation against an individual who made a report/complaint, served as a witness, opposed the reported behavior, is a friend or acquaintance of the reporting individual or respondent, or participated in the investigation and/or conduct process;
  - f. Violation of any conduct sanction imposed in accordance with the Student Code of Conduct.
20. Violation of any provision of the Residence Hall License or rules contained in the Residential Hall Policies and Procedures.
21. Violation of SUNY Poly policies, rules, or regulations.
22. Violation of local, state, or federal law.
23. Aiding, abetting, or procuring another person to violate a SUNY Poly policy or local, state or federal law.
24. Attempting to violate SUNY Poly policy or local, state or federal law.

#### **Section Four: Temporary and Administrative Directives**

In certain circumstances, appropriate SUNY Poly officials may issue temporary and/or administrative directives prior to the Administrative or Board Hearing.

##### **Temporary Directives**

SUNY Poly utilizes three types of temporary directives; temporary suspension, temporary removal from residence halls, and temporary removal from campus building, SUNY Poly program/event or service.

The Director of Community Standards may implement a temporary directive immediately if they reasonably believe that:

1. The student's continued presence would constitute a danger to the health and/or safety to a member(s) of the SUNY Poly community; or
2. The student's continued presence would constitute a danger to the preservation of SUNY Poly property or premises; or
3. The behavior of the student significantly detracts from the educational environment and/or poses a disruption of normal SUNY Poly operations.

The terms of the temporary suspension and/or removal shall be specified in the temporary directive notice letter issued. A student who has been issued a temporary directive shall be entitled to a prompt review of the need for and/or terms of the temporary directive. The accused/respondent seeking a review shall submit a written request with supporting documentation to the Vice President for Student Affairs.

The decision of the Vice President for Student Affairs shall be made within two (2) business days of the receipt of the written request and shall be final. The accused/respondent shall be notified of the decision regarding the temporary directive in writing.

Absent a reversal or amendment on appeal, the temporary directive shall remain in place pending the resolution of the administrative hearing or Board Hearing as outlined in Section 5: Student Conduct Procedures.

### **Temporary Suspension**

During the temporary suspension, the student shall be restricted from all SUNY Poly premises, including classes, access to residence halls and other campus facilities. Temporary suspension also includes restriction from attendance at all College sponsored or supervised functions and the temporary loss of privileges for which the student might otherwise be eligible.

### **Temporary Removal from Residence Halls**

During the temporary removal from the residence halls, the student may be removed from campus housing and restricted from buildings and grounds of the residential complexes.

### **Temporary Removal from Campus Building(s)/Service(s)/Program(s)**

Other restrictions may be imposed such as denial of access to a specified campus building, service, program and/or SUNY Poly sponsored or supervised functions. A student may also be restricted from hosting guests on campus for a specified period of time as deemed to be appropriate by the Director of Community Standards.

### **Administrative Directives**

If there is a concern for the well-being of a member of SUNY Poly community, or to prevent disruption to SUNY Poly operations, an appropriate College official may issue an administrative directive. SUNY Poly utilizes three types of administrative directives: cease and desist order, no contact order, and persona non grata status.

The terms of the administrative directive shall be specified in the administrative directive notice letter issued. A student who has been issued an administrative directive shall be entitled to a prompt review of the need for and/or terms of the administrative directive. Any party seeking a review shall submit a written request with supporting documentation to the Vice President for Student Affairs. The decision of the Vice President for Student Affairs shall be made within two (2) business days of the receipt of the written request and shall be final. The party who submitted the request shall be notified of the decision regarding the administrative directive in writing.

### **Cease and Desist Order**

A Cease and Desist Order is a written directive issued between two parties which prohibits contact, either directly or through a third party. A Cease and Desist Order is considered mutual in that it applies to both the parties and does not restrict the movement of either party on campus.

A College official under the direction of the Vice President for Student Affairs may issue a Cease and Desist Order between any two parties even if there is no investigation in progress and/or no conduct charges pending. A Cease and Desist Order can also be issued in cases in which conduct proceedings have concluded and did not result in a finding of responsibility.

A Cease and Desist Order shall remain in place until it is amended or withdrawn. Any intentional violation of a Cease and Desist Order may be considered a separate violation of the Student Code of Conduct.

### **No Contact Order**

A No Contact Order is a written directive prohibiting contact through any means with a protected person, either directly or through a third party. If the accused/respondent and the protected person observe each other in a public place, it is the responsibility of the accused/respondent to leave the area immediately and without directly contacting the protected person.

In Category II Level II cases (as described in Section Six: Student Conduct Procedures Part B) that are advancing through the conduct process, SUNY Poly shall automatically issue a No Contact Order. If SUNY Poly finds it appropriate, it may make a schedule for the reporting individual and the accused/respondent to use the same College facilities and services, while maintaining the terms of the No Contact Order.

A No Contact Order issued as an administrative directive is considered temporary pending the resolution of the administrative hearing or Board Hearing as outlined in Section Six: Student Conduct Procedures.

In cases in which a respondent is found not responsible following an administrative hearing or Board Hearing, the No Contact Order shall be withdrawn. In all cases, regardless of responsibility outcome, the student conduct officer or designee may, at their discretion, issue a Cease and Desist Order, which is not a sanction.

Any intentional violation of a No Contact Order may be considered a separate violation of the Student Code of Conduct.

## Persona Non Grata

A persona non grata letter is an order which prohibits a person's presence from SUNY Poly premises and College sponsored or supervised functions. When the accused is not a member of the College community and presents a threat to the health and safety of a member of the College community, University Police or other College officials may provide assistance to the reporting individual in obtaining a persona non grata letter, subject to legal requirements and College policy.

### Section Five: Student Conduct Process Rights

Each accused/respondent or reporting individual shall have the following rights:

- The right to a prompt response to any complaint. SUNY Poly strives to complete the investigation and conduct process (excluding the appeals process) within sixty (60) calendar days from the date of the complaint, absent extenuating circumstances. Timelines may vary based on the complexity of the case, number of witnesses, and nature of the academic calendar.
- The right to an investigation and conduct 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 same opportunity to be accompanied by an advisor of their choice who may assist and advise the accused/respondent and reporting individual throughout the conduct process and any related hearings or meetings. Participation of the advisor in any proceeding is governed by state and federal law and the Student Code of Conduct.
- The right to receive advance written or electronic notice of the date, time, and location of any meeting or hearing the accused/respondent and reporting individual are required to or are eligible to attend. The accused/respondent will also be provided the factual allegations concerning an violation, a reference to the specific Code provisions alleged to have been violated, and possible sanctions.
- The right to 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 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 SUNY Poly).
- The right to present evidence and testimony at a hearing, when appropriate.
- The right to decline to testify against oneself. Silence will not be considered an admission of responsibility by the hearing body.
- The right to a range of options for providing testimony via alternative arrangements, including telephone/videoconferencing or testifying with a room partition.
- The right to ask questions of the decision-maker and via the decision-maker indirectly request responses from either the reporting individual or respondent and any other witnesses present.
- The right 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 have access to a full and fair record of a student conduct hearing, which shall be preserved and maintained for at least seven (7) years. To access the file, please contact:
  - Director of Community Standards, 315-792-7535  
Residential Life Suite #229, Campus Center, Utica Site
- The right to choose whether to disclose or discuss the outcome of the conduct process.
- The right to have all non-public evidence obtained during the course of the conduct process protected from public release until final determination, including any appeal determination, if applicable, unless otherwise required by law.

**The accused/respondent and reporting individual to Category II Sexual and/or Gender Based Discrimination and Misconduct cases are afforded the following additional rights throughout the student conduct process:**

- The right to have their complaint investigated and adjudicated in an impartial, timely, and thorough manner by individuals who receive annual training in conducting investigations and reviewing cases of sexual misconduct, 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 including but not limited to sexual misconduct, domestic violence, dating violence, and stalking.
- The right to exclude prior sexual history with persons other than the other party in the student conduct process or their own mental health diagnosis and treatment from admittance in the conduct stage that determines responsibility. Past findings of sexual misconduct, dating or domestic violence, or stalking may be admissible in the student conduct stage that determines sanction.
- The right to simultaneous (among the respondent and the reporting individual) written or electronic notification of the outcome of a conduct proceeding, including the decision, any sanction(s), and the rationale for the decision and any sanctions.
- The right to make an impact statement during the point of the proceeding where the decision maker is deliberating on appropriate sanctions.

## **Section Six: Student Conduct Procedures**

### **Introduction**

SUNY Poly’s student conduct procedures have been developed with an emphasis on student involvement and fundamental fairness. The hearing bodies are not courts of law; hence, the formal court rules of evidence and procedures used in the courts do not apply. For a better understanding of the differences between the student conduct process and criminal process, see <http://system.suny.edu/sexual-violence-prevention-workgroup/College-and-Criminal-Resource/>

In order to comply with FERPA and provide an orderly process for the presentation and consideration of relevant information without undue intimidation or pressure, the hearing process for individual students and student organizations are not open to the general public.

Any notices or notifications outlined in the Student Code of Conduct will be sent to the student’s SUNY Polytechnic assigned email account, unless extenuating circumstances dictate otherwise as determined by the College. Each student is responsible for monitoring their SUNY Poly email account on a regular basis. The conduct officer or Title IX Coordinator, at



their discretion, may utilize additional delivery. Charges against student organizations will be delivered to the president of the student organization.

The student conduct process is divided into two distinct parts: Category I and Category II. Category I procedures provide guidance related to general student conduct cases. Category II provides guidance for Sexual and/or Gender Based Discrimination and Misconduct cases. Category II policies and procedures comply with Title IX federal regulations, Violence Against Women Act (VAWA) reauthorization, the Clery Act, Office for Civil Rights guidance, and New York State law, including New York Education Law, Article 129-B.

## **PART A: CATEGORY I - GENERAL STUDENT CONDUCT PROCEDURES**

### **Complaint**

Any member of the SUNY Poly community may make a complaint or provide information concerning a potential violation(s) of the Student Code of Conduct. Allegations of prohibited behavior may be submitted to any of the following offices:

**Office of Community Standards** - Campus Center, Residential Life Suite #229 (Utica), 315-792-7535;

**Residential Life & Housing** - Campus Center, Residential Life Suite #229 (Utica), 315-792-7810;

**Student Services** - Nano Fab South, 3rd Floor, Suite 309 (Albany), 518-956-7337;

**University Police** - Kunsela Hall B126, 315-792-7222 (Utica); Nano Fab East Suite 1701 (Albany), (518) 437-8600.

### **Advisor**

The reporting individual and respondent are permitted to have one advisor of their choice present with them at any investigation meeting, conduct meeting, and/or at a hearing. An advisor may privately consult with and advise their advisee throughout the investigation and conduct process, but may not speak on behalf of the student, question witnesses, disrupt the proceeding, present information to the hearing body, or otherwise directly participate in any investigation or conduct process. An advisor may be any person the reporting individual or respondent chooses. During all investigation and conduct meetings and hearings, the reporting individual and respondent may request a brief recess to consult with their respective advisor, which may be granted at the discretion of the conduct officer or chairperson of the Hearing Board, unless the recess would be unreasonably disruptive.

### **Investigation and Notice of Charge**

A conduct officer shall investigate the report to determine whether further action is necessary and may bring charges against the accused/respondent if sufficient information exists. All investigations will occur within a reasonable timeframe and every effort will be made to keep investigations private to the greatest extent possible. If the conduct officer determines that there is sufficient information that warrants further action, the conduct officer shall initiate either an administrative hearing or Board Hearing.

A student or student organization charged with an alleged violation of the Code will be provided written notice of the charge(s) and will be required to meet with a conduct officer. Unless circumstances prohibit, the respondent shall be provided notice of the charges within ten (10) business days of the Office of Community Standards receiving documentation. For cases referred to University Police or the Title IX Office, the ten (10) business days begin upon the Office of Community Standards' receipt of the official report from those offices. Written notice of charges includes information about the circumstances surrounding the potential violation including, where available, the date, time, location and factual allegations, as well as a student's rights under SUNY Poly's conduct process. In the notice, the case will be assigned either Level I or Level II status depending on the nature of the violations.

Both the reporting individual and respondent will receive the name of the conduct officer assigned to the case in their notice of charge letter. Within 24 hours of this notice, the reporting individual or respondent may request in writing that the conduct officer be removed on the basis of bias or conflict of interest, and set forth the specific basis for the request with

supporting information. The Vice President of Student Affairs will determine whether the challenge has merit and respond to the request in writing within two (2) business days.

### **Case Level Status**

A conduct case in which potential sanctions do not include suspension, expulsion or removal from College housing will be designated as a **Level I case**. Level I cases are resolved through an administrative hearing.

A conduct case in which potential sanctions include but are not limited to suspension, expulsion or removal from College housing will be designated as a **Level II case**. Level II cases are resolved through a Board Hearing.

### **Student Conduct Hearings**

A hearing provides both the reporting individual and respondent the opportunity to present information for review by either a conduct officer or the Board. There are two types of hearings: administrative hearings and Board Hearings.

All hearings will be recorded by the Office of Community Standards. Deliberations held during a Board Hearing shall not be recorded. The reporting individual or respondent to a conduct case may request in writing to review the hearing record. Cameras or other reproduction equipment, other than SUNY Poly's recording device, are not permitted in a student conduct hearing, unless as a result of a preapproved reasonable accommodation.

### **Administrative Hearing**

An administrative hearing is a hearing in which a conduct officer meets with the respondent to review the relevant information, charges, and the student conduct process. During the administrative hearing, the conduct officer will determine whether the respondent violated the Code and will assign sanctions if appropriate.

The respondent is required to schedule an administrative hearing with the conduct officer within five (5) business days from the date of the notice of charge letter. If the respondent needs to reschedule the administrative hearing, the respondent must notify the conduct officer no less than 24 hours prior to the scheduled hearing and request to reschedule. In the event a respondent does not schedule, reschedule, or fails to attend an administrative hearing, an additional conduct charge of "failure to comply" (Student Code of Conduct Prohibited Behavior #18) may be added.

Should the respondent fail to schedule or attend an Administrative hearing, the conduct officer will give the respondent two (2) additional business days, with written notice, before proceeding. An additional charge of failing to comply may be added to the charge(s). The Administrative hearing will then be held in the student's absence. The student will be assumed to have entered a claim of Not Responsible to each allegation and forfeits their ability to present evidence on their behalf. Findings and sanctions, if applicable, will be based on the information and not upon the accused student's failure to appear. A student may submit a written request with supporting documentation to the conduct officer showing good cause for failing to appear. The conduct officer will review and make a determination as to whether a new hearing will be granted, otherwise, the decision of the hearing shall stand.

Except in the case of a student charged with failing to obey the summons of a hearing body or College official, no respondent may be found to have violated the Student Code of Conduct solely because the student failed to appear before the hearing body.

At the hearing, the conduct officer will ask the respondent if they are responsible or not responsible for the alleged charge(s). If the respondent accepts responsibility, the conduct officer will assign sanctions.

If the respondent does not accept responsibility, the conduct officer will review the case and based on preponderance of the evidence will make a decision, including assignment of sanction(s), when necessary.

The conduct officer will send a letter documenting the outcome and any sanctions imposed within five (5) business days of the administrative hearing, except when additional time is necessary for extenuating circumstances as determined by the Vice President for Student Affairs. The respondent and reporting individual, if any, may appeal the outcome and/or sanctions as outlined in Section Eight: Appeals.

SUNY Poly may place a hold on the records or registration of any accused or respondent who fails to respond to a SUNY Poly investigation or conduct notice or fulfill any sanctions previously issued. SUNY Poly may take other action necessary for resolution of a case prior to the accused's or respondent's enrollment in a subsequent semester, transfer or graduation. All pending conduct matters must be resolved prior to a student's graduation, transfer from or continued education at SUNY Poly.

### **Board Hearing**

The Board Hearing will be conducted by a panel ("the Board") comprised of students, faculty and/or staff which reviews student conduct cases. The Board is appointed by the Vice President of Student Affairs on an annual basis. A quorum of five (5) Board members to include at least two (2) students and two (2) staff and/or faculty members shall be required for a Board Hearing. One member of the Board will be designated as chair by the Director of Community Standards.

Level II cases are resolved through a Board Hearing, except in cases where the respondent accepts responsibility for the alleged violation(s). When a respondent accepts responsibility for a Category I Level II violation, an administrative hearing will be used instead of the Board Hearing.

Prior to the Board Hearing, the respondent is instructed to schedule a pre-hearing meeting with the conduct officer within five (5) business days from the date of the notice of charge letter. If the respondent needs to reschedule the pre-hearing meeting, the respondent must notify the conduct officer no less than forty-eight (48) hours prior to the scheduled meeting and request to reschedule the meeting. In the event a respondent does not schedule, reschedule, or fails to attend the pre-hearing meeting, the conduct officer will move forward with scheduling the Board Hearing.

Under the Board Hearing process, if there is a reporting individual, that individual will also be instructed to schedule in a pre-hearing meeting.

At the pre-hearing meeting, the following information related to the Board Hearing is reviewed:

- **List of Hearing Board members:** The reporting individual and the respondent will be provided with the names of the Hearing Board members and an opportunity to challenge the participation of any board member on the basis of bias or a conflict of interest. A challenge of a Board member must be made in writing to the conduct officer within 24 hours of receipt of the Notice of Hearing and must state the specific reason(s) for the challenge. The conduct officer will determine whether the challenge has merit and notify the reporting individual and the respondent of the decision within two (2) business days. The College reserves the right to change the board composition at any time, with notice and an opportunity to challenge a Hearing Board member's participation.
- **Case specific information:** The conduct officer will provide the reporting individual and respondent with a final opportunity to review the Board Hearing case file, which includes relevant evidence and a list of witnesses if applicable, which will be presented during the Board Hearing, if any. The reporting individual and the respondent shall be permitted to submit additional information, if deemed relevant by the conduct officer, for the Hearing Board case file no later than the three (3) days prior to the hearing. The other party shall be provided the opportunity to review the information prior to the hearing. Other relevant documents, or evidence the reporting individual and/or the respondent submits less than three (3) business days prior to the hearing will be reviewed by the conduct officer who can a) exclude evidence that has not been shared with the other party or b) adjourn the hearing to afford all parties the opportunity to review evidence to be presented c) and/or to conduct further investigation. The conduct officer will make the final decision related to the admissibility of all information and/or evidence.
- **Witnesses:** The reporting individual and the respondent may request that witnesses attend the Board Hearing if it can be shown that such witnesses have relevant information. The Director of Community Standards will be responsible for the notification of witnesses to attend the Board Hearing. The reporting individual and respondent will be permitted to ask questions of the witnesses through the Hearing Board, via the chairperson. All witnesses are subject to the right of questioning by the Hearing Board, and may be recalled at any time during the hearing for additional questions.
- **Accommodations:** The conduct officer or Hearing Board, for good cause, may accommodate concerns for the personal safety, well-being, and/or fear of confrontation of any party during the Board Hearing by providing separate facilities, using a visual screen, and/or permitting participation by telephone, videotape, or other means as determined by the conduct officer. These alternative arrangements are subject to the rights of both the reporting individual and respondent, and must enable the Hearing Board, respondent, and reporting individual to communicate in real time.
- **Role of the Complainant:** The complainant acting on behalf of the College presents evidence and witnesses pertaining to the case.
- **Procedure for Multiple Students Accused:** In cases involving more than one respondent, the Director of Community Standards will generally conduct the Board Hearings jointly. A respondent may submit a written request for an individual hearing to the Director of Community Standards. If a separate hearing is granted, information ob-

tained in one respondent's hearing may be used at another respondent's hearing provided that each respondent has the opportunity to review and respond to the information.

The conduct officer shall schedule a Board Hearing within ten (10) business days of the pre-hearing meeting unless special periods (e.g., holidays, breaks) dictate otherwise. The reporting individual and respondent shall be notified of the time and place of the Board Hearing at least four (4) business days prior to the hearing.

During the hearing the respondent, complainant, and reporting individual, if any, will be given the opportunity to make opening and closing statements, present witnesses, and ask relevant questions. Following the closing statements, the Board will begin their deliberations.

All deliberations are closed and shall include only the Hearing Board members. The chairperson of the Board will serve as a facilitator during the deliberation. A review of information will be conducted by the Hearing Board to determine the respondent's non-responsibility/responsibility as to each of the charges. The decision shall be made by a majority vote (abstentions are not permitted) of the Hearing Board. A decision of responsibility shall be made only if the allegations contained in each charge have been established by a preponderance of the evidence.

If the Board has found the respondent responsible for one or more violations, the chairperson will then summon the conduct officer. The conduct officer will provide the Board with a student's conduct record, if any, for consideration by the Board for the purposes of issuing sanctions. The conduct officer will be dismissed by the chairperson prior to the start of the deliberations. The Board shall agree by majority vote (no abstentions) on appropriate sanction(s) as outlined in the Sanctioning Guidelines document. The chairperson will communicate the Board's decision regarding the respondent's responsibility and a recommendation of appropriate sanction(s) to the Director of Community Standards. The Director of Community Standards is required to accept the Hearing Board's decision with respect to responsibility/non-responsibility, unless the decision is arbitrary and capricious. Where the respondent is found responsible for one or more charges, the Director of Community Standards is not required to accept the Hearing Board's recommendation of appropriate sanctions. Specifically, the Director of Community Standards may reduce the sanctions recommended by the Hearing Board, but may not increase the sanctions.

Within five (5) business days following the adjournment of the hearing, the Hearing Board's decision will be communicated in writing to the respondent by the Director of Community Standards. Written notification will contain the name of the respondent; whether the respondent has been found responsible or not responsible for the charge(s), the rationale for the decision, and the sanction imposed, if any. If the violation is a crime of violence under the Clery Act (20 U.S.C. § 1092 (f)(1)(F)(i)(I)-(VIII) Part 1) or is a Category II violation, the reporting individual will also receive written notification of this information. College policy neither encourages nor discourages further disclosure of the decision letter by either student. The notification shall also inform both the reporting individual and the respondent of the appeal process, which includes any possible changes to the outcome that may occur before it becomes final, and when the outcome becomes final.

## **PART B: CATEGORY II: SEXUAL AND/OR GENDER BASED DISCRIMINATION AND MISCONDUCT PROCEDURES**

This section sets forth the manner in which allegations of sexual misconduct, intimate partner violence, and stalking will be addressed by the Office of Community Standards in consultation with the Title IX Coordinator.

### **Students' Bill of Rights**

The Students' Bill of Rights, incorporated herein by reference, is distributed annually to students, is made available on SUNY Poly's Title IX website ([www.sunypoly.edu/titleix](http://www.sunypoly.edu/titleix)), and is posted throughout campus, including in each campus residence hall and dining hall.

### **Policy for Alcohol and/or Drug Use Amnesty**

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

### **Confidentiality: How SUNY Poly Will Weigh the Request and Respond**

If a reporting individual discloses an incident to a SUNY Poly employee who is responsible for responding to or reporting a Category II violation, but wishes to maintain confidentiality or does not consent to the College's request to initiate an investigation, the Title IX Coordinator must weigh the request against SUNY Poly's obligation to provide a safe, non-discriminatory environment for all members of the campus community, including the reporting individual.

SUNY Poly will assist with academic, housing, employment, and other reasonable and available accommodations to the reporting individual regardless of their reporting choice. While reporting individuals may request accommodations through several College offices, the Title IX Coordinators will serve as primary point of contact to assist with these measures. SUNY Poly also may take proactive steps to combat prohibited behavior in a general way that does not identify the reporting individual or the situation that was disclosed. Because SUNY Poly is under a continuing obligation to address the issue of sex discrimination campus-wide, reports of Category II prohibited behavior (including non-identifying reports) may also prompt the College to consider broader remedial action – such as increased monitoring, supervision or security at locations where the prohibited behavior occurred; increasing education and prevention efforts, including to targeted population groups; conducting climate assessment surveys; and/or revisiting College policies and practices.

SUNY Poly will seek consent from a reporting individual of an alleged Category II violation prior to conducting an investigation. A reporting individual may decline to consent to an

investigation and can request confidentiality, even if SUNY Poly has received notice of the incident. The request for confidentiality will be honored unless SUNY Poly's failure to act does not adequately mitigate the risk of harm to the reporting individual or other members of the SUNY Poly community. Honoring a reporting individual's request for confidentiality may limit SUNY Poly's ability to meaningfully investigate and pursue conduct action against the accused.

When weighing an individual's request for confidentiality, SUNY Poly will review the available information and consider many factors to determine whether to proceed despite that request. These factors include, but are not limited to:

- Whether the accused has a history of violent behavior or is a repeat offender;
- Whether the incident represents escalation in prohibited behavior on behalf of the accused from previously noted behavior;
- Whether there is increased risk that the accused will commit additional acts of violence;
- Whether the accused used a weapon or force;
- Whether the reporting individual is a minor;
- Whether SUNY Poly possesses other means to obtain relevant evidence such as security footage or physical evidence;
- Whether the report reveals a pattern of perpetration at a given location or by a particular group;
- Whether the prohibited conduct was committed by multiple respondents;
- Whether the respondent has admitted to the conduct.

In cases in which the Title IX Coordinator grants the reporting individual's request for confidentiality, the alleged incident will be documented with the Title IX office. If a future pattern develops, SUNY Poly has the right to re-examine the incident.

When the Title IX Coordinator has sufficient information to demonstrate SUNY Poly has a responsibility to address the prohibited behavior, SUNY Poly may move forward with a full investigation and conduct process. SUNY Poly will not require a reporting individual to participate in any investigation or conduct proceeding. SUNY Poly will inform the reporting individual prior to starting a full investigation and will take immediate action as necessary to protect and assist them.

### **Report/Complaint**

Any member of the SUNY Poly community may make a complaint or offer information concerning a potential Category II violation of the Student Code of Conduct. A student may make a report against another student, an employee, a student organization or group, or a third party. The procedure SUNY Poly utilizes to address these reports may vary, depending on who the report is against.



Allegations of prohibited behavior may be submitted to SUNY Poly's Title IX Coordinators or the Director of Community Standards:

**Katie Tynan-Simon, Title IX Coordinator**

Student Center, S228 (Utica)

315-792-7235

Nano Fab East 4520 (Albany)

518-956-7317

[ktynan@sunypoly.edu](mailto:ktynan@sunypoly.edu)

**Stacey Genther, Deputy Title IX Coordinator**

Campus Center, Suite 217

315-792-7808

[stacey.genther@sunypoly.edu](mailto:stacey.genther@sunypoly.edu)

**Megan Lennon, Director of Community Standards**

Campus Center, Residential Life Suite #229

315-792-7535

[wyetm@sunypoly.edu](mailto:wyetm@sunypoly.edu)

*Students who wish to speak **confidentially** about an incident may contact a confidential resource as designated in SUNY Poly's Options for Confidentially Disclosing document available at <https://sunypoly.edu/titleix/policies-procedures>.*

**Privacy vs. Confidentiality**

SUNY Poly offices and employees who cannot guarantee confidentiality will maintain a reporting individual's privacy to the greatest extent possible. The information a reporting individual provides to a non-confidential resource will be relayed to the Title IX Coordinator. SUNY Poly will limit any disclosure as much as possible, even if the Title IX Coordinator determines that a request for confidentiality cannot be honored.

**The Role of the Title IX Coordinator**

The Title IX Coordinator is responsible for the investigation of Category II violations as outlined in the Student Code of Conduct. The Title IX Coordinator(s) will collect and review the information available. The Title IX Coordinators are not advocates or advisors, but will assist both the reporting individual and respondent by providing information about support and advocacy services and available accommodations. The Title IX Coordinator does not serve as a member of the Administrative or Hearing Board that determines if the complaint is substantiated.

**Advisor**

The reporting individual and respondent are permitted to have one advisor of their choice present with them at any investigation meeting, conduct meeting, and/or at a hearing. An advisor may privately consult with and advise their advisee throughout the investigation and conduct process, but may not speak on behalf of the student, question witnesses, disrupt the proceeding, present information to the hearing body, or otherwise directly participate in any investigation or conduct process. An advisor may be any person the reporting individual or respondent chooses. During all investigation and conduct meetings and hearings, reporting individual and respondent may request a brief recess to consult with their respective advisor,

which may be granted at the discretion of the conduct officer or chairperson of the Hearing Board, unless the recess would be unreasonably disruptive.

### **Accommodations**

SUNY Poly will take steps, where necessary, to support the reporting individual throughout the investigation and conduct process, including implementing appropriate temporary or administrative measures, as outlined in Section Four: Temporary and Administrative Directives. SUNY Poly will also take appropriate action to support the respondent throughout the process.

SUNY Poly may grant reasonable and available accommodations that effect a change in academic, housing, SUNY Poly employment, transportation and other applicable arrangements in order to address safety concerns, separate the reporting individual and respondent, prevent retaliation, and avoid an ongoing hostile environment. Accommodation requests can be made to the Title IX Coordinator or Director of Community Standards, and are subject to their review and approval.

As the investigation and conduct process for a Category II case is advancing, the Title IX Coordinator may, at their discretion, put restrictions in place when providing an accommodation. These restrictions may include, but are not limited to, altering a student's academic schedule, restricting parties from attending class/classes, re-assigning parties to a different class section, allowing parties to attend their scheduled class but with restrictions, restricting parties from certain areas of campus, restricting parties from campus but allowing parties to fulfill class requirements via internet, restricting or altering the dates/times/locations/hours permitted to work, scheduling the use of specific spaces (i.e. dining halls), restricting attendance at SUNY Poly sponsored or supervised functions, graduation or other ceremonies.

A student who has been issued a directive as a result of an accommodation shall be entitled to a prompt review of the need for and terms of the directive. Any party seeking a review shall submit a written request with supporting documentation to the Vice President for Student Affairs. The decision of the Vice President for Student Affairs shall be final.

### **Retaliation**

No member of the SUNY Poly community shall retaliate, intimidate, threaten, coerce or otherwise discriminate against a person who reports a Category II violation, files a complaint, serves as a witness, or assists or participates in the investigation or conduct process in any manner. Participants who experience retaliation should report the incident to the Title IX Coordinator, Director of Community Standards, or Vice President for Student Affairs. Any substantiated act of retaliation may result in sanctions or other student conduct action as outlined in the Code, College policies, and/or the conduct procedures pursuant to the applicable collective bargaining agreements.

### **Investigation**

A preliminary investigation of a report may precede a full investigation. During the preliminary investigation, the Title IX Coordinator will provide the reporting individual with information about the investigation and conduct process and will seek the reporting individual's consent to investigate (as outlined in the Confidentiality: How SUNY Poly Will Weigh the Request and Respond portion of this section). The Title IX Coordinator will interview the reporting individual and collect information relevant to the incident.

In cases in which (1) the reporting individual elects to file a formal complaint or (2) the reporting individual requests confidentiality but the College has determined it has a responsibility to address the prohibited behavior, the Title IX Coordinator will review the information and determine if there is sufficient information available to move forward with the conduct process. If adequate information was obtained in the preliminary investigation to give reasonable cause to believe a Category II violation may have occurred, the Title IX Coordinator will proceed with a full investigation.

Notice of Potential Conflict: If a full investigation is being pursued, both the reporting individual and respondent will receive notification in writing, of the name of the Title IX Coordinator assigned to the investigation of the case. Within 24 hours of this notice, the reporting individual or respondent may request in writing that the Title IX Coordinator be removed on the basis of bias or conflict of interest, and set forth the specific basis for the request with supporting information. The Vice President of Student Affairs will determine whether the challenge has merit and respond to the request in writing within two (2) business days.

The preliminary review of a complaint, including any temporary or administrative directives to be put in place, will generally be completed within 20 days of receipt of the complaint. The subsequent, comprehensive review and investigation of the complaint, including interviews and gathering of evidence, will generally be completed within 40 days of receipt of the complaint.

The full investigation will not begin until the reporting individual files a formal complaint with the Title IX Coordinator. In cases in which the reporting individual has requested confidentiality but SUNY Poly has determined an obligation to address the prohibited behavior, the full investigation will not begin until written notification of this determination has been issued to the reporting individual.

After the Title IX Coordinator understands the nature and scope of the complaint, they will send notice to the accused that a complaint has been filed and will include the date, time, location, and factual allegations concerning the violation(s), as well as the respondent's rights and other information about the investigation and conduct processes. The respondent will be instructed to contact the Title IX Coordinator within 48 hours of receiving the notice to schedule an initial interview. If the respondent fails to contact the Title IX Coordinators within 48 hours of the notice, the Title IX Coordinator may proceed with the investigation.

The Title IX Coordinator will meet with the reporting individual and accused separately when conducting the investigation. Both the reporting individual and respondent will be asked to provide any relevant documentation or supporting information (including but not limited to text messages, phone logs, video or audio recordings, photographs, social media posts or messages, letters, emails) and identify potential witnesses relevant to the complaint.

The Title IX Coordinator will interview witnesses deemed relevant to the complaint and will collect and review documentation and evidence provided by the witnesses.

### **Production and Review of the Investigation Report**

Where a full investigation is being pursued, the Title IX Coordinator will produce a written investigation report, which both the reporting individual and the respondent will be provided

an opportunity to review in draft form. The report will include a summary of the statements of each person interviewed, the relevant documentation, and other information reviewed by the Title IX Coordinator. The reporting individual and respondent will be permitted to provide clarifying comments to the portions of the report in which their own statements are summarized. They will also be permitted to respond to the content of the report and to propose questions to be asked of the witnesses and the other party to the complaint. The Title IX Coordinator will review the comments and questions submitted by the reporting individual and the respondent, if any, and will determine whether the report should be modified and/or if further investigation is necessary.

All information and documentation provided by either the reporting individual or the respondent, or by a witness(es) interviewed in the course of an investigation, may be included in the final investigation report and shared with the reporting individual, respondent, and appropriate College officials.

Once the investigation is complete and a final report is generated, the report is provided to the Director of Community Standards. The Director of Community Standards will review the report and determine if conduct action will be taken. If conduct action is pursued, the Director of Community Standards will provide the accused with notice of applicable charges and shall initiate an Administrative or Board Hearing.

### **Notice of Charge**

A student or student organization charged with an alleged violation of the Code will be provided written notice of the charge(s) and will be required to meet with a conduct officer. Unless circumstances prohibit, the respondent shall be provided notice of the charges within ten (10) business days of the Office of Community Standards' receipt of the final investigation report from the Title IX Coordinator. Written notice of charges includes information about the circumstances surrounding the potential violation including, where available, the date, time, location and factual allegations, as well as a student's rights under SUNY Poly's conduct process. In the notice, the case will be assigned either level I or level II status depending on the nature of the violations:

- a. **Category II Level I** - A Category II conduct case in which potential sanctions do not include suspension, expulsion or removal from College housing will be designated as a Level I case. Cases involving an allegation of sexual harassment, sexual exploitation or non-consensual sexual contact may be assigned a Level I status, which would be resolved through an administrative hearing. The conduct officer will review the severity of the alleged conduct for sexual harassment, sexual exploitation, and non-consensual sexual contact cases and determine whether, based on the information obtained through the investigation, the case should be elevated to a Level II charge.
- b. **Category II Level II**- A Category II conduct case in which possible sanctions include but are not limited to suspension, expulsion or removal from College housing will be designated as a Level II case. Any case involving an allegation of non-consensual sexual intercourse, dating violence, domestic violence, or stalking will be automatically assigned Level II case status. These cases are assigned to a Board Hearing, except in cases in which the respondent accepts responsibility. If a respondent accepts responsibility for a Category II Level II violation, an administrative hearing will be used instead of the Board Hearing.

Both the reporting individual and respondent will receive the name of the conduct officer assigned to the case in the notice of charge letter. Within 24 hours of this notice, the reporting individual or respondent may request in writing that the conduct officer be removed on the basis of bias or conflict of interest, and set forth the specific basis for the request with supporting information. The Vice President of Student Affairs will determine whether the challenge has merit and respond to the request in writing within two (2) business days.

### **Student Conduct Hearings**

A hearing provides both the reporting individual and respondent the opportunity to present information for review by either a conduct officer or the Board. There are two types of hearings: Administrative Hearings and Board Hearings.

All hearings will be recorded by the Office of Community Standards. Deliberations held during a Board Hearing shall not be recorded. The reporting individual or respondent to a conduct case may request in writing to review to the hearing record. Cameras or other reproduction equipment, other than SUNY Poly's recording device, are not permitted in a student conduct hearing, unless as a result of a preapproved reasonable accommodation.

### **Administrative Hearing**

An administrative hearing is a hearing in which a conduct officer meets with the respondent to review the relevant information, including the final investigative report prepared by the Title IX Coordinator, charges, and the student conduct process. During the administrative hearing, the conduct officer will determine whether the respondent violated the Code and will assign sanctions if appropriate.

The respondent is required to schedule an administrative hearing with the conduct officer within five (5) business days from the date of the notice of charge letter. If the respondent needs to reschedule the administrative hearing, the respondent must notify the conduct officer no less than 24 hours prior to the scheduled hearing and request to reschedule. In the event a respondent does not schedule, reschedule, or fails to attend an administrative hearing, an additional conduct charge of "failure to comply" (Section Three: Prohibited Behavior, #18) may be added.

Should the respondent fail to schedule or attend an Administrative Hearing, the conduct officer will give the respondent two (2) additional business days, with written notice, before proceeding. An additional charge of failing to comply may be added to the charge(s). The Administrative Hearing will then be held in the student's absence. The student will be assumed to have entered a claim of Not Responsible to each allegation and forfeits their ability to present evidence on their behalf. Findings and sanctions, if applicable, will be based on the information and not upon the accused student's failure to appear. A student may submit a written request with supporting documentation to the conduct officer showing good cause for failing to appear. The conduct officer will review and make a determination as to whether a new hearing will be granted; otherwise, the decision of the hearing shall stand.

Except in the case of a student charged with failing to obey the summons of a hearing body or College official, no respondent may be found to have violated the Student Code of Conduct solely because the student failed to appear before the hearing body.

At the hearing, the conduct officer will ask the respondent if they are responsible or not responsible for the alleged charge(s). If the respondent accepts responsibility, the conduct officer will assign sanctions.

If the respondent does not accept responsibility, the conduct officer will review the case and based on preponderance of the evidence will make a decision, including assignment of sanction(s), when necessary.

If the respondent has been found responsible for one or more violations, the reporting individual and the respondent each shall have the opportunity to provide an impact statement prior to the conduct officer's deliberation on appropriate sanctions. Impact statements outline the reporting individual's or respondent's thoughts or opinions regarding an appropriate sanction. The conduct officer is not bound by these statements in determining sanctions.

The conduct officer will send a letter to the respondent and the reporting individual documenting the outcome and any sanctions imposed within five (5) business days of the administrative hearing, except when additional time is necessary for extenuating circumstances as determined by the Vice President for Student Affairs. The respondent and reporting individual may appeal the outcome and/or sanctions as outlined in Section Eight: Appeals.

SUNY Poly may place a hold on the records or registration of any accused or respondent who fails to respond to a SUNY Poly investigation, conduct notice, or fulfill any sanctions previously issued. SUNY Poly may take other action necessary for resolution of a case prior to the accused's or respondent's enrollment in a subsequent semester, transfer or graduation. All pending conduct matters must be resolved prior to a student's graduation, transfer from or continued education at SUNY Poly.

### **Board Hearing**

The Board Hearing will be conducted by a panel ("the Board") comprised of students, faculty and/or staff which reviews student conduct cases. The Board is appointed by the Vice President of Student Affairs on an annual basis. A quorum of five (5) Board members to include at least two (2) students and two (2) staff and/or faculty members shall be required for a Board Hearing. One member of the Board will be designated as chair by the Director of Community Standards.

Level II cases are resolved through a Board Hearing, except in cases in which the respondent accepts responsibility for the alleged violation(s). If a respondent accepts responsibility for a Category II Level II case, an administrative hearing will be used instead of the Board Hearing.

Prior to the Board Hearing, the respondent is instructed to schedule a pre-hearing meeting with the conduct officer within five (5) business days from the date of the notice of charge letter. If the respondent needs to reschedule the pre-hearing meeting, the respondent must notify the conduct officer no less than 48 hours prior to the scheduled meeting and request to reschedule the meeting. In the event a respondent does not schedule, reschedule, or fails to attend the pre-hearing meeting, the conduct officer will move forward with scheduling the Board Hearing.

Under the Board Hearing process, if there is a reporting individual, that individual will also be instructed to schedule in a pre-hearing meeting.

At the pre-hearing meeting, the following information related to the Board Hearing is reviewed:

- **List of Hearing Board members:** The reporting individual and the respondent will be provided with the names of the Hearing Board members and an opportunity to challenge the participation of any board member on the basis of bias or conflict of interest. A challenge of a Board member must be made in writing to the conduct officer within 24 hours of receipt of the Notice of Hearing and must state the specific reason(s) for the challenge. The conduct officer will determine whether the challenge has merit and notify the reporting individual and the respondent of the decision within two (2) business days. The College reserves the right to change the board composition at any time, with notice and an opportunity to challenge a Hearing Board member's participation.
- **Case specific information:** The conduct officer will provide the reporting individual and respondent with a final opportunity to review the Board Hearing case file, which includes the final investigative report prepared by the Title IX Coordinator, with supporting documentation as applicable. The reporting individual and the respondent shall be permitted to submit additional information, if deemed relevant by the conduct officer and/or Title IX Coordinator, for the Hearing Board case file no later than the three (3) days prior to the hearing. The other party shall be provided the opportunity to review the information prior to the hearing. Other relevant documents or evidence the reporting individual and/or the respondent submits less than three (3) business days prior to the hearing will be reviewed by the conduct officer and/or Title IX Coordinator who can a) exclude evidence that has not been shared with the other party, b) adjourn the hearing to afford all parties the opportunity to review evidence to be presented, and/or c) conduct further investigation. The conduct officer and/or the Title IX Coordinator will make the final decision relating to the admissibility of all information and/or evidence.
- **Witnesses:** The reporting individual and the respondent may request that witnesses attend the Hearing Board if it can be shown that such witnesses have relevant information. The Director of Community Standards will be responsible for the notification of witnesses to attend the Board Hearing. The reporting individual and respondent will be permitted to ask questions of the witnesses through the Hearing Board, via the chairperson. All witnesses are subject to the right of questioning by the Hearing Board, and may be recalled at any time during the hearing for additional questions.
- **Accommodations:** The Title IX Coordinator, conduct officer, and/or Hearing Board, for good cause, may accommodate concerns for the personal safety, well-being, and/or fears of confrontation on of any party during the Board Hearing by providing separate facilities, using a visual screen, and/or permitting participation by telephone, videotape, or other means as determined by the Title IX Coordinator. These alternative arrangements are subject to the rights of both the reporting individual and respondent, and must enable the Hearing Board, respondent, and reporting individual to communicate in real time.
- **Role of the Complainant:** The complainant acting on behalf of the College presents evidence and witnesses pertaining to the case.

- **Procedure for Multiple respondents:** In cases involving more than one respondent, the Director of the Office of Community Standards will generally conduct the Board Hearings jointly. A respondent may submit a written request for an individual hearing to the Director of Community Standards. If a separate hearing is granted, information obtained in one respondent's hearing may be used at another respondent's hearing provided that each respondent has the opportunity to review and respond to the information.

The conduct officer shall schedule a Board Hearing within ten (10) business days of the pre-hearing meeting unless special periods (e.g., holidays, breaks) dictate otherwise. The reporting individual and respondent shall be notified of the time and place of the Board Hearing at least four (4) business days prior to the hearing.

During the hearing the respondent, complainant, and reporting individual, if any, will be given the opportunity to make opening and closing statements, present witnesses and ask relevant questions. Following the closing statements, the Board will begin their deliberations.

All deliberations are closed and shall include only the Hearing Board members. The chairperson of the Board will serve as a facilitator during the deliberation. A review of information will be conducted by the Hearing Board to determine respondent's non-responsibility/responsibility as to each of the charges. The decision shall be made by a majority vote (abstentions are not permitted) of the Hearing Board. A decision of responsibility shall be made only if the allegations contained in each charge have been established by a preponderance of the evidence.

If the Board has found the respondent responsible for one or more violations, the respondent and the reporting individual each shall have the opportunity to make an impact statement before the Board prior to the Board's deliberation on appropriate sanctions. Impact statements outline the reporting individual's or respondent's thoughts or opinions regarding an appropriate sanction. The Hearing Board is not bound by these statements in determining sanctions. After impact statements are made, the respondent, reporting individual, and their respective advisors are dismissed.

The chairperson will then summon the conduct officer. The conduct officer will provide the Board with a student's conduct record, if any, for consideration by the Board for the purposes of issuing sanctions. The conduct officer will be dismissed by the chairperson prior to the start of the deliberations. The Board shall agree by majority vote (no abstentions) on appropriate sanction(s). The chairperson will communicate the Board's decision regarding the respondent's responsibility and a recommendation of appropriate sanction(s) to the Director of Community Standards. The Director of Community Standards is required to accept the Hearing Board's decision with respect to responsibility/non-responsibility, unless the decision is arbitrary and capricious. Where the respondent is found responsible for one or more charges, the Director of Community Standards is not required to accept the Hearing Board's recommendation of appropriate sanctions. Specifically, the Director of Community Standards may reduce the sanctions recommended by the Hearing Board, but may not increase the sanctions.



Within five (5) business days following the adjournment of the hearing, the Hearing Board's decision will be communicated in writing to the reporting individual and the respondent concurrently by the Director of Community Standards. Written notification will contain the name of the respondent; whether the respondent has been found responsible or not responsible for charge(s) of a Category II violations; the rationale for the decision, and the sanction imposed, if any. College policy neither encourages nor discourages further disclosure of the decision letter by either party. The notification shall also inform both the reporting individual and the respondent of the appeal process, which includes any possible changes to the outcome that may occur before it becomes final, and when the outcome becomes final.

### Section Seven: Sanctions

In keeping with SUNY Poly's values, any sanction(s) imposed is for the purposes of educating students and student organizations about the seriousness of their action(s), deterring subsequent violations, and promoting civility and positive growth, while maintaining the safety and integrity of SUNY Poly.

SUNY Poly recognizes that not all violations of the Student Code of Conduct are the same. As a result, SUNY Poly reserves the right to impose differing sanctions. When considering appropriate sanctions the conduct officer or the Board will consider the following information:

- the nature and severity of the conduct;
- the respondent's prior conduct history;
- the impact of the conduct;
- how the College has sanctioned similar incidents in the past; and
- whether the respondent has accepted responsibility.

SUNY Poly's Sanctioning Guidelines, which are utilized by the hearing bodies in order to ensure consistent and fair sanctions, are available for review at <https://sunypoly.edu/student-conduct/sanction-guidelines.htm>. Sanctions become effective once the conduct officer issues notice of the outcome and sanctions to the respondent and/or student organization. The imposition of sanctions will normally be deferred while appeals are pending, though temporary directives will continue until there is a final outcome. The Vice President of Student Affairs may suspend the conduct officer's/Hearing Board's determination or make such other interim modifications to the determination as may be appropriate in their judgement. Failure to complete a sanction may result in a registration, transcript, and/or diploma hold being placed on the students account.

When there is a finding of responsibility one or more of the following sanctions may be imposed:

- Disciplinary Warning:** An official communication that the Code has been violated and more severe disciplinary action may follow if the respondent is found responsible for further violations.
- Disciplinary Probation:** A higher level sanction issued due to the serious nature of the violation. Probation shall be for a designated period of time. If the respondent is found to be in violation of any College policies during the probationary period, heightened sanctions may be imposed. At the discretion of campus offices and programs, respondents on disciplinary probation may be ineligible for employment and/or participation in certain activities.

- C. **Final Probation**: A elevated probation that serves as a final notice that if respondent is found responsible for any Code violation(s) during the probationary period, there respondent may be suspended or expelled. At the discretion of campus offices and programs, students on final probation may be ineligible for employment and/or participation in certain activities.
- D. **Deferred Residence Hall Suspension**: A final notice to the student that indicates a further violation of the Code may result in residence hall suspension or residence hall expulsion. This sanction is used when the respondent is found responsible for multiple violations of the Residence Hall policies, fails to complete previously imposed sanctions, or adhere to previously imposed conditions.
- E. **Residence Hall Suspension**: A disciplinary sanction in which the respondent is removed from campus housing and restricted from the buildings and grounds of the residential complexes for a defined period of time, after which the student is eligible to return. Conditions for readmission shall be specified in the outcome letter. The respondent will be responsible for all assessed charges including room and board.
- F. **Residence Hall Expulsion**: A disciplinary sanction which results in the permanent removal of the student from campus housing and permanent restriction from the buildings and grounds of the residential complexes. The respondent will be responsible for all assessed charges including room and board.
- G. **Change in Residence Hall Assignment**: A written directive to relocate to an alternative residence hall assignment.
- H. **Suspension**: A disciplinary status that results in the respondent's temporary separation from the College for a specific amount of time. A suspended respondent is assigned persona non grata status (See Section Four: Temporary and Administrative Directives) for the duration of the suspension. If needed, conditions for readmission shall be specified in the outcome letter. Respondents who are suspended during an academic semester will be withdrawn from all coursework with a (W) grade and be responsible for all assessed charges including tuition, fees, room and board. Suspension from the College will result in a notation on the respondent's academic record. (See Section Seven: Sanctions, Transcript Notation).
- I. **Expulsion**: A disciplinary status, which is the permanent separation of the student from SUNY Poly. An expelled student is assigned persona non grata status (See Section Four: Temporary and Administrative Directives). Respondents who are expelled during an academic semester will be withdrawn from all coursework with a (W) grade and be responsible for all assessed charges including tuition, fees and room and board. Expulsion from the College will result in a notation on the respondent's academic record. (See Section Seven: Sanctions, Transcript Notation).
- J. **Loss of Privileges**: A disciplinary status in which the respondent is denied specific privileges for a designated period of time. Loss of privileges may include, but are not limited to:
1. A restriction from possessing particular items on campus;
  2. A restriction from a particular College building, facility, or space;
  3. A restriction from a particular social event or membership in a student organization;
  4. A restriction from hosting visitors and/or guests;
  5. Deactivation of a student organization, including SUNY Poly recognition, for a specified period of time;
  6. Other restrictions as assigned.
- K. **Restitution**: Payment for loss, damage, or injury. This payment may take the form of monetary reimbursement or the cost for appropriate service or compulsory program.

- L. **Community Restitution**: Service to SUNY Poly, service to the greater community or other related discretionary assignments subject to prior approval of the conduct officer.
- M. **Behavioral and/or Mental Health Assessment**: By a specified date, a respondent must complete a behavioral and/or mental health assessment and follow through with all recommendations made as a result of the assessment.
- N. **Behavioral Agreement**: A plan established by the conduct officer that clearly defines behavioral expectations and standards that the respondent is required to abide by.
- O. **Discretionary Sanctions**: Other related sanctions that meet the approval of the conduct officer, that include but are not limited to:
  - 1. Letter of apology;
  - 2. Essay or research paper on assigned topic;
  - 3. Program presentations;
  - 4. Substance abuse education program;
  - 5. Educational/training program or workshops.
- P. **No Contact Order**: A written directive prohibiting contact with another protected person, either directly or through a third party. If the respondent and the protected person observe each other in a public place, it is the responsibility of the respondent to leave the area immediately and without directly contacting the protected person.

**Sanctions for Category II Prohibited Behavior**

This section establishes the available sanctions, as described above, for Category II: Sexual and/or Gender Based Discrimination and Misconduct violations.

**When a student is found responsible for non-consensual sexual contact, sexual exploitation, or sexual harassment, the following sanctions are available:**

Status Sanctions	Additional Sanctions
<ul style="list-style-type: none"> <li>• Expulsion</li> <li>• Suspension for 10, 9, 8, 7, 6, 5, 4, 3, 2 or 1 semester(s)</li> <li>• Suspension for 10, 9, 8, 7, 6, 5, 4, 3, 2 or 1 semester(s) and if readmitted final probation through graduation</li> <li>• Suspension for 10, 9, 8, 7, 6, 5, 4, 3, 2 or 1 semester(s) and if readmitted final probation for 8, 7, 6, 5, 4, 3, 2 or 1 semester</li> <li>• Final probation through graduation</li> <li>• Final probation for 8, 7, 6, 5, 4, 3, 2 or 1 semester(s)</li> <li>• Disciplinary probation for 8, 7, 6, 5, 4, 3, 2 or 1 semester(s)</li> </ul>	<p>A respondent who is placed on suspension, final probation, and/or disciplinary probation/warning, may also receive one or more of the following additional sanctions:</p> <ul style="list-style-type: none"> <li>• Residence hall expulsion</li> <li>• Residence hall suspension</li> <li>• Deferred residence hall suspension</li> <li>• Discretionary sanctions</li> <li>• Behavioral and/or mental health assessment</li> <li>• Loss of privileges</li> <li>• Restitution</li> <li>• No Contact Order</li> </ul>

**When an individual is found responsible for stalking, the following sanctions are available:**

Status Sanctions	Additional Sanctions
<ul style="list-style-type: none"> <li>• Expulsion</li> <li>• Suspension for 10, 9, 8, 7, 6, 5, 4, 3, 2 or 1 semester(s)</li> <li>• Suspension for 10, 9, 8, 7, 6, 5, 4, 3, 2 or 1 semester(s) and if readmitted final probation through graduation</li> <li>• Suspension for 10, 9, 8, 7, 6, 5, 4, 3, 2 or 1 semester(s) and if readmitted final probation for 8, 7, 6, 5, 4, 3, 2 or 1 semester</li> <li>• Final probation through graduation</li> <li>• Final probation for 8, 7, 6, 5, 4, 3, 2 or 1 semester(s)</li> <li>• Disciplinary probation for 8, 7, 6, 5, 4, 3, 2 or 1 semester(s)</li> </ul>	<p>A respondent who is placed on suspension, final probation, and/or disciplinary probation the following additional sanctions are available:</p> <ul style="list-style-type: none"> <li>• Residence hall expulsion</li> <li>• Residence hall suspension</li> <li>• Deferred residence hall suspension</li> <li>• Discretionary sanctions</li> <li>• Behavioral and/or mental health assessment</li> <li>• Loss of privileges</li> <li>• Restitution</li> <li>• No Contact Order</li> </ul>

When a student is found responsible for dating violence or domestic violence, the following sanctions are available:

Status Sanctions	Additional Sanctions
<ul style="list-style-type: none"> <li>• Expulsion</li> <li>• Suspension for 10, 9, 8, 7, 6, 5, 4, 3, 2 or 1 semester(s)</li> <li>• Suspension for 10, 9, 8, 7, 6, 5, 4, 3, 2 or 1 semester(s) and if readmitted final probation through graduation</li> <li>• Suspension for 10, 9, 8, 7, 6, 5, 4, 3, 2 or 1 semester(s) and if readmitted final probation for 8, 7, 6, 5, 4, 3, 2 or 1 semester</li> <li>• Final probation through graduation</li> <li>• Final probation for 8, 7, 6, 5, 4, 3, 2 or 1 semester(s)</li> </ul>	<p>A respondent who is placed on suspension and/or final probation, the following additional sanctions are available:</p> <ul style="list-style-type: none"> <li>• Residence hall expulsion</li> <li>• Residence hall suspension</li> <li>• Deferred residence hall suspension</li> <li>• Discretionary sanctions</li> <li>• Behavioral and/or mental health assessment</li> <li>• Loss of privileges</li> <li>• Restitution</li> <li>• No Contact Order</li> </ul>

When a student is found responsible for non-consensual sexual intercourse, the College will impose a minimum sanction of suspension with additional requirements as follows:

Status Sanction	Additional Sanctions
<ul style="list-style-type: none"> <li>• Expulsion</li> <li>• Suspension for 10, 9, 8, 7, 6, 5, 4, 3, or 2 (semesters)</li> <li>• Suspension for 10, 9, 8, 7, 6, 5, 4, 3, 2 or 1 semester(s) and if readmitted final probation through graduation</li> <li>• Suspension for 10, 9, 8, 7, 6, 5, 4, 3, 2 or 1 semester(s) and if readmitted final probation for 8, 7, 6, 5, 4, 3, 2 or 1 semester</li> </ul>	<p>A respondent who is placed on suspension and/or final probation, the following additional sanctions are available:</p> <ul style="list-style-type: none"> <li>• Residence hall expulsion</li> <li>• Discretionary sanctions</li> <li>• Behavioral and/or mental health assessment</li> <li>• Loss of privileges</li> <li>• Restitution</li> <li>• No Contact Order</li> </ul>

## Transcript Notation

A respondent's transcript will be subject to conduct notation for all cases in which the sanction imposed is expulsion or suspension from SUNY Poly. This includes, but is not limited to, cases in which a respondent is found responsible for an act of violence that meets the reporting requirements found in the Clery Act at 20 U.S.C. § 1092 (f)(1)(F)(i)(I)-(VIII) Part 1. The notation will state that the respondent was "*suspended after a finding of responsibility for a Code of Conduct violation*" or "*expelled after a finding of responsibility for a Code of Conduct violation.*" The date the sanction was imposed will also be noted on the transcript.

An accused student who withdraws from SUNY Poly while an investigation is pending or after being charged with a Code violation will not be exempt from conduct action. If a student withdraws during a preliminary review or investigation, a hold may be placed on the student's account which will prohibit the student from registering for classes and/or being able to obtain an official transcript until the case is resolved.

If a respondent withdraws from SUNY Poly while conduct charges are pending and declines to complete the conduct process, SUNY Poly shall notate on the respondent's transcript "withdrew with conduct charges pending."

An appeal seeking removal of a transcript notation for a suspension should be submitted, in writing, to the Vice President of Student Affairs with written documentation showing rehabilitation or other good cause for transcript notation removal. The decision of the Vice President for Student Affairs on whether to remove the notation is final. If the appeal for the removal of the transcript notation is granted, the notation shall not be removed prior to one year after conclusion of the suspension. If a finding of responsibility is vacated for any reason, any such transcript notation shall be removed.

A transcript notation of expulsion is a permanent notation of the transcript and shall not be removed.

## Section Eight: Appeals

An appeal is a request for a review of an outcome of a student conduct case. An appeal does not rehear a conduct case, but rather, determines if the conclusion reached in the original hearing is valid based on specific grounds.

### Request for an Appeal

A student may submit a request for an appeal in writing to the Office of Community Standards. The grounds for filing an appeal are limited to the following:

- a. The rights of the respondent(s), student organization(s) or reporting individual(s) were violated in the student conduct process as outlined in Section Six: Student Conduct Procedures;
- b. New evidence is discovered that was not available at the time of the Administrative or Board Hearing was held;
- c. The evidence presented does not support the decision;
- d. The sanction(s) imposed were not appropriate for the violation.

A student's request for an appeal must include specific reference to the grounds on which they are filing the request and must include supporting information. A request for an appeal

must be submitted to the Office of Community Standards no later than close of business on the fifth (5th) business day following the date the notice of outcome was issued. Failure to appeal within the allotted time will render the original decision final and conclusive.

### **Procedures for an Appeal**

If the appeal request is timely and meets the aforementioned grounds, an Appellate Board will be convened within five (5) business days of receipt of the request for an appeal. An Appellate Board is comprised of three (3) Appellate Board members of which at least one (1) student and at least one (1) faculty or staff member. The Vice President of Student Affairs shall appoint the membership as necessary. One member of the Appellate Board shall serve as the chairperson. Members of the Appellate Board must deliberate in a fair and impartial manner and may not have a conflict of interest. The Appellate Board deliberations are not recorded.

An appeal shall be limited to a review of the record of the conduct hearing, the hearing case file, and the content of the appeal request including any supporting documentation. The appeal will be reviewed based on the preponderance of evidence standard. The reporting individual and the respondent will generally not have the opportunity to meet with the Appellate Board unless, in the Appellate Board's discretion, a meeting would serve to clarify an issue related to the appeal.

The Appellate Board shall choose one of the following courses of action after review of the information:

- A. Uphold the hearing decision and implement the sanction(s), if any;
- B. Uphold the hearing decision, but change the sanction(s);
- C. Overturn the hearing decision and, if appropriate, implement sanctions;
- D. Grant a new Board Hearing;
  - 1. When a new hearing is granted, the record of the previously conducted hearing will not be introduced or provided to members of the Hearing Board, except, at the discretion of the Hearing Board's chair, to challenge contradictory testimony.

The Appellate Board shall report their decision via letter to the Director of Community Standards within three (3) business days of their review. The Director of Community Standards shall communicate the decision of the Appellate Board to the reporting individual, respondent, or student organization within three (3) business days of receipt of the board's decision. If the Director of Community Standards determines that the Appellate Board's decision is arbitrary or capricious, the Director of Community Standards may send it back to the Appellate Board for further review.

If the reporting individual or respondent submits an appeal request of a Category II case outcome, the non-requesting party will receive notice that an appeal was submitted and will be afforded the opportunity to submit a written response to the requesting party's appeal within five (5) business days of the notification. Should both the respondent and the reporting individual both file an appeal, the appeals will be considered concurrently. Both the reporting individual and respondent of Category II cases will be notified of the appeal decision within thirty days of when the appeal review took place. The decision shall be final,

except in cases that are eligible for review by the SUNY Poly President, as described in the Final Appeals portion of this Section.

### **Final Appeal**

A respondent may appeal the decision of the Appellate Board to the SUNY Poly President only when the sanction involves suspension or expulsion. This appeal must be submitted to the SUNY Poly President by close of business on the fifth (5th) business day following the date the Appellate Board decision letter is issued to the respondent by the Director of Community Standards. If the President agrees to consider an appeal, in their sole discretion, they shall be provided and may consider the records of the Appellate Board, Board Hearing, hearing case file and such written submissions and oral arguments as the President requests. The President shall make such determination as they deem appropriate and the decision shall be final.

### **Section Nine: Timelines for Student Conduct Process**

All deadlines and time requirements in the Code may be extended for good cause as determined by the Director of Community Standards and/or the Title IX Coordinator. If there is a delay, notification will be sent in writing to both the reporting individual and the respondent with a new date for future deadlines or events.

#### **Summer Timeline for Cases**

During the period between the fall and spring semesters, cases will be handled per the timelines established in Section Six: Student Conduct Procedures.

Generally for Level I Cases, if the incident under review occurred during the spring semester but was unable to be resolved prior to the end of the semester, the conduct officer and/or Title IX Coordinator will contact the student to participate in the investigation process and administrative hearing, when applicable, in person, via phone, or other electronic medium. While the conduct officer will make reasonable accommodations to enable a student's attendance, students are required to attend the investigation meetings and the administrative hearing or may be subject to a hold on their school records and/or registration. In the hearing, the conduct officer will review the complaint, make a determination regarding the respondent's responsibility/non-responsibility, and assign applicable sanctions. The respondent is able to appeal the decision of the conduct officer as stated in Section Eight: Appeals.

Generally for Level II Cases, if the incident under review occurred during the spring semester but was unable to be resolved prior to the end of the semester, the conduct officer and/or Title IX Coordinator will contact the accused to participate in the investigation process and Board Hearing, when applicable, in person, via phone, or other electronic medium. If the accused does not accept responsibility in a Level II case, the conduct officer will at their discretion convene a Board Hearing at the earliest possible time. Should there be a compelling and legitimate reason, as determined by the Director of Community Standards, that the case cannot be resolved during the summer, a Board Hearing will be held at the beginning of the fall semester. Cases where the accused could potentially be subject to suspension or expulsion may have financial consequences as outlined in Section Seven: Sanctions. For Level II cases in which the accused accepts responsibility, the case will be referred for an Administrative Hearing.



If the student is known to be attending SUNY Poly during the summer session or residing on campus when an incident occurs, the case shall be handled under the procedures that apply during the regular academic year as referenced in Section Six: Student Conduct Procedures. Any appeal of a decision made at this level that does not include suspension or expulsion shall be heard at the beginning of the next academic semester.

## **Section Ten: Notifications and Records**

### **Notification of Guardians of Student Conduct Action/FERPA**

In accordance with the Family Educational Rights and Privacy Act of 1974, SUNY Poly may release information pertaining to individual student conduct cases to appropriate College personnel and to parents/guardians of dependent students. Unless otherwise allowed by FERPA, information from a student's conduct file will not be made available without the student's written consent.

### **Maintenance of Records**

There shall be a verbatim record, e.g., audio recording, of all hearings. The record shall be the property of SUNY Poly and will be retained for seven (7) years from the end of the academic year in which the conduct case was resolved, except in a matter of suspension or expulsion, in which case the record is maintained indefinitely.

### **Interpretation and Revision**

Any question of interpretation regarding the Student Code of Conduct will be referred to Vice President for Student Affairs for final determination. The Student Code of Conduct will be reviewed annually under the direction of Vice President for Student Affairs.

### **Authorization**

Education Law of the State of New York (Section 356) establishes a College Council for each unit of the State University of New York with power to make regulations governing the behavior and conduct of students at each respective campus. This Student Code of Conduct has been reviewed and approved by the College Council of SUNY Polytechnic Institute.

Amendments and modifications to the Code shall take effect upon notice to the SUNY Poly community. Substantive amendments require review and approval of SUNY Poly College Council and/or as mandated by federal or state rules, law or regulations and shall take effect following notice to the SUNY Poly community.

### **Public Order**

In addition to the Student Code of Conduct, all SUNY Poly students are also governed by the Rules for the Maintenance of Public Order on College Campuses. These rules are implemented in compliance with section 6430 of the Education Law and comprise Part 535 of Title 8 of NYCRR. The College reserves the right to decide which set of conduct regulations to use in reviewing an allegation of violation.

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