

SUNY
SCHENECTADY
COUNTY COMMUNITY COLLEGE

Personnel

Board of Trustees Policy

SUBJECT:

Sexual Assault, Relationship Violence, and Stalking Policies and Procedures for Students and Employees (Sexual Misconduct Policy)	Number: 2.36 & 3.16
	DATE: May 17, 2021 Resolution # 21-56
	SUPERSEDES: August 17, 2020 Resolution # 20-70 November 19, 2018 Resolution #18-137 and June 20, 2016, Resolution #16-95

This procedure document directly relates to the Sexual Violence Prevention and Response Policy and Implementation Guidelines of the SUNY Schenectady Board of Trustees, as hereto attached.

**SUNY Schenectady Policies on Sexual Violence
Prevention and Response**

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A. Scope of this Policy

This Sexual Assault, Relationship Violence, and Stalking Policies and Procedures for Students and Employees (“Sexual Misconduct Policy”) applies to all complaints of Sexual Misconduct, as defined below, including Sexual Misconduct that constitutes Title IX Sexual Harassment under the Title IX Grievance Policy. However, if a Formal Complaint is filed under the Title IX Grievance Policy regarding sexual misconduct, SUNY Schenectady will investigate and adjudicate the alleged sexual misconduct under the Title IX Grievance Policy, and this Sexual Misconduct Policy will not apply.

This Sexual Misconduct Policy will apply under the following circumstances:

- An individual files a Formal Complaint with SUNY Schenectady pursuant to the Title IX Grievance Policy alleging Sexual Misconduct, but the Formal Complaint is dismissed because the alleged conduct:
 - does not involve a complainant who is currently participating in, or attempting to participate in, the education programs or activities of SUNY Schenectady;
 - is alleged to have occurred before August 14, 2020;
 - is alleged to have occurred outside the United States;
 - is alleged to have occurred outside of SUNY Schenectady’s education program or activity, as defined in the Title IX Grievance Policy; or
 - if true, would not constitute Title IX Sexual Harassment as defined in the Title IX Grievance Policy.
- SUNY Schenectady becomes aware of an allegation of sexual misconduct by or against an employee or student or that has a reasonable connection to SUNY Schenectady, and the Title IX Coordinator informs the complainant of their right to file a Formal Complaint, but the complainant chooses not to file a Formal Complaint.

Links to the additional SUNY Schenectady policies that may be applicable are available on the Title IX page at <https://sunysccc.edu/About-Us/Title-IX/index.html>. In addition, direct links are as follows:

- Title IX Grievance Policy - <https://sunysccc.edu/PDF/About%20SCCC/Policies%20and%20Procedures/Human%20Resources/2.23-3.19-TitleIXGrievancePolicy.pdf>
- Discrimination, Harassment, and Retaliation Policy and Complaint Procedure - <https://sunysccc.edu/PDF/About%20SCCC/Policies%20and%20Procedures/Student/3.15-Procedure-ResolvingComplaints-DiscriminationHarassmentRetaliation.pdf>
- Student Code of Conduct - <https://sunysccc.edu/PDF/About%20SCCC/Policies%20and%20Procedures/Student/3.1-StudentCodeOfConduct.pdf>

B. Definition of Affirmative Consent

Affirmative 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.

The following principles are provided as guidance for the SUNY Schenectady community:

- 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.
 - Whether through words or actions that clearly display consent, each party must affirmatively consent to participating in each sexual activity. Consenting to one type of sexual activity is not a blanket consent to any other or all types of sexual activity.
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- Consent may be initially given but withdrawn at any time.
- Consent cannot be given when a person is incapacitated, 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, being under the age of consent, or if an individual otherwise cannot consent. Minors who cannot consent under New York’s laws covering age of consent are considered incapacitated. Under New York law, the age of consent is 17 years old. Students and employees are encouraged to review New York State Penal Law Article 130 for additional details regarding New York’s age of 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. This does not mean that individuals cannot affirmatively consent to sexual activity or contact when they have been drinking or using drugs, however. Such individuals may still affirmatively consent through words or actions that clearly indicate interest in engaging in the activity.
 - Incapacitation is to be determined by a student conduct or investigation process based on available evidence, acknowledging that in almost no cases will scientific evidence of alcohol or drug level (such as a breathalyzer taken at the time of the assault) be available. There is no single standard or number of drinks that leads to incapacitation. This level varies for different people, and may depend in part on their age, gender, height, weight, metabolism and whether and how much they have recently eaten.
- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
- When consent is withdrawn or can no longer be given, sexual activity must stop.
 - Consent can “no longer be given” when a party to a sexual act or sexual contact initially consents to the activity, but during the course of the activity falls asleep or otherwise becomes unconscious or incapacitated. At that point, the other party must stop the sexual activity or contact.

C. Policy for Alcohol and/or Drug Use Amnesty for Students and Interpersonal Violence Cases.

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

occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.

D. Campus Climate Assessment Policy

Climate assessments afford institutions the opportunity to better understand their campus and to make informed decisions when it comes to providing a safe educational environment. Beginning in the 2015-2016 academic year, SUNY Schenectady conducted a uniform climate survey that ascertained student experience with and knowledge of reporting and college adjudicatory processes for sexual harassment, including sexual violence, and other related crimes.

All campus climate assessment surveys will address at least the following:

- Student and employee knowledge about:
 - The Title IX Coordinator's role;
 - Campus policies and procedures addressing sexual assault;
 - How and where to report sexual violence as a victim/survivor or witness;
 - The availability of resources on and off campus, such as counseling, health, academic assistance;
 - The prevalence of victimization and perpetration of sexual assault, domestic violence, dating violence, and stalking on and off campus during a set time period (for example, the last two years);
 - Bystander attitudes and behavior;
 - Whether victims/survivors reported to SUNY Schenectady and/or police, and reasons why they did or did not report.
 - The general awareness of the difference, if any, between the institution's policies and the penal law; and
 - The general awareness of the definition of affirmative consent.

SUNY Schenectady will take steps to ensure that answers remain anonymous and that no individual is identified. Results will be published on the campus website providing no personally identifiable information shall be shared.

E. Students' Bill of Rights.

The State University of New York and SUNY Schenectady are committed to providing options, support and assistance to victims/survivors of sexual assault, domestic violence, dating violence, and/or stalking to ensure that they can continue to participate in SUNY Schenectady-wide and campus programs, activities, and employment. All victims/survivors of these crimes and violations, regardless of race, color, national origin, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, criminal conviction, or other protected characteristic, have the following rights, regardless of whether the crime or violation occurs on campus, off campus, or while studying abroad:

All students have the right to:

1. Make a report to:
 - An employee with the authority to address complaints, including the Title IX Coordinator, a Student Affairs employee, or a Human Resources employee;
 - Campus Security;
 - Local law enforcement and/or NYS police;

- Family Court or Civil Court
2. Confidentially or anonymously disclose a crime or violation and have the report taken seriously;
 3. Make a decision freely about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure from the College;
 4. Be treated with dignity and to receive courteous, fair, and respectful health care and counseling services, where available;
 5. Be free from any suggestion that you are at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
 6. Describe the incident to as few individuals as practicable and not to be required to unnecessarily repeat a description of the incident;
 7. Be free from retaliation by the College, the accused and/or the respondent, and/or their friends, family and acquaintances;
 8. Access to at least one level of appeal of a determination;
 9. Be accompanied by an advisor of choice who may assist and advise you throughout the judicial or conduct process including during all meetings and hearings;
 10. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the College.

Copies of this Bill of Rights shall be distributed annually to students, made available on SUNY Schenectady's website, and posted in each campus building.

F. Sexual Misconduct Response Policy

In accordance with the Students' Bill of Rights, reporting individuals shall have the right to pursue more than one of the options below at the same time, or to choose not to participate in any of the following options:

1. Reporting

Reporting individuals have the right to make the following reports:

- To disclose *confidentially* the incident to the following College employee, who by law may maintain confidentiality, and can assist in obtaining services:
 - Robyn King, Counselor IV, 518-381-1257, possonrm@sunysccc.edu, Elston 222
- To disclose *confidentially* the incident and obtain services from New York State, Schenectady County, or other outside resources through the New York State Office for the Prevention of Domestic Violence (opdv.ny.gov). Specific assistance options are available at <http://www.opdv.ny.gov/help/index.html> or by calling 1-800-942-6906.
- Additional assistance may also be obtained through resources for crisis intervention, resources, and referrals. These resources are not reporting mechanisms and will not result in any information being provided to the College. Reporting individuals are encouraged to additionally contact a campus resource so that the College can take appropriate action. A full list of resources is available on the College's Title IX page at <https://sunysccc.edu/About-Us/Title-IX/index.html>.
 - New York State Coalition Against Sexual Assault (NYSCASA): <http://nyscasa.org/responding>;

- New York State Coalition Against Domestic Violence (NYSCADV): <http://www.nyscadv.org/>;
- Pandora's Project: <https://pandys.org/>;
- To disclose the incident to the Title IX Coordinator or another appropriate official who has been designated by the Title IX Coordinator to provide emergency assistance (the "Designee").
 - The Designee may be an official of SUNY Schenectady or an official of an off campus resource.
 - The Title IX Coordinator or Designee will be available upon the first instance of disclosure by a reporting individual to provide immediate information and assistance regarding (1) options to proceed, including other reporting options; (2) where applicable, the importance of preserving evidence and obtaining a sexual assault forensic examination as soon as possible; and (3) the criminal justice process, including that it utilizes different standards of proof and evidence and that any questions about whether a specific incident violated the penal law should be addressed to law enforcement or to the district attorney.
 - The Title IX Coordinator or Designee will also provide the information contained in the Students' Bill of Rights, including the right to choose when and where to report, to be protected by the College from retaliation, and to receive assistance and resources from the College.
 - The Title IX Coordinator or Designee will also explain that they are private and not confidential resources, and they may still be required by law and College policy to inform one or more College officials about the incident.
 - The Title IX Coordinator will generally be available for emergency access
 - on weekdays between the hours of 9am to 5pm, at the following:
 - Title IX Coordinator, 518-381-1340 titleix@sunysccc.edu
 - When the Title IX Coordinator is not available, individuals may contact the following designee - Michael Munger, Director of Campus Safety, 518-381-1445, mungermg@sunysccc.edu Elston 512
- To file a criminal complaint with local law enforcement and/or New York State police:
 - Schenectady Police Department
 - 531 Liberty Street
 - Schenectady, NY 12305
 - General Number: (518) 382-5200
 - Emergencies: 9-1-1
 - Domestic Violence Advocate: (518) 382-5280
 - State police 24-hour hotline to report sexual assault on a NY college campus: 1-844-845-7269 (<https://troopers.ny.gov/campus-sexual-assault-victims-unit>).
 - If a reporting individual wants or needs assistance in notifying the local Police Departments or New York State Police, they should contact SUNY Schenectady's Office of Campus Safety who will assist them in doing so. SUNY Schenectady's Office of Campus Safety can be contacted at: (518) 381-1308, or from a campus phone 5555.

Please note that there are significant differences between SUNY Schenectady's policies and the criminal justice system because they have different, important goals. In the criminal justice system, prosecutors pursue cases when they believe there is sufficient

- evidence to prove, beyond a reasonable doubt, that an individual has committed a criminal act. A person who is convicted of a crime will face criminal penalties, such as incarceration, probation, or the imposition of a fine. SUNY Schenectady's policies seek to determine whether an individual has violated a College policy. In these processes, a preponderance of the evidence standard of proof is used to determine responsibility. A person who is found to have violated a SUNY Schenectady policy may be suspended, expelled or otherwise restricted from full participation in the SUNY Schenectady community. Additional information is contained within this Sexual Misconduct Policy.
- To receive assistance from agencies in initiating legal proceedings in family court or civil court. In addition to the information below, please see the
 - Empire Justice Center
 119 Washington Avenue, 3rd Floor
 Albany, NY 12210
 Business Phone: Long Island: (631) 650-2317; Rochester: (585) 454-4060
 Website: <https://empirejustice.org/>
 - Legal Aid Society of Northeastern New York - Amsterdam office
 1 Kimball Street
 Amsterdam, NY 12010
 Business Phone: 518-842-9466
 Website: <http://www.lasnny.org>
 Hotline: (800) 821-8347
 - To file a Formal Complaint under the Title IX Grievance Procedure
 - Formal Complaints can be made after consulting with the Title IX Coordinator: Ben DeAngelis, 518-381-1340, titleix@sunysccc.edu
 - Formal Complaints will be investigated and discipline, if any, will be imposed pursuant to the Title IX Grievance Procedure.
 - To report an incident of sexual assault, domestic violence, dating violence, and/or stalking, and/or talk to the Title IX Coordinator to obtain information and assistance.
 - Reports can be made to the Title IX Coordinator: Ben DeAngelis, 518-381-1340, titleix@sunysccc.edu
 - Reports can also be made to any SUNY Schenectady employee, who will refer the report to the Title IX Coordinator.
 - Reports will be investigated in accordance with the applicable SUNY Schenectady policy. The reporting individual's identity shall remain as private as possible, if the reporting individual wishes to maintain privacy.
 - If a reporting individual wishes to keep their identity anonymous, they may call the Title IX Coordinator anonymously to discuss the situation and available options. See below for additional details on making a confidential report to SUNY Schenectady.
 - When the accused is an employee, to report the incident to the SUNY Schenectady Office of Human Resources, Edmund J. McTernan, Executive Director of Human Resources, Elston - Room 126; phone (518) 381-1331, Email: mcternej@sunysccc.edu.

- Disciplinary proceedings (if any) will be conducted in accordance with any applicable collective bargaining agreement, law, or policy for unrepresented employees.
- When the accused is an employee of an affiliated entity or vendor of the College, College officials will, at the request of the reporting individual, assist in reporting to the appropriate office of the vendor or affiliated entity and, if the response of the vendor or affiliated entity is not sufficient, assist in obtaining a *persona non grata* letter, subject to legal requirements and college policy.
- To withdraw a complaint or involvement from the SUNY Schenectady process at any time.
 - If a reporting individual chooses to withdraw, however, SUNY Schenectady may still have an obligation to investigate and/or take further actions under state or federal law. If SUNY Schenectady continues an investigation or takes action after a reporting individual withdraws their complaint, they have the right to participate as much or as little as they wish.
- To be provided with, at a minimum, at the first instance of disclosure by a reporting individual to a College representative, the following statement:
 - “You have the right to make a report to SUNY Schenectady Campus Safety, local law enforcement, and/or State Police or choose not to report; to report the incident to your institution; to be protected by the institution from retaliation for reporting an incident; and to receive assistance and resources from your institution.”

2. Resources:

Reporting individuals have the right to obtain services from a variety of resources including the resources listed below. The full list of resources is posted on the Title IX webpage at <https://sunysccc.edu/About-Us/Title-IX/>.

- Sexual contact can transmit Sexually Transmitted Infections (STI) and may result in pregnancy. Testing for STIs and emergency contraception is available. Students can obtain tests for STIs and emergency contraception at the following:

Program/Entity	Location	Contact Information	Cost
Ellis Hospital	1101 Nott Street Schenectady, NY 1308	P: 518-243-3333	Fees charged
Albany Medical Center	43 New Scotland Ave. Albany, NY 12208	P: 518-262-3125	Fees charged
St. Peter's Hospital	315 S. Manning Blvd. Albany, NY 12208	P: 518-525-1550	Fees charged
Albany Memorial Hospital	600 Northern Blvd. Albany, NY 12204	P: 518-471-3221	Fees charged

- Other applicable available centers and services include the following:

New York State Office for the Prevention of Domestic Violence
<https://opdv.ny.gov/contact.html>
(518-457-5800)

Equinox Domestic Violence Services
<https://www.equinoxinc.org/page/domestic-violence-services-15.html>
(518) 432-7865

- Within 96 hours of an assault, you can get a Sexual Assault Forensic Examination (commonly referred to as a rape kit) at one of the above-listed hospitals
 - While there should be no charge for a rape kit, there may be a charge for medical or counseling services off campus and, in some cases, insurance may be billed for services. You are encouraged to let hospital personnel know if you do not want your insurance policyholder to be notified about your access to these services.
 - The New York State Office of Victim Services may be able to assist in compensating victims/survivors for health care and counseling services, including emergency funds. More information may be found at <https://ovs.ny.gov/> or by calling 1-800-247-8035.
- To best preserve evidence, victims/survivors should avoid showering, washing, changing clothes, combing hair, drinking, eating, or doing anything to alter physical appearance until after a physical exam has been completed.

3. Protection and Accommodations:

(a) No Contact Orders:

- When the **accused** is a **student** only (and does not have another role at the College), reporting individuals have the right to have SUNY Schenectady issue a “No Contact Order,” consistent with College policy and procedure, meaning that neither the accused nor the reporting individual may be in contact with the other party. Any contact is a violation of College policy subject to Code of Conduct charges.
 - This “no contact order” is a SUNY Schenectady document that does not have the legal effect of an order of protection, which is obtained through a court.
 - Under the no contact order: (1) either party’s intentional contact with the other party is subject to additional conduct charges; and (2) if the accused and a reporting individual observe each other in a public place, it is the responsibility of the accused to leave the area immediately and without directly contacting the reporting individual.
 - This may include requesting that the Title IX Coordinator establish a schedule of attendance for the accused to access certain locations at SUNY Schenectady, such as academic buildings, libraries, athletics or fitness facilities, and dining halls.
- When the **accused** is a **non-student** (e.g., employee, alumni, or third party), reporting individuals have the right to make a request for SUNY Schenectady to impose a no contact order which prohibits the non-student from making any contact with the reporting individual, and in some cases, from being on campus.
 - To make such a request, reporting individuals should contact the Vice President for Student Affairs, VPstudentaffairs@sunysccc.edu, 518-381-1365.

(b) Orders of Protection:

- All reporting individuals have the right to have assistance from Campus Safety or other College officials in initiating legal proceedings in family court or civil court, including but not limited to obtaining an Order of Protection or, if outside of New York State, an equivalent protective or restraining order.
 - SUNY Schenectady serves as a resource to students in initiating these proceedings. However, SUNY Schenectady will not bring actions on behalf of reporting individuals, provide or pay for attorneys, or provide direct support. The local resources listed in Section V(A), above, may be able to help you initiate legal proceedings, however.

- All reporting individuals have the right to receive a copy of the Order of Protection or equivalent and have an opportunity to meet or speak with a College official who can explain the Order and answer questions about it, including information from the Order about the accused's responsibility to stay away from the protected person(s); that burden does not rest on the protected person(s). For assistance in obtaining or understanding an Order of Protection, contact: Michael Munger, Director of Campus Safety, 512 Elston Hall, (518) 381-1445
 - An Order of Protection is issued by the court to limit the behavior of someone who harms or threatens to harm another person. It is used to address various types of safety issues, including, but not limited to situations involving domestic violence. Family Courts, criminal courts, and Supreme Courts can all issue orders of protection. An order of protection may direct the offending person not to injure, threaten or harass you, your family, or any other person(s) listed in the order.
 - A Family Court Order of Protection is issued as part of a civil proceeding. Its purpose is to stop violence within a family, or within an intimate relationship, and provide protection for those individuals affected. All Family Court proceedings are confidential. To obtain an order of protection in the Family Court, your relationship to the other person must fall into one of the following categories: (1) current or former spouse, (2) someone with whom you have a child in common, (3) a family member to whom you are related by blood or marriage, or (4) someone with whom you have or have had an "intimate relationship." An intimate relationship does not have to be a sexual relationship. A relationship may be considered intimate depending on factors such as how often you see each other, or how long you have known each other. After a petition is filed, the court will decide if it is an intimate relationship.
 - To start a proceeding in Family Court in New York, you need to file a form called a Family Offense Petition (http://ww2.nycourts.gov/courts/7jd/courts/family/case_types/family_offense.shtml). You can contact the Family Court in your County for help completing and filing the petition. Contact information for the Family Courts in Schenectady is as follows: 620 State St., Schenectady, NY 12305, (518) 285-8435, (518) 393-1565 (fax).
 - You may also wish to speak with an attorney or domestic violence advocate before filing.
 - A criminal court order of protection is issued as a condition of a defendant's release and/or bail in a criminal case. A criminal court order of protection may only be issued against a person who has been charged with a crime.

- Reporting individuals have the right to an explanation of the consequences for violating these Orders, including but not limited to arrest, additional conduct charges, and interim suspension.
- Reporting individuals have the right to have assistance from Campus Safety in effecting an arrest when an individual violates an Order of Protection or, if outside of New York State, an equivalent protective or restraining order within the jurisdiction of Campus Safety or, if outside of the jurisdiction, to call on and assist local law enforcement in effecting an arrest for violating such an order.
- When the **accused** is a **student** and presents a continuing threat to the health and safety of the community, reporting individuals have the right to have the accused subject to interim suspension pending the outcome of a conduct process, if SUNY Schenectady undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations justifies removal, and provides the respondent with notice and an opportunity to challenge the decision immediately following the removal.
- When the **accused** is a **non-student**, but is a **member of the SUNY Schenectady community** and presents a continuing threat to the health and safety of the community, reporting individuals have the right to subject the accused to interim measures in accordance with applicable collective bargaining agreements, employee handbooks, and SUNY Schenectady policies and rules. Non-student employee respondents may be placed on administrative leave during the pendency of the investigation and conduct processes.
- When the **accused** is **not a member of the college community**, reporting individuals have the right to have assistance from Campus Safety or other college officials in obtaining a *persona non grata* letter, subject to legal requirements and College policy.

(c) Supportive Measures:

- All reporting individuals and accused have the right to obtain reasonable and available supportive measures that effect a change in academic, housing, employment, transportation, or other applicable arrangements in order to ensure safety, prevent retaliation, and avoid an ongoing hostile environment.
 - SUNY Schenectady is obligated to comply with a student's reasonable request for academic situation changes following alleged Sexual Misconduct.
 - While reporting individuals may request accommodations through any of the offices referenced in this policy, the following office can serve as a point to assist with these measures:
 - Vice President of Student Affairs, 518-381-1378, Elston Hall 222, VPstudentaffairs@sunysccc.edu
 - Ben DeAngelis, Title IX Coordinator, 518-381-1340, titleix@sunysccc.edu
 - SUNY Schenectady will protect the confidentiality of supportive measures provided to a reporting individual, to the extent that doing so will not impair SUNY Schenectady's ability to provide the accommodations or protective measures. The complainant or accuser will be informed before SUNY Schenectady shares any personally identifying information that SUNY Schenectady believes is necessary

to provide an accommodation or protective measure. If this occurs, the complainant or accuser will be told what information will be shared, with whom it will be shared, and why it will be shared.

4. Student Code of Conduct Process:

- If the **accused** is a **student**, a reporting individual has the right to request that student conduct charges be filed against the accused, unless the student has filed a Formal Complaint, in which case the Title IX Grievance Procedure will apply. Note, however, that if the Formal Complaint is dismissed, but the investigator determines that it is more likely than not that the accused violated the Student Code of Conduct, SUNY Schenectady may pursue discipline against the student under the Student Code of Conduct, following the typical Student Code of Conduct procedures.
- Conduct proceedings are governed by the procedures set forth in SUNY Schenectady's Student Code of Conduct, as well as federal and New York State law, including the due process provisions of the United States and New York State Constitutions.
- Throughout student conduct proceedings, the student respondent and the reporting individual will both have:
 - The same opportunity to be accompanied by an advisor of their choice who may assist and advise the parties throughout the conduct process and any related hearings or meetings. Participation of the advisor in any proceeding is governed by federal law and the Student Code of Conduct and/or the Implementation Guidelines for these Policies.
 - The right to a prompt response to any complaint and to have their complaint investigated and adjudicated in an impartial, timely, and thorough manner by individuals who receive annual training in conducting investigations of sexual violence, the effects of trauma, impartiality, the rights of the respondent, including the right to a presumption that the respondent is "not responsible" until a finding of responsibility is made, and other issues related to sexual assault, domestic violence, dating violence, and stalking.
 - The right to an investigation and process conducted in a manner that recognizes the legal and policy requirements of due process (including fairness, impartiality, and a meaningful opportunity to be heard) and is not conducted by individuals with a conflict of interest.
 - The right to receive advance written or electronic notice of the date, time, and location of any meeting or hearing they are required to or are eligible to attend. Accused individuals will also be told the factual allegations concerning the violation, a reference to the specific code of conduct provisions alleged to have been violated, and possible sanctions.
 - The right to 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 Schenectady).
 - The right to present evidence and testimony at a hearing, where appropriate.
 - The right to a range of options for providing testimony via alternative arrangements, including telephone/videoconferencing or testifying with a room partition.

- The right to exclude prior sexual history with persons other than the other party in the conduct process or their own mental health diagnosis or treatment from admittance in college disciplinary stage that determines responsibility. Past findings of domestic violence, dating violence, stalking, or sexual assault may be admissible in the disciplinary stage that determines sanction.
- The right to ask questions of the Hearing Board and via the Hearing Board indirectly request responses from other parties and any other witnesses present.
- The right to make an impact statement during the point of the proceeding where the Hearing Board is deliberating on appropriate sanctions, that will be provided to the Vice President of Student Affairs at the conclusion of the hearing.
- The right to simultaneous (among the parties) written or electronic notification of the outcome of a conduct proceeding, including the decision, any sanctions, and the rationale for the decision and any sanctions.
- The right to written or electronic notice about the sanction(s) that may be imposed on the accused based upon the outcome of the conduct proceeding. For students found responsible for sexual assault, the available sanctions are suspension with additional requirements and expulsion/dismissal.
- Access to at least one level of appeal of a determination before an Appeals Board, 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 five years.
- The right to choose whether to disclose or discuss the outcome of a conduct hearing.
- The right to have all information obtained during the course of the conduct or judicial process be protected from public release until the Appeals Board makes a final determination unless otherwise required by law.

G. Options for Confidentially Disclosing Sexual Violence

The State University of New York and SUNY Schenectady want you to get the information and support you need regardless of whether you would like to move forward with a report of sexual violence to campus officials or to police. You may want to talk with someone about something you observed or experienced, even if you are not sure that the behavior constitutes sexual violence. A conversation where questions can be answered is far superior to keeping something to yourself. Confidentiality varies, and this document is aimed at helping you understand how confidentiality applies to different resources that may be available to you.

1. Privileged and Confidential Resources:

Individuals who are *confidential* resources will not report crimes to law enforcement or college officials without your permission, except for extreme circumstances, such as a health and/or safety emergency. At SUNY Schenectady, the confidential resource is:

- Robyn King, Counselor IV, 518-381-1257, Elston 222, possonrm@sunysccc.edu

Off-campus options to disclose sexual violence *confidentially* include (note that these outside options do not provide any information to the campus):

- Off-campus counselors and advocates. Crisis services offices will generally maintain confidentiality unless you request disclosure and sign a consent or waiver form. More information on an agency's policies on confidentiality may be obtained directly from the agency.

- All off-campus resources are available on the College's Title IX page at <https://sunysccc.edu/About-Us/Title-IX/index.html>.
- Off-campus healthcare providers:

Program/Entity	Location	Contact Information	Cost
Ellis Hospital	1101 Nott Street Schenectady, NY 12308	P: 518-243-3333	Fees charged
Albany Medical Center	43 New Scotland Ave. Albany, NY 12208	P: 518-262-3125	Fees charged
St. Peter's Hospital	315 S. Manning Blvd. Albany, NY 12208	P: 518-262-3125	Fees charged
Albany Memorial Hospital	600 Northern Blvd. Albany, NY 12204	P: 518-471-3221	Fees charged

- Note that medical office and insurance billing practices may reveal information to the insurance policyholder, including medication and/or examinations paid for or administered. The New York State Office of Victim Services may be able to assist in compensating victims/survivors for health care and counseling services, including emergency compensation. More information may be found here: <https://ovs.ny.gov/sites/default/files/brochure/rights-crime-victims-booklet-final-8-24-20.pdf>, or by calling 1-800-247- 8035.

Note that even individuals who can typically maintain confidentiality are subject to exceptions under the law, including when individuals are a threat to themselves or others and the mandatory reporting of child abuse.

2. Non-Professional Counselors and Advocates.

Non-professional counselors and advocates can also assist you without sharing information that could identify you. At SUNY Schenectady, this includes members of Student Affairs, located in room 222 Elston Hall, (518) 381-1344. These individuals will report the nature, date, time, and general location of an incident to SUNY Schenectady's Title IX Coordinator, but will consult with you to ensure no personally identifying details are shared without your consent. These individuals are not considered confidential resources as discussed above.

3. Privacy versus Confidentiality.

Although SUNY Schenectady officers and employees cannot guarantee *confidentiality*, they will maintain your *privacy* to the greatest extent possible. The information you provide to a non-confidential resource will be relayed only as necessary to investigate and/or seek a resolution and to notify the Title IX Coordinator or designee, who is responsible under the law for tracking patterns and spotting systemic issues. SUNY Schenectady will limit the disclosure as much as possible, even if the Title IX Coordinator determines that the request for confidentiality cannot be honored.

4. Requesting Confidentiality: How SUNY Schenectady Will Weigh the Request and Respond.

If you disclose an incident to an SUNY Schenectady employee who is responsible for responding to or reporting sexual violence or sexual harassment, but wish to maintain confidentiality or do not consent to the College's request to initiate an investigation, the Title IX Coordinator must weigh your request against our obligation to provide a safe, nondiscriminatory environment for all members of our community, including you.

We will assist you with academic, transportation, employment, and other reasonable and available accommodations regardless of your reporting choices. While reporting individuals may request accommodations through several college offices, the following office can serve as a primary point of contact to assist with these measures.

- Title IX Coordinator, Ben DeAngelis, 518-381-1340, titleix@sunysccc.edu

We also may take proactive steps, such as training or awareness efforts, to combat sexual violence in a general way that does not identify you or the situation you disclosed.

We may seek consent from you prior to conducting an investigation. You may decline to consent to an investigation, and that determination will be honored unless SUNY Schenectady's failure to act does not adequately mitigate the risk of harm to you or other members of the SUNY Schenectady community. Honoring your request may limit our ability to meaningfully investigate and pursue conduct action against an accused individual. If we determine that an investigation is required, we will notify you and take immediate action as necessary to protect and assist you.

When you disclose an incident to someone who is responsible for responding to or reporting sexual violence or sexual harassment, but wish to maintain confidentiality, SUNY Schenectady will 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, such as a situation that previously involved sustained stalking,
- the 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; and
- Whether we possess other means to obtain evidence such as security footage, and whether the report reveals a pattern of perpetration at a given location or by a particular group.

If SUNY Schenectady determines that it must move forward with an investigation, the reporting individual or victim/survivor will be notified and SUNY Schenectady will take immediate action as necessary to protect and assist them.

5. Public Awareness/Advocacy Events.

If you disclose a situation through a public awareness event such as "Take Back the Night," candlelight vigils, protests, an applicable student organization or other event or forum, or other public event, SUNY Schenectady is not obligated to begin an investigation. SUNY Schenectady may use the information you provide to inform the need for additional education and prevention efforts.

6. Anonymous Disclosure.

You can make a report through an anonymous hotline. A full list of hotlines is available on the College's Title IX page at <https://sunysccc.edu/About-Us/Title-IX/index.html>. These hotlines are for crisis intervention, resources and referrals and are not reporting mechanisms. These hotlines include the following:

- New York State Domestic and Sexual Violence Hotline: 1-800-942-6906, or <http://www.opdv.ny.gov/help/dvhotlines.html>.
- Equinox Hotline: 518-432-7865.
- Unity House Hotline: 518-272-2370.
- The National Domestic Violence Hotline: 1-800-799-7233 (SAFE).
- The National Sexual Assault Hotline: 1-800-656-4673 (HOPE).
- Note that these hotlines are for crisis intervention, resources, and referrals, and are not reporting mechanisms, meaning that disclosure on a call to a hotline does not provide any information to the campus. Reporting individuals are encouraged to additionally contact a campus confidential or private resource so that the campus can take appropriate action in these cases.

7. Institutional Crime Reporting.

Reports of certain crimes occurring in certain geographic locations will be included in the SUNY Schenectady Clery Act Annual Security Report in an anonymized and aggregate manner that neither identifies the specifics of the crime nor the identity of the reporting individual or victim/survivor.

Contact Information:

- Title IX Coordinator:
Ben DeAngelis, titleix@sunysccc.edu, 518-381-1340
- Human Resources:
Edmund J. McTernan, Executive Director of Human Resources
518-381-1331, mcternej@sunysccc.edu, Elston 126
- Campus Safety Officer:
Michael Munger, Director of Campus Safety
518-381-1445, mungermg@sunysccc.edu, Elston 512
- Student Affairs Officer:
Vice President of Student Affairs
518-381-1378, VPstudentaffairs@sunysccc.edu, Elston 222

SUNY Schenectady is obligated to issue timely warnings of Clery Act crimes occurring within relevant geography that represent a serious or continuing threat to students and employees (subject to exceptions when potentially compromising law enforcement efforts and when the warning itself could potentially identify the reporting individual or victim/survivor). A reporting individual will never be identified in a timely warning.

The Family Educational Rights and Privacy Act ("FERPA") allows institutions to share information with parents when (1) there is a health or safety emergency, or (2) when the student is a dependent on either parents' prior year federal income tax return. Generally, SUNY Schenectady will not share information about a report of sexual violence with parents without the permission of the reporting individual.

H. Student Onboarding and Ongoing Education Guide

The State University of New York and its SUNY Schenectady believe that sexual violence prevention training and education cannot be accomplished via a single day or a single method of training. To that end, SUNY Schenectady will continue to educate all new and current students using a variety of best practices aimed at educating the entire college community in a way that decreases violence and maintaining a culture where sexual assault and acts of violence are not tolerated.

All new first year and transfer students, during the course of their onboarding to SUNY Schenectady, will be offered training on the following topics, using a method and manner determined by SUNY Schenectady:

1. SUNY Schenectady prohibits sexual harassment, including sexual violence, domestic violence, dating violence, stalking, other violence or threats of violence, and will offer resources to any victims/survivors of such violence while taking administrative and conduct action regarding any accused individual within the jurisdiction of the institution;
2. Relevant definitions including, but not limited to, the definitions of sexual assault, domestic violence, dating violence, stalking, confidentiality, privacy, and consent;
3. Policies apply equally to all students regardless of sexual orientation, gender identity, or gender expression;
4. The role of the Title IX Coordinator, SUNY Schenectady Campus Security, and other relevant offices that address domestic violence, dating violence, stalking, and sexual assault prevention and response;
5. Awareness of violence, its impact on victims and survivors and their friends and family, and its long-term impact;
6. The Students' Bill of Rights and Sexual Violence Response Policy, including:
 - o How to report sexual violence and other crimes confidentially, and/or to college officials, campus law enforcement and security, and local law enforcement; and
 - o How to obtain services and support;
7. Bystander intervention and the importance of taking action to prevent violence when one can safely do so;
8. The protections of the Policy for Alcohol and/or Drug Use Amnesty in Sexual and Interpersonal Violence Cases.
9. Risk assessment and reduction including, but not limited to, steps that potential victims, perpetrators, and bystanders can take to lower the incidence of violations, which may contain information about the dangers of drug and alcohol use, including underage drinking and binge drinking, involuntary consumption of incapacitating drugs and the danger of mislabeled drugs and alcohol, the importance of communication with trusted friends and family whether on campus or off campus, and the availability of institution officials who can answer general or specific questions about risk reduction; and
10. Consequences and sanctions for individuals who commit these crimes and code of conduct violations.

The onboarding process is not limited to a single day of orientation, but recognizes that students enroll at different times at different SUNY campuses and gives campuses the flexibility to best educate students at a time and manner that can most effectively bring these points to light. SUNY Schenectady will conduct these trainings for all new students, whether first-year or transfer, undergraduate, graduate, or professional. SUNY Schenectady shall use multiple methods to

educate students about sexual violence prevention. Each SUNY institution will also share information on sexual violence prevention with parents of enrolling students.

Students at SUNY Schenectady campuses shall be offered general and specialized training in sexual violence prevention. Each institution will conduct a campaign, compliant with the requirements of the Violence Against Women Act, to educate the student population. Further, institutions will, as appropriate, provide or expand specific training to include groups such as international students, students that are also employees of the campus, leaders and officers of registered/recognized student organizations, online and distance education students. Institutions will also provide specific training to members of groups identified as likely to engage in high-risk behavior.

SUNY Schenectady requires student leaders and officers of student organizations recognized by or registered with SUNY Schenectady, as well as those seeking recognition by SUNY Schenectady, to complete training on domestic violence, dating violence, stalking, or sexual assault prevention as part of the approval process, prior to receiving recognition or registration. SUNY Schenectady requires each student-athlete to complete training on domestic violence, dating violence, stalking, or sexual assault prevention prior to participating in intercollegiate athletic competition.

Methods of training and educating students may include, but are not limited to:

- President's welcome messaging;
- Peer theater and peer educational programs;
- Online training;
- Social media outreach;
- First-year seminars and transitional courses;
- Course syllabi;
- Faculty teach-ins;
- Institution-wide reading programs;
- Posters, bulletin boards, and other targeted print and email materials;
- Programming surrounding large recurring campus events;
- Partnering with neighboring SUNY and non-SUNY colleges to offer training and education;
- Partnering with State and local community organizations that provide outreach, support, crisis intervention, counseling and other resources to victims/survivors of crimes to offer training and education. Partnerships can also be used to educate community organizations about the resources and remedies available on campus for students and employees seeking services; and
- Outreach and partnering with local business those attract students to advertise and educate about these policies.

SUNY Schenectady will engage in a regular assessment of their programming and policies to determine effectiveness. SUNY Schenectady may either assess its own programming or conduct a review of other campus programming and published studies to adapt its programming to ensure effectiveness and relevance to students.

I. New Policies Pursuant to New York State Law:

1. Policy for the Review of No Contact Order

Both the accused and the reporting individual shall, upon request and consistent with SUNY Schenectady policies and procedures, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of a No Contact Order, including potential modification, and shall be allowed to submit evidence in support of their request. The Title IX Coordinator may establish an appropriate schedule for the accused and respondents to access applicable SUNY Schenectady buildings and property at a time when such buildings and property are not being accessed by the reporting individual.

The College will promptly review existing No Contact Orders at a party's request, including request to modify the terms of or discontinue the order. The parties can submit evidence to support their requests. If the campus finds it appropriate, it can even make a schedule for parties who seek to use the same facilities without running afoul of the no contact order.

Requests to review a No Contact Order should be submitted to: the Vice President of Student Affairs for students, or the Executive Director for Human Resources for employees and other nonstudents. If a request for review is received from one party, the other party will be notified of the request for review. The Executive Director of Human Resources or Vice President of Student Affairs will issue a determination in response to a request, and notify both parties of the determination.

2. Policy for Review of an Interim Suspension

Both the accused and the reporting individual shall, upon request and consistent with SUNY Schenectady's policies and procedures, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of an interim suspension, including potential modification, and shall be allowed to submit evidence in support of their request.

SUNY Schenectady will promptly review existing interim suspensions at a party's request, including requests to modify the terms or discontinue it. Parties can submit evidence to support their request.

Requests to review an interim suspension should be submitted to: the Vice President of Student Affairs, for students, or Executive Director for Human Resources, for employees and other non-students. If a request for review is received from one party, the other party will be notified of the request for review. The Executive Director of Human Resources or Vice President of Student Affairs will issue a determination in response to a request, and notify both parties of the determination.

3. Policy for Review of Interim Measures/Accommodations

Both the accused and the reporting individual shall, upon request and consistent with SUNY Schenectady's policies and procedures, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of any such interim measures and accommodations that directly affects them, and shall be allowed to submit evidence in support of their request.

The College will promptly review existing interim measures and accommodations at the request of the party who is affected by that interim measure or accommodation. The parties can submit evidence to support their request.

Requests to review interim measures and accommodations should be submitted to: Vice President of Student Affairs, VPstudentaffairs@sunysccc.edu, for students, or Edmund McTernan, Executive Director of Human Resources, for employees and other non-students. If a request for review is received from one party, the other party will be notified of the request for review.

4. Policy for Transcript Notations

For crimes of violence, including, but not limited to sexual violence, defined as crimes that meet the reporting requirements pursuant to the federal Clery Act established in 20 U.S.C. 1092(f)(1)(F)(i)(I)-(VIII), SUNY Schenectady must make a notation on the transcript of students who are suspended or expelled after being found responsible for a crime of violence in a student conduct process, stating that they were “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.” For a respondent who withdraws from SUNY Schenectady while such crime of violence conduct charges are pending, and declines to complete the disciplinary process, SUNY Schenectady will make a notation on the transcript of such students that they “withdrew with conduct charges pending.”

These transcript notations can be appealed by contacting the Registrar, 518-381-1388, registrar@sunysccc.edu Elston 208. Transcript notations for violence-related suspensions shall not be removed prior to one year after conclusion of the suspension. Transcript notations for violence-related expulsions shall never be removed from a student’s transcript. A notation for an expulsion may not be removed via an appeal to SUNY Schenectady. If a finding of responsibility is vacated for any reason, however, the transcript notation must be removed. Further, if a court of competent jurisdiction vacates a finding of responsibility for a violation of college policy, the transcript notation memorializing that finding will also be vacated.

5. Reporting Aggregate Data to NYSED

SUNY Schenectady will annually report to the New York State Education Department the following information about reports of domestic violence, dating violence, stalking and sexual assault:

- (a) The number of such incidents that were reported to the Title IX Coordinator.
- (b) Of those incidents in paragraph (a) of this subdivision, the number of reporting individuals who sought the institution's judicial or conduct process.
- (c) Of those reporting individuals in paragraph b of this subdivision, the number of cases processed through the Institution's judicial or conduct process.
- (d) Of those cases in paragraph c of this subdivision, the number of respondents who were found responsible through the Institution's judicial or conduct process.
- (e) Of those cases in paragraph c of this subdivision, the number of respondents who were found not responsible through the Institution's judicial or conduct process.
- (f) A description of the final sanctions imposed by the institution for each incident for which a respondent was found responsible, as provided in paragraph d of this subdivision, through the Institution's judicial or conduct process.
- (g) The number of cases in the institution's judicial or conduct process that were closed prior to a final determination after the respondent withdrew from the Institution and declined to complete the disciplinary process.

- (h) The number of cases in the Institution's judicial or conduct process that were closed because the complaint was withdrawn by the reporting individual prior to a final determination.

The NYS Education Department shall create a reporting mechanism for institutions to efficiently and uniformly provide the information outlined in subdivision one of this section and SUNY Schenectady to annually submit the following information:

1. How many domestic violence, dating violence, stalking, and sexual assault incidents were reported to the Title IX Coordinator this year?
2. From those incidents in paragraph (a), how many reporting individuals wanted to use the student conduct process for adjudication?
3. How many of these cases were actually processed through the student conduct process?
4. How many of the respondents in these cases were found responsible?
5. How many of the respondents in these cases in paragraph (c) were found not responsible?
6. What sanctions were imposed for each instance where a respondent was found responsible (paragraph [d])?
7. How many cases closed before adjudication or before finding because the accused/respondent withdrew from the institution?
8. How many cases closed before adjudication or before finding because the reporting individual withdrew the complaint?

SUNY Schenectady maintains, for seven years, records of:

1. any sexual harassment investigation, including any responsibility determination, and any required recording or transcript, as well as any sanctions imposed on the respondent, and any remedies provided to the complainant;
2. any appeal and its result;
3. any informal resolution and its results; and
4. all materials used to train investigators, adjudicators, and Title IX coordinators with regard to sexual harassment.

SUNY Schenectady will also create and maintain for a period of seven years a record of any actions, including supportive measures, taken in response to a report or formal complaint of sexual harassment, as well as document the bases for its conclusions and that it has taken measures designed to preserve access to the institution's educational program or activity.

6. Policy/Instructions on How Parties Can Review the Case File/Evidence

SUNY Schenectady shall ensure that every student be afforded the right, throughout proceedings involving an accusation of sexual assault, domestic violence, dating violence, stalking, or sexual activity, to review and present available evidence in the case file, or otherwise in the possession or control of SUNY Schenectady, and relevant to the conduct case, consistent with institution policies and procedures.

In student disciplinary proceedings involving domestic violence, dating violence, stalking, or sexual violence, SUNY Schenectady will allow parties to review available evidence held

by SUNY Schenectady in accordance with SUNY Schenectady policy. Parties can also present available evidence as appropriate under SUNY Schenectady policies.

J. New York State Legislative Definitions

1. "Institution" shall mean any college or university chartered by the regents or incorporated by special act of the legislature that maintains a campus in New York.
2. "Title IX Coordinator" shall mean the Title IX Coordinator and/or designee or designees.
3. "Bystander" shall mean a person who observes a crime, impending crime, conflict, potentially violent or violent behavior, or conduct that is in violation of rules or policies of an institution.
4. "Code of Conduct" shall mean the written policies adopted by SUNY Schenectady governing student behavior, rights, and responsibilities while such student is matriculated in the Institution.
5. "Confidentiality" may be offered by an individual who is not required by law to report known incidents of sexual assault or other crimes to institution officials, in a manner consistent with State and Federal law, including but not limited to 20 U.S.C. 1092(f) and 20 U.S.C. 1681(a). Licensed mental health counselors, medical providers and pastoral counselors are examples of institution employees who may offer confidentiality.
6. "Privacy" may be offered by an individual when such individual is unable to offer confidentiality under the law but shall still not disclose information learned from a reporting individual or bystander to a crime or incident more than necessary to comply with this and other applicable laws, including informing appropriate Institution officials.
7. "Accused" shall mean a person accused of a violation who has not yet entered SUNY Schenectady's judicial or conduct process.
8. "Respondent" shall mean a person accused of a violation who has entered SUNY Schenectady's judicial or conduct process.
9. "Reporting Individual" shall encompass the terms victim, survivor, complainant, claimant, witness with victim status, and any other term used by SUNY Schenectady to reference an individual who brings forth a report of a violation.
10. "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).
11. "Domestic violence", "dating violence", "stalking" and "sexual assault" shall be defined by SUNY Schenectady in its Code of Conduct and Implementation Guidelines for SUNY Schenectady's Policies on Sexual Violence Prevention and Response in a manner consistent with applicable federal definitions.

**Implementation Guidelines for SUNY Schenectady’s
Policies on Sexual Violence Prevention and Response
And Sexual Misconduct Investigation Procedures**

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I. Purpose and Scope

These Implementation Guidelines (the “Guidelines”) are intended to supplement and further clarify SUNY Schenectady’s Policies on Sexual Violence Prevention and Response (the “Policies”). The following apply to both the Guidelines and the Policies:

A. Applicability of the Sexual Misconduct Investigation and Disciplinary Procedures.

The Investigation and Disciplinary Procedures set forth in sections IV, V, and VI below ONLY apply to Sexual Misconduct investigations under the following circumstances:

- An individual files a Title IX Formal Complaint with SUNY Schenectady alleging Sexual Misconduct, as defined below, but the Formal Title IX Complaint is dismissed because the alleged conduct:
 - does not involve a complainant who is currently participating in, or attempting to participate in, the education programs or activities of SUNY Schenectady;
 - is alleged to have occurred before August 14, 2020;
 - is alleged to have occurred outside the United States;
 - is alleged to have occurred outside of SUNY Schenectady’s education program or activity, as defined in the Title IX Grievance Policy; or
 - if true, would not constitute Title IX Sexual Harassment as defined in the Title IX Grievance Policy.
- SUNY Schenectady becomes aware of Sexual Misconduct, as defined below, by or against an employee or student or that has a reasonable connection to SUNY Schenectady, and the Title IX Coordinator informs the complainant of their right to file a Formal Complaint, but the complainant chooses not to file a Formal Complaint, and the Title IX Coordinator determines it is not necessary to file a Formal Complaint.

B. Purpose: SUNY Schenectady is committed to creating and maintaining an educational and work environment free from all forms of Sexual Misconduct, as defined herein. Any act involving Sexual Misconduct will not be tolerated. These acts have a real impact on the lives of victims. They not only violate a person’s feelings of trust and safety, but they can also substantially interfere with a student’s education or an employee’s employment. It is the collective responsibility of all members of the SUNY Schenectady community to foster a safe and secure campus environment.

C. Scope:

1. **Who:** These Guidelines and Policies apply to all members of the SUNY Schenectady community, including students, faculty, staff, visitors, independent contractors, and other third parties who are on campus and involved in an incident of sexual misconduct (this can be someone who witnessed an incident or who wishes to report an incident on behalf of another).
2. **What:** This Guidelines and Policies prohibit all forms of Sexual Misconduct which includes, but is not limited to, acts of sexual harassment, sexual violence, sexual coercion, sexual threats or intimidation, nonconsensual sexual activity, domestic violence, dating violence, sexual assault, stalking, and cyber-stalking. Please refer to the Definitions section for a complete list of terms and prohibited acts.

These Guidelines and Policies cover incidents of Sexual Misconduct occurring between individuals in various types of relationships. These include, but are not limited to, student to student, staff to staff, faculty member to faculty member, visitor/contracted employee to faculty/staff, faculty member to student, staff to student, supervisor to subordinate, and coach to student athlete. These may be acts committed by or against an individual or group. These acts may be committed by a stranger, an acquaintance, or someone with whom the victim has a social, romantic, or intimate relationship. These acts may be committed by or against any individual, regardless of sexual orientation or gender identity.

3. **Where:** These Guidelines and Policies cover conduct that takes place at SUNY Schenectady. This includes any building or property owned or controlled by SUNY Schenectady and used in direct support of, or in a manner related to, the school's educational purposes, including dining halls and public property within or immediately adjacent to and accessible from campus. This also includes any building or property owned or controlled by a student organization that is officially recognized by SUNY Schenectady and any building or property not within the same reasonably contiguous geographic area of SUNY Schenectady that supports or relates to the school's educational purposes and is frequently used by students.

These Guidelines and Policies also cover conduct that takes place off-campus that may have a nexus to the SUNY Schenectady community. These Guidelines and Policies also apply to incidents that occur while a student is studying abroad. When the conduct involves students or employees from two or more institutions, SUNY Schenectady will work collaboratively with the other institutions to address the conduct, provided that the collaboration complies with the Family Educational Rights and Privacy Act ("FERPA").

These Guidelines and Policies cover all educational, extracurricular, athletic, or other campus programs. The Guidelines and Policies also cover all campus and school-related activities, including, but not limited to, student organizations, community organizations with student and/or faculty participation, and all other educational or extracurricular events hosted by or at SUNY Schenectady.

- C. **Nondiscrimination:** SUNY Schenectady applies the protections set forth herein regardless of race, color, national origin, religion, creed, age, disability, gender/sex, gender identity or expression, sexual orientation, familial or marital status, pregnancy, predisposing genetic characteristics, military or veteran status, domestic violence victim status, criminal arrest or conviction record, or other protected characteristics. Students and employees may exercise civil rights and practice religion without interference by SUNY Schenectady's investigation or conduct processes.

II. **Definitions**

The definitions listed in the Policies apply to both the Guidelines and the Policies. In addition, the following definitions apply in both the Guidelines and the Policies:

- A. **Appeals Board** – for any student disciplinary proceeding that involves a charge of Sexual Misconduct as defined below, the Appeals Board will be comprised of one or more persons designated by the Vice President of Student Affairs to consider an appeal from an investigator's determination that no Sexual Misconduct violation occurred, and from a Hearing Board's final determination regarding responsibility and/or sanctions. Such

Hearing Board shall be appointed by the Vice President of Student Affairs and consists of a panel of student(s), administrator(s), or faculty member(s). Members of the Hearing Board and Appeals Board receive annual training in conducting investigations of sexual violence, the effects of trauma, impartiality, the rights of the respondent, including the right to a presumption that the respondent is “not responsible” until a finding of responsibility is made, the Policies and these Guidelines, and other issues related to sexual assault, domestic violence, dating violence, and stalking.

- B. Confidentiality** – may be offered by an individual who is not required by law to report known incidents of sexual assault or other crimes to institution officials, in a manner consistent with state and federal law, including but not limited to 20 U.S.C. § 1092(f) and 20 U.S.C. § 1681(a). SUNY Schenectady’s confidential employee is Robyn King, Counselor IV, 518-381-1257, possonrm@sunysccc.edu, Elston 222.

The obligation to keep information in confidence is inherent for the designated SUNY Schenectady professionals. Many off-campus resources such as rape crisis centers are also confidential, and with the exception of certain child abuse and imminent threats, individuals working in such organizations have no obligation to report information back to the reporting individual’s campus.

It is important to note that all Responsible Employees at SUNY Schenectady, as defined below, are required to report known incidents of sexual assault or other crimes, so they are NOT confidential resources. However, although SUNY Schenectady officers and employees cannot guarantee confidentiality, they will maintain your privacy to the greatest extent possible. The information you provide to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator to investigate and/or seek a resolution.

- C. Crimes under the Clery Act** – murder, manslaughter, rape, fondling, incest, statutory rape, robbery, aggravated assault, burglary, motor vehicle theft, and arson, as defined below.
- **Criminal Homicide** - Manslaughter by Negligence: The killing of another person through gross negligence.
 - **Criminal Homicide** - Murder and Non-negligent Manslaughter: The willful (non-negligent) killing of one human being by another.
 - **Rape**: The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
 - **Fondling**: The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or temporary or permanent mental incapacity.
 - **Incest**: Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - **Statutory Rape**: Sexual intercourse with a person who is under the statutory age of consent. Under New York law, the age of consent is 17 years old. See New York State Penal Law Article 130.
 - **Robbery**: The taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or by putting the victim in fear.

- **Aggravated Assault**: An unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault usually is accompanied by the use of a weapon or by means likely to produce death or great bodily harm. (It is not necessary that injury result from an aggravated assault when a gun, knife, or other weapon is used which could and probably would result in serious personal injury if the crime were successfully completed.
- **Burglary**: The unlawful entry of a structure to commit a felony or a theft. For reporting purposes this definition includes: unlawful entry with intent to commit a larceny or felony; breaking and entering with intent to commit a larceny; housebreaking; safecracking; and all attempts to commit any of the aforementioned.
- **Motor Vehicle Theft**: The theft or attempted theft of a motor vehicle.
- **Arson**: Any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling house, public building, motor vehicle or aircraft, personal property of another, etc.

D. Formal Complaint – A Formal Complaint under the Title IX Grievance Policy means a document, which can be an electronic submission, filed by a complainant with a signature or other indication that the complainant is the person filing the formal complaint, or signed by the Title IX Coordinator, alleging Title IX Sexual Harassment against a respondent about conduct within SUNY Schenectady’s education program or activity and requesting initiation of the procedures consistent with the Title IX Grievance Policy to investigate the allegation of Title IX Sexual Harassment. When a Formal Complaint has been filed, the Procedures set forth below do not apply.

E. Nonconsensual Sexual Activity – occurs when “sexual activity,” is perpetrated against a victim without “affirmative consent,” as defined herein.

F. Privacy – may be offered by an individual when such individual is unable to offer confidentiality under the law, but the individual will not disclose information learned from a reporting individual or bystander to a crime or incident more than is necessary to comply with applicable laws and SUNY Schenectady policies and procedures.

Although most SUNY Schenectady employees are not confidential resources, they can still offer “privacy.” This means that an employee may have to share information pursuant to federal or state law or college policy with certain other SUNY Schenectady employees, but they will not share the private information beyond what is required or needed to comply with law and policy, and will otherwise limit re-disclosure as much as possible.

Privacy of the records specific to the investigation is maintained in accordance with New York State law and FERPA. Any public release of information to comply with the timely warning provisions of the Clery Act will not release the names of victims or information that could easily lead to a victim’s identification.

G. Relationship Violence – “domestic violence” and “dating violence” as defined under federal and state law.

- Generally, relationship violence is a pattern of coercive behaviors that serve to exercise control and power in an intimate relationship. The coercive and abusive behaviors can be physical, sexual, psychological, verbal and/or emotional in nature. Intimate partner abuse can occur in relationships of the same or different genders;

between current or former intimate partners who have dated, lived together, or been married.

- Under the Clery Act:
 - Domestic Violence is defined as felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or New York family violence laws, or by any other person against an adult or youth victim who is protected from that person's acts under New York domestic or family violence laws.
 - Dating Violence is defined as violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship is determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.

- Under New York law:
 - Domestic Violence is an act which would constitute a violation of the penal law, including, but not limited to acts constituting disorderly conduct, harassment, aggravated harassment, sexual misconduct, forcible touching, sexual abuse, stalking, criminal mischief, menacing, reckless endangerment, kidnapping, assault, attempted murder, criminal obstruction or breaching or blood circulation, or strangulation; and such acts have created a substantial risk of physical or emotional harm to a person or a person's child. Such acts are alleged to have been committed by a family member. The victim can be anyone over the age of sixteen, any married person or any parent accompanied by their minor child or children in situations in which such person or such person's child is a victim of the act.
 - "Family or household member" means persons related by consanguinity or affinity; persons legally married to one another; person formerly married to one another regardless of whether they still reside in the same household; persons who have a child in common regardless of whether such persons are married or have lived together at any time; Unrelated persons who are continually or at regular intervals living in the same household or who have in the past continually or at regular intervals lived in the same household; Persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time.
 - Factors that may be considered in determining whether a relationship is an "intimate relationship" include, but are not limited to: the nature or type of relationship regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an "intimate relationship"; Any other category of individuals deemed to be a victim of domestic violence as defined by the office of children and family services in regulation. Intimate relationship status shall be applied to teens,

lesbian/gay/bisexual/transgender, and elderly individuals, current and formerly married and/or dating heterosexual individuals who were, or are in an intimate relationship.

- “Parent” means natural or adoptive parent or any individual lawfully charged with a minor child’s care or custody.
- Dating Violence - New York State does not specifically define “dating violence.” However, under New York Law, intimate relationships are covered by the definition of domestic violence when the act constitutes a crime and is committed by a person in an “intimate relationship” with the victim.

H. Responsible Employee – any employee who has the authority to take action to redress Sexual Misconduct, as defined herein; who has been given the duty of reporting incidents of Sexual Misconduct or any other misconduct by students to the Title IX Coordinator; or whom a student could reasonably believe has this authority or duty. At SUNY Schenectady, Responsible Employees include the following:

- All members of the President’s Council:
 - Chief of Staff,
 - Vice President for Academic Affairs,
 - Vice President for Administration,
 - Vice President of Development and External Affairs,
 - Vice President of Student Affairs,
 - Executive Director of Human Resources,
 - Executive Director for Workforce Development & Community Education,
 - Executive Director of Schenectady College and Career and Outreach Center,
 - Human Resource and Diversity Manager;
- Deans:
 - Dean of Business, Criminal Justice and Law,
 - Dean of the School of Hotel, Culinary Arts and Tourism,
 - Dean of Liberal Arts,
 - Dean of Math, Science, Technology and Health,
 - Dean of The School of Music;
- Director of Security;
- Anyone else a student would reasonably believe is a Responsible Employee, including: advisors, club advisors, coaches, mentors, Assistant Vice Presidents, and program directors; and
- In some instances, faculty members, including when overseeing an event, supervising an away trip, or serving in another role that would cause a student to reasonably believe that the faculty member is a Responsible Employee).

A Responsible Employee must report to the College’s Title IX Coordinator, or designee, all relevant details about the alleged Sexual Misconduct that the student or another person has shared and that SUNY Schenectady will need to determine what occurred and to resolve the situation. This includes the names of the alleged perpetrator, the individual who experienced the alleged Sexual Misconduct, and other individuals involved in the alleged Misconduct, as well as relevant facts, including the date, time, and location.

Before a student reveals information that they may wish to keep confidential, a Responsible Employee will make every effort to ensure that the student understands: (i) the employee’s obligation to report the names of the alleged perpetrator and student involved in the alleged Sexual Misconduct, as well as relevant facts regarding the alleged

incident (including the date, time, and location), to the Title IX Coordinator or other appropriate College officials, (ii) the student's option to request that the College maintain their confidentiality, which the Title IX coordinator will consider, and (iii) the student's ability to share the information confidentially with counseling, advocacy, health, mental health, or sexual-assault-related services.

I. **Sexual Activity** – has 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). Therefore, the term “sexual activity” includes the following:

- contact between the penis and the vulva or the penis and the anus, and for purposes of this definition contact involving the penis occurs upon penetration, however slight;
- contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;
- the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;
- the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or
- the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

Individuals must obtain affirmative consent (as defined in the Policies) prior to engaging in any of the activity referenced above.

J. **Sexual Assault** – “sexual assault” as defined under both federal and state law.

- Under the Clery Act, the term “sexual assault” means an offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI’s UCR program and as set forth in Appendix A to the Clery Act (34 CFR § 668.46). In Appendix A to the Clery Act regulations, these terms are defined as follows:
 - **Rape** – The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
 - **Fondling** – the touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person’s will; or, not forcibly or against the person’s will where the victim is incapable of giving consent because of their youth or temporary or permanent mental or physical incapacity.
 - **Incest** – sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - **Statutory Rape** – sexual intercourse with a person who is under the statutory age of consent. Under New York law, the age of consent is 17 years old. See New York State Penal Law Article 130.
- Under New York law, “sexual assault” includes any and all sexual offenses or acts defined in New York State Penal Code Article 130, including sexual misconduct, rape, sexual abuse, forcible touching, and aggravated sexual contact, and involve conduct that would generally fall within the above-listed definitions. However, these offenses also cover certain actions, such as sexual assault with an object, which may not be included within the above-listed definitions. Students and employees are encouraged to review the full definitions and elements of these offenses, which can be found in New York State

Penal Law §§ 130.00 to 130.96. Under New York State law, a Sexual Misconduct occurs when certain sexual acts are perpetrated against a victim without affirmative consent.

K. Sexual Misconduct – a term used by SUNY Schenectady, which includes any incident of “sexual assault,” “nonconsensual sexual activity,” “relationship violence,” and/or “stalking,” as those terms are defined in these Policies and Guidelines.

L. Stalking – “stalking” as defined under both federal and state law.

- Generally, stalking is a pattern of behavior that can include:
 - Repeatedly leaving or sending victim unwanted items, presents, flowers
 - Harassing the victim through the internet, including social networking websites
 - Repeated, unwanted and intrusive phone calls, e-mails or text messages; especially after being clearly informed to stop
 - Damaging or threatening to damage the victim’s property
 - Following, monitoring, surveillance of victim and/or victim’s family, friends, co-workers
 - Abusing or killing a pet or other animal
 - Crossing jurisdictions/borders to stalk/commit offenses
- Under the Clery Act, stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to (a) fear for the person’s safety or the safety of others; or (b) suffer substantial emotional distress. For the purposes of this definition:
 - “course of conduct” means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property;
 - “reasonable person” means a reasonable person under similar circumstances and with similar identities to the victim; and
 - “substantial emotional distress” means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
- Under New York law, a person engages in stalking when they intentionally, and for no legitimate purpose, engages in a course of conduct directed at a specific person, and knows or reasonably should know that such conduct:
 - is likely to cause reasonable fear of material harm to the physical health, safety or property of such person, a member of such person’s immediate family or a third party with whom such person is acquainted; or
 - causes material harm to the mental or emotional health of such person, where such conduct consists of following (including unauthorized tracking of someone’s movements or location through a GPS or other device), telephoning or initiating communication or contact with such person, a member of such person’s immediate family or a third party with whom such person is acquainted, and the actor was previously clearly informed to cease that conduct; or
 - is likely to cause such person to reasonably fear that their employment, business or career is threatened, where such conduct consists of appearing, telephoning or initiating communication or contact at such person’s place of employment or business, and the actor was previously clearly informed to cease that conduct.

More detailed definitions can be found in New York State Penal Law §§ 120.45 to 120.60.

M. Title IX Sexual Harassment – conduct that meets the definition of “sexual harassment” under the Title IX Grievance Policy, including any conduct on the basis of sex that satisfies one or more of the following:

- An employee conditioning educational benefits on participation in unwelcome sexual conduct (i.e., quid pro quo);
- Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the educational SUNY Schenectady’s education program or activity;
- Sexual assault as defined in the Clery Act, which includes any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent;
- Dating violence as defined in the Violence Against Women Act (VAWA), which includes any violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship; (ii) The type of relationship; (iii) The frequency of interaction between the persons involved in the relationship.
- Domestic violence as defined in VAWA, which includes any felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under New York’s domestic or family violence laws or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of New York.
- Stalking as defined in VAWA, meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to-- (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.

Note that conduct that does not meet the definition of “Title IX Sexual Harassment” may still be prohibited under other SUNY Schenectady policies and procedures.

III. Interplay Between the Criminal Justice Process & the Sexual Misconduct Process under the Guidelines and Policies

- A. SUNY Schenectady disciplinary proceedings may be instituted against a student charged with Sexual Misconduct that potentially violates both the criminal law and the Student Conduct Code, without regard to the pendency of civil or criminal litigation in court or criminal arrest or prosecution.
- B. The judicial or conduct process for any proceeding involving a Sexual Misconduct charge will run concurrently with a criminal justice investigation and proceeding, except for temporary delays as requested by external municipal entities while law enforcement gathers evidence, which should not last more than 10 days except when law enforcement specifically requests and justifies a longer delay. The Title IX Coordinator is responsible for determining whether a delay is justified. Determinations made or sanctions imposed by SUNY Schenectady shall not be subject to change because criminal charges arising out of the same facts giving rise to violation of SUNY Schenectady rules were dismissed, reduced, or resolved in favor of or against the criminal law defendant.

- C. SUNY Schenectady will cooperate fully with law enforcement and other agencies in the enforcement of criminal law on campuses and in the conditions imposed by criminal courts for the rehabilitation of student violators, provided that the conditions do not conflict with campus rules or sanctions. Individual members of the College community, acting in their personal capacities, remain free to interact with governmental representatives as they deem appropriate.
- D. Nothing in SUNY Schenectady's policies limits the rights of students to pursue cases through the criminal justice system. There are significant differences between the two systems because they have different, important goals. In the criminal justice system, prosecutors pursue cases when they believe there is sufficient evidence to prove, beyond a reasonable doubt, that an individual has committed a criminal act. A person who is convicted of a crime will face criminal penalties, such as incarceration, probation, or the imposition of a fine. SUNY Schenectady's disciplinary process seeks to determine whether an individual has violated college policy. In this process, a preponderance of the evidence standard of proof is used to determine responsibility. A person who is found to have violated SUNY Schenectady policy may be suspended, expelled or otherwise restricted from full participation in the SUNY Schenectady community. A document that further explains the differences between the two systems can be found in **Appendix A**.

IV. SUNY Schenectady Sexual Misconduct Investigation Process & Procedures

When SUNY Schenectady becomes aware of an incident of Sexual Misconduct by or against an employee or student or that has a reasonable connection to SUNY Schenectady, it will take prompt and appropriate action.

A. Initial Assessment

The Title IX Coordinator will make an initial assessment regarding the validity of any information received about the incident. The Title IX Coordinator will also determine whether the alleged incident is an incident of Sexual Misconduct, or should more appropriately be dealt with under other SUNY Schenectady policies, such as the Student Code of Conduct. This initial determination will be made within 3 business days of SUNY Schenectady becoming aware of allegations that Sexual Misconduct has been committed.

The Title IX Coordinator will also inform the complainant of the right to file a Formal Complaint under the Title IX Grievance Procedure. If a Formal Complaint is filed, the Title IX Grievance Procedure will apply, and this procedure will not apply, unless the Formal Complaint is dismissed, but the investigator determines that a violation of the Code of Conduct may have occurred.

This procedure will apply when:

- an individual files a Formal Title IX Complaint with SUNY Schenectady alleging a Sexual Misconduct, but the Formal Title IX Complaint is dismissed, or
- SUNY Schenectady becomes aware of an allegation of Sexual Misconduct by or against an employee or student or that has a reasonable connection to SUNY Schenectady, and the Title IX Coordinator informs the complainant of their right to file a Formal Complaint, but the complainant chooses not to file a Formal Complaint, and the Title IX Coordinator determines it is not necessary to file a Formal Complaint.

B. Consent to Conduct an Investigation

If the Title IX Coordinator determines that an investigation is required under this procedure, the Title IX Coordinator must seek consent from reporting individuals prior to conducting an investigation. If a reporting individual does not consent to SUNY Schenectady's request to initiate an investigation, the Title IX Coordinator will weigh the request against SUNY Schenectady's obligation to provide a safe, nondiscriminatory environment for all members of its community.

SUNY Schenectady will honor a request to decline an investigation, unless SUNY Schenectady determines in good faith that failure to investigate does not adequately mitigate a potential risk of harm to the reporting individual or other members of the community, based on the Title IX Coordinator's consideration of factors that include, but are not limited to, the following:

- Whether the accused has a history of violent behavior or is a repeat offender;
- Whether the incident represents escalation in unlawful conduct on behalf of the accused from previously noted behavior;
- The 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; and
- Whether the institution possesses other means to obtain evidence such as security footage, and
- Whether available information reveals a pattern of perpetration at a given location or by a particular group.

If the Title IX Coordinator determines that the request to decline to consent to an investigation can be honored, SUNY Schenectady will still assist with any reasonable and available accommodations.

If the Title IX Coordinator determines that a request to decline to consent to an investigation cannot be honored, and an investigation is necessary, SUNY Schenectady must notify the reporting individuals and take immediate action as necessary to protect and assist them.

C. Commencement of the Investigation

When an investigation is commenced, the accused must be informed, as promptly as possible, of:

- the specific rule, rules, laws, Policies, Guidelines, and/or Code of Conduct provisions alleged to have been violated;
- the date, time, location and factual allegations concerning the violation;
- in what manner the specific rule, rules or laws are alleged to have been violated, and
- the sanction or sanctions that may be imposed on the respondent based upon the outcome of any judicial or conduct process.

Within 3 business days of determining that an investigation is necessary, the Title IX Coordinator, or designee, who shall be a trained investigator, and who does not have a conflict of interest, will promptly start conducting a fair, complete, thorough, and impartial investigation, which provides a meaningful opportunity to be heard. The designated investigator must have received annual training that covers topic including, but not limited to, the following: (1) issues related to Sexual Misconduct, (2) how to conduct an investigation and hearing process that protects the safety of victims and promotes

accountability; (3) conducting investigations of sexual violence; (4) the effects of trauma; (5) impartiality; (6) 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 (7) SUNY Schenectady’s policies and procedures, including the Guidelines and Policies.

If the Title IX Coordinator is implicated in the report, the President will be responsible for designating a trained investigator to conduct the investigation. If it would be inappropriate for the Title IX Coordinator or President to designate an investigator to conduct the investigation, then the Chair of the Board of Trustees will make this designation.

D. Standard of Evidence

The standard of evidence used to evaluate a report of an incident of Sexual Misconduct by or against an employee or student is a “preponderance of the evidence.” Under this standard, a determination must be made on the basis of whether it is more likely than not that the accused student or employee violated the Policies or the Guidelines.

E. Investigation Procedures

In investigating the complaint, the designated investigator shall:

- Provide the complainant and respondent with copies of the Policies and Guidelines. In addition, provide complainant and respondents who are students with reasonable advance written or electronic notice of any meeting they are required to or are eligible to attend.
- Discuss the allegations in the complaint with the complainant and respondent at separate meetings, and provide both parties with equal opportunities to identify witnesses and present evidence supporting their respective positions at these meetings.
- Provide the complainant and the respondent with the same opportunities for a support person or advisor of their choice throughout the process, including any meeting, conference, hearing or other procedural action. An attorney for either the accuser or the accused, however, may be present but may not have a speaking role during such meeting, conference, hearing, or other procedural action.
- Student complainants and respondents will also be provided with the opportunity to exclude (1) their own prior sexual history with persons other than the other party in the investigation process, and (2) their own mental health diagnosis and/or treatment from the investigator’s consideration when determining responsibility. However, the investigator may consider past findings of domestic violence, dating violence, stalking, or sexual assault when determining the sanction to be imposed. Meet with witnesses and obtain any additional documentary evidence.
- Attempt, where appropriate, to resolve the complaint by exploring and suggesting possible solutions to the problem with all involved parties, provided, however, that the complainant will not be required to participate in mediation with the accused.
- If a resolution is not possible, make a preponderance of the evidence determination in the matter.

The time necessary to complete an investigation will vary depending upon the facts of a particular case. In most cases, investigations will be completed within 60 days of receipt of a report.

F. Conclusion of the Investigation

1. The investigator shall prepare a written investigatory report including a summary of the investigation, summaries of all interviews, findings of fact, recommendations with respect to whether it is more likely than not that the incident of an incident of Sexual Misconduct occurred, and appropriate disciplinary actions, if any, and/or other appropriate remedial measures.
2. The investigator shall provide the completed investigatory report to the Title IX Coordinator. Upon receipt of the investigatory report or if the Title IX Coordinator conducted the investigation, The Title IX Coordinator will inform the parties, in writing, of the outcome, within 2 business days of that determination. This written notice will include the result of the investigation, any recommended sanctions, the rationale for the result and any recommended sanctions, the findings of fact, and a notification if conduct charges will be pursued and/or continued.
3. Delivery of this outcome will not be delayed to either party, and should occur as nearly simultaneously as possible, without unnecessarily bringing those in conflict into close proximity to each other. Should any change in outcome occur prior to finalization, all parties will be timely informed in writing, and will be notified when the results of the resolution process become final.
4. If the determination is that the respondent did not commit Sexual Misconduct, SUNY Schenectady will not pursue discipline against that individual. The parties will be informed of their potential rights to exercise a request for an appeal of the determination, if applicable. If the determination is that the respondent did not commit Sexual Misconduct, the reporting individual has the right to appeal this finding of no violation to an Appeals Board within two (2) business days of the decision.
5. If the determination is that it is more likely than not that the accused student or employee committed Sexual Misconduct, SUNY Schenectady will take the matter very seriously, and will pursue, or continue to pursue internal disciplinary proceedings against the respondent. The disciplinary proceedings will then be commenced within 5 business days of the decision to pursue disciplinary charges, following the applicable process outlined below based upon the respondent's association with the College.

G. Remedial Measures

If the investigation reveals that it is more likely than not that Sexual Misconduct occurred, SUNY Schenectady will take appropriate remedial measures necessary to end such conduct, prevent any such future conduct, and correct any personnel or academic decisions made which are related to the prohibited conduct. Remedies may include, but are not limited to, continuing or commencing any of the above-listed "interim measures." These remedies are separate from, and in addition to, any 2 measures that may have been provided prior to the conclusion of the investigation. Such measures can be requested by a reporting individual or accuser, by contacting the Director of Human Resources for employees or the Vice President of Student Affairs for students.

V. Student Discipline for Sexual Misconduct

Student discipline for Sexual Misconduct will be handled under the following procedure.

A. Interim Measures

1. While this procedure is pending against a student, that student's degrees, grade reports, and transcripts will not be issued until the matter is resolved.
2. Interim Suspension: In certain circumstances, the Vice President of Student Affairs, or a designee, may impose a College suspension prior to the hearing process.
 - Interim suspensions may be imposed only: a) to ensure the immediate safety and well-being of members of SUNY Schenectady community or preservation of SUNY Schenectady property; b) to ensure the student's own immediate physical or emotional safety and well-being; or c) if the student poses an immediate threat of disruption of, or interference with, the normal operations of SUNY Schenectady. Before imposing such a suspension, SUNY Schenectady will undertake an individualized safety and risk analysis, determine that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provide the student with notice and an opportunity to challenge the decision immediately following the removal.
 - Mandatory Interim Suspension – If a student accused of Sexual Misconduct is determined to present a continuing threat to the health and safety of the College community, based on an individualized safety and risk analysis, in which SUNY Schenectady determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Sexual Misconduct justifies removal, SUNY Schenectady must subject the student to an interim suspension pending the outcome of a judicial or conduct process.
 - SUNY Schenectady provides both the accused and the reporting individual, upon request and consistent with SUNY Schenectady's policies and procedures, a prompt review, reasonable under the circumstances, of the need for and terms of an interim suspension, including potential modification, in which they are allowed to submit evidence in support of their request. Requests to review an interim suspension should be submitted to: Vice President of Student Affairs, at VPstudentaffairs@sunysccc.edu. If a request for review is received from one party, the other party will be notified of the request for review. The Vice President of Student Affairs will issue a determination in response to the request, and notify both parties of the determination.
 - During an interim suspension, students may be denied access to the campus and including classes, and/or all other College activities or privileges for which the student might otherwise be eligible, as the Vice President of Student Affairs or designee may determine to be appropriate.
3. No Contact Order
 - During the disciplinary process, SUNY Schenectady may extend or issue a no contact order, whereby: (1) continued intentional contact between the reporting individual and accused is subject to additional conduct charges; and (2) if the accused and a reporting individual observe each other in a public place, it is the responsibility of the accused to leave the area immediately and without directly contacting the reporting individual. This may include establishing an appropriate

schedule for the accused and respondents to access applicable buildings and property of SUNY Schenectady at a time when such buildings and property are not being accessed by the reporting individual.

- Upon request, both the accused and the reporting individual are entitled to a prompt review, reasonable under the circumstances, of the need for and terms of the no contact order, including potential modification, in which they are allowed to submit evidence in support of their requests. Requests to review a no contact order should be submitted to: the Vice President of Student Affairs, at VPstudentaffairs@sunysccc.edu. If a request for review is received from one party, the other party will be notified of the request for review. The Vice President for Student Affairs will issue a determination in response to the request, and notify both parties of the determination.

4. Interim Measures

- SUNY Schenectady is obligated to provide reasonable and available interim measures and accommodations that effect a change in academic, housing, employment, transportation or other applicable arrangements in order to help ensure safety, prevent retaliation and avoid an ongoing hostile environment.
- Upon request, SUNY Schenectady will provide both the accused and the reporting individual a prompt review, reasonable under the circumstances, of the need for and terms of any such interim measure and accommodation that directly affects them, in which they are allowed to submit evidence in support of their request. Requests to review interim measures should be submitted to the Title IX Coordinator the Vice President of Student Affairs.
- If a request for review is received from one party, the other party will be notified of the request for review. The Title IX Coordinator or the Vice President of Student Affairs will issue a determination in response to the request, and notify both parties of the determination.

B. Student Conduct Hearings

1. Designation of Hearing Board

- The Hearing Board will consist of a panel of three (3) individuals, appointed by the Vice President of Student Affairs.
- The Vice President of Student Affairs shall select one member of the Hearing Board to serve as the Chair.
- No member of the Hearing Board will also have served as the Title IX Coordinator, Title IX investigator, or advisor to any party in the case, nor may any member of the Hearing Board serve on the Appeals Board.
- No member of the Hearing Board will have a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case. See Appendix A for details on bias. The parties will have an opportunity to raise any objections regarding a member of the Hearing Board's actual or perceived conflicts of interest or bias prior to the commencement of the hearing, to the Vice President of Student Affairs. If the

Vice President of Student Affairs determines that the member of the Hearing Board has a conflict of interest or bias, that member will be replaced as quickly as possible.

- The Hearing Board will be trained on topics including how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for complainants, and any technology to be used at the hearing. Hearing Board members will also receive annual training on issues related conducting investigations of sexual violence, the effects of trauma, the rights of the respondent, including the right to a presumption that the respondent is “not responsible” until a finding of responsibility is made, how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability, SUNY Schenectady’s policies and procedures, and other issues including, but not limited to domestic violence, dating violence, stalking and sexual assault.

2. Review of the Case File

Both the complainant and the respondent will be given the opportunity to review available evidence in the case file, or otherwise in SUNY Schenectady’s possession or control, that may be used in a hearing and/or may exonerate or show responsibility in the case. SUNY Schenectady may place reasonable restrictions on access to evidence, such as time, place and manner restrictions, heightened restriction for sensitive information that is not directly relevant to the questions raised in the investigation or hearing, and a limit on students or their advisors of choice engaging in “fishing expeditions” of all records maintained by SUNY Schenectady that in any way relate to any of the parties. Complainants, the respondent, and their advisors are not entitled to generalized pre-hearing discovery, or to copies of all available evidence, but are instead entitled to access the evidence directly relevant to the specific case, as reasonably determined by SUNY Schenectady.

3. Hearing Rules

For all disciplinary hearings involving one or more charges of Sexual Misconduct, the following rules apply:

- a. Standard of Evidence. The standard of evidence used to evaluate a charge or complaint is a “preponderance of the evidence.” Under this standard, a determination must be made on the basis of whether it is more likely than not that the accused student committed an act of Sexual Misconduct.
- b. Presumption of “Not Responsible.” The respondent is presumed to be “not responsible” until SUNY Schenectady has established evidence, testimony or information that would allow the Vice President Student Affairs to find the respondent responsible pursuant to these Guidelines.
- c. Rules of Evidence. Formal rules of process, procedure, and/or technical rules of evidence, such as those which are applied in criminal or civil court, do not apply in these hearings.
- d. Notice. Students must receive reasonable advance written or electronic notice of:
 - i. any meeting they are required to or are eligible to attend,

- ii. the specific rule, rules, laws, Policies, Guidelines, and/or Code of Conduct provisions alleged to have been violated;
- iii. the date, time, location and factual allegations concerning the violation;
- iv. in what manner the specific rule, rules or laws are alleged to have been violated; and
- v. any possible sanctions.

SUNY Schenectady may provide notice of the date, time, location and factual allegations that have been reported, specific provisions reported to have been violated, and associated sanctions in multiple notices and/or separate communications. Nothing prohibits SUNY Schenectady from holding students accountable for violations that are not referenced in the initial charge letter but are learned about from evidence, testimony, or admission at a hearing, consistent with SUNY Schenectady policies and due process, where applicable.

f. Timing.

- i. A date shall be set for a hearing, not less than five (5) nor more than fifteen (15) business days after the student has been notified of the hearing. Minimum and maximum time limits for scheduling of hearings may be modified at the discretion of the Vice President of Student Affairs.
- ii. Proceedings include timely notice of meetings and timely and equal access to information and evidence.
- iii. The proceedings are completed within a reasonably prompt, designated timeframe. However, the timeframe may be extended for good cause upon written notice to the accuser and accused.

g. Advisors. The complainant and the respondents may select any advisor of their own choosing, including an attorney, who must be permitted to assist and advise a complainant or respondent throughout the process, including during the hearing.

- If a student chooses to have an advisor who is not a member of the SUNY Schenectady community, the student must inform the Vice President of Student Affairs of the name of their advisor at least three business days prior to the scheduled hearing. Students who wish to have their advisors notified regarding the hearing date and other matters should also notify the Vice President of Student Affairs and provide their advisor's contact information.
- The complainant and the respondent student is responsible for presenting their own information, and therefore, advisors (including an attorney, when applicable), are not permitted to speak or to participate directly in any hearing before a Hearing Board. The selection of an advisor is the responsibility of the complainant or respondent. Any costs associated with the advisor are at the expense of the student.
- Advisors who violate SUNY Schenectady policies may be removed from a hearing or meeting. A student should select as an advisor a person whose schedule allows attendance at the scheduled date and time for the hearing because delays will not normally be allowed due to the scheduling conflicts of an advisor. SUNY Schenectady is not required to recess the hearing or allow the student to replace the banned advisor with a new advisor. SUNY Schenectady is not required to limit its capacity to conduct its judicial or conduct process due to scheduling or other delays (whether genuine or tactical) by an advisor.

- h. Attending the Hearing.
 - i. The complainant, accused, and their advisor(s), if any, shall be allowed to attend the entire portion of the hearing at which information is presented.
 - ii. If an accused student, with notice, does not appear at a hearing, the information in support of the charges shall be presented and considered, even if the accused student is not present.

- i. Right to Present and Exclude Evidence.
 - i. At any hearing conducted by the Hearing Board, the respondent will be offered an opportunity to present evidence and testimony. SUNY Schenectady will try to arrange the attendance of witnesses who are members of the SUNY Schenectady community, if reasonably possible, and who are identified by the complainant and respondent at least two weekdays prior to the hearing.
 - ii. Students will have the right to ask questions of the Hearing Board and, via the Chair of the Hearing Board, indirectly request responses from other parties and any other witnesses present.
 - iii. Students will have the right to make an impact statement during the point of the proceeding where the Hearing Board is deliberating on appropriate sanctions.
 - iv. Students will be provided with the opportunity to exclude (1) their own prior sexual history with persons other than the other party in the conduct process, and (2) their own mental health diagnosis and/or treatment from admittance in any stage of the disciplinary proceeding where responsibility is determined (including determinations by the Investigator, Hearing Board, and Appeals Board). However, past findings of domestic violence, dating violence, stalking, or sexual assault may be admissible in disciplinary stages that determine sanctions. Further, if a complainant engaged in sexual activity with more than one partner in a short time period (as reasonably determined by the College) and SUNY Schenectady alleges that the complainant sustained injuries during non-consensual sexual activity with the accused, the fact of consensual or non-consensual sexual activity with the unrelated individual may be admitted for the limited purpose of addressing how injuries were sustained. Such evidence may not be used to show a pattern of engaging in sexual activity by the complainant or to allege that that the complainant consented to activity with the unrelated individual, or the respondent.

- j. Privacy and Safety Concerns.
 - i. Hearings normally shall be conducted in private.
 - ii. The Hearing Board may accommodate concerns for the personal safety, well-being and/or fears of confrontation of the complainant, respondent, and/or other witness during the hearing by providing separate facilities, by using a visual screen, and/or permitting participation by telephone, video tape, written statement or other means, where and as determined in the sole judgment of the Vice President of Student Affairs to be appropriate.

- k. Withdrawal.
 - i. If the accused student withdraws from SUNY Schenectady while student conduct proceedings are in process, the student does so with charges pending. SUNY Schenectady reserves the right to adjudicate those charges when/if the student returns to SUNY Schenectady.

- ii. The complainant shall be permitted to withdraw from the hearing process at any time. If the complainant chooses to withdraw, however, SUNY Schenectady may choose to proceed with Student Conduct charges, without the complainant's participation. If SUNY Schenectady takes action after a complainant withdraws from the process, the complainant has the right to participate as much or as little as the complainant wishes.
 - i. Transcript. There shall be a single verbatim written transcript created of all hearings. The record shall be the property of SUNY Schenectady. The respondent and complainant will be given reasonable access to the full and fair record of the hearing, and SUNY Schenectady will maintain a copy of the record for at least five years after the hearing. If a participant requests an official transcript, SUNY Schenectady may choose to allow licensed court reporters to make transcripts of a hearing or proceeding, at the expense of the participant in the hearing who requests an official transcript. If one participant creates an official transcript, SUNY Schenectady may be required to provide that official transcript to the other party upon request.
4. Determination of Responsibility and Sanctions
 - a. After the portion of the hearing concludes in which all pertinent information has been received, the Hearing Board will make a finding by majority vote as to whether it is more likely than not that the accused student committed Sexual Misconduct and/or violated any section of the Code of Conduct that the student is charged with violating.
 - b. If the Hearing Board determines by a preponderance of the evidence that the accused student committed Sexual Misconduct and/or violated the Code of Conduct, the Hearing Board will then recommend whether to impose a sanction, and the severity of the sanction.
 - c. The sanctions that may be recommended by the Hearing Board include the following:
 - **No action;**
 - **Reprimand:** written reprimand with warning that continuation or repetition of misconduct may result in further disciplinary action;
 - **Restitution:** compensation for loss or injury, reimbursement for damages to or the misappropriation of property; or other payment for expenses incurred as a result of the student's actions;
 - **Mediation** and/or counseling referral;
 - **Disciplinary Probation:** suspension of a student from any or all College programs or activities that do not relate directly to the student's academic performance;
 - **Suspension:** discontinuance from classes and other designated privileges or activities for a definite period of time;
 - **Expulsion:** termination as a student of the College for an indefinite period;
 - **Degree Revocation:** The College reserves the right to revoke a degree when upon conclusion of an investigatory process it is determined that the degree was obtained by fraud;
 - **Community Service:** may include performance of no more than fifty (50) hours of unpaid work assignments per semester either on or off campus as specified.

Assignments are assigned and supervised by an administrative officer of the College and may not be combined or in conjunction with any other volunteer or court ordered requirement;

- **Educational Activities:** such sanctions may include a formal apology in writing and/or in person; a behavioral contract specifying the behavioral requirements to be followed, a reflective writing assignment or attendance at an event directly related to the violation committed;
 - **Restrictions:** temporary or permanent loss of the use of a College facility, service, and or the privilege of participating in any extra-curricular activity;
 - **Mental Health and Threat Assessments:** professional assessments may be imposed at the expense of the student;
 - **Other Secondary Sanctions/Interventions:** such sanctions/ interventions may be imposed instead of or in addition to those specified above.
- d. The Hearing Board may consider mitigating and aggravating circumstances when choosing whether or not to impose a sanction and the severity of the sanction, including without limitation any or all of the following:
- Nature of the offense;
 - Severity of the damage, injury, or harm resulting from the offense;
 - Whether the respondent promptly took responsibility for their actions;
 - Present demeanor of the respondent;
 - Past disciplinary history of the respondent, which includes, without limitation, completion of or pending disciplinary sanctions from past cases;
 - The respondent's honesty, or lack thereof, and the cooperation demonstrated during the investigation of the complaint and subsequent disciplinary proceeding;
 - Whether the charge involved an action directed at another based upon their race, religion, ethnicity, national origin, gender, age, physical ability, or sexual orientation;
 - The recommendation of associated victims or parties to the incident; and
 - Any other factor deemed relevant by the Hearing Board.
- e. The Hearing Board will then submit its findings and recommended sanctions to the Vice President of Student Affairs for review.
- f. The Vice President of Student Affairs may, following a review of the record, accept or reject the Hearing Board's determination of fact and the sanction recommendation. The Vice President of Student Affairs reserves the right to review and amend any decision of the Hearing Board.

D. Notification

Within five (5) business days of the receipt of the Hearing Board's written report and recommendation, the Vice President of Student Affairs will notify both parties simultaneously in writing of the result of the hearing process, any sanctions imposed, the rationale for the decision and the actual sanctions imposed, and the findings of fact, by mailing a copy of results by e-mail and certified mail to the last address provided to the College by the respondent and complainant. Should any change in outcome occur prior to finalization, all parties will be timely informed in writing, and will be notified when the results of the resolution process become final.

The parties will also be informed of their right to appeal the decision to an Appeals Board within two (2) business days of the decision, pursuant to the procedures set forth below. Unless otherwise required by law, SUNY Schenectady will protect all information obtained about students during the course of the disciplinary process from public release, until the Appeals Board makes a final determination.

The decision of the Vice President of Student Affairs or designee shall take effect immediately unless otherwise provided for in the student notification, and such decision shall be final except as provided for in the appeal process.

E. Disclosure of Information Following Hearing

Students have the option to choose whether to disclose or discuss the outcome of the hearing. Unless otherwise required by law, SUNY Schenectady will protect all information obtained about students during the course of the disciplinary process from public release, until the students' rights to appeal lapse, or the Appeals Board makes a final determination.

F. Appeals Process

1. Grounds for an Appeal

Appeals can be requested for one or more of the following reasons only:

- To determine whether the penalty is inappropriate to the finding (including where a student admits to wrongdoing, and an agreement is reached on liability, but no agreement is reached regarding penalty);
- To determine whether the finding of the Vice President of Student Affairs is supported by the evidence;
- To determine whether the student's procedural rights were violated;
- To determine whether new evidence, which was unavailable at the original proceeding, has been discovered;
- To review an investigator's final determination that no Sexual Misconduct violation occurred; and
- To review any portion of the Vice President of Student Affairs' final determination regarding a Sexual Misconduct charge or complaint.

2. Appeals of Title IX Coordinator's Investigation Decision

- A final determination that the respondent is not responsible by the Title IX Coordinator following an investigation may be appealed by the complainant to an Appeals Board within two (2) business days of receipt the decision. Such appeals shall be in writing and shall be delivered to the Vice President of Student Affairs. Upon receipt of an appeal, the Vice President of Student Affairs will confirm that the appeal is supported by one of the reasons listed in section XVI(A)(1), above.
- If no appeal is submitted to the Vice President of Student Affairs within two (2) business days of the decision, the determination of the Title IX Coordinator will become final, unless the complainant filing the appeal

can establish good cause for the delay in filing the appeal.

- If a proper appeal is not filed, the Vice President of Student Affairs shall dismiss the appeal. If a proper appeal and submission are filed, the Vice President of Student Affairs shall appoint an Appeals Board. All case documentation shall be delivered to each member of the Appeals Board.
- The Vice President of Student Affairs shall convene an Appeals Board within ten (10) days of receiving the appeal. The Appeals Board shall reach a determination within ten (10) business days after it is convened.
- The parties will be informed, in writing, of the result of the appeal, the Appeals Board's recommended sanctions, the rationale for the result and for the Appeals Board's recommended sanctions, and the Appeals Board's findings of fact. Delivery of this outcome will not be delayed to either party, and should occur as nearly simultaneously as possible, without unnecessarily bringing those in conflict into close proximity to each other.
- Appeals Board proceedings will be conducted by individuals who have received annual training on issues related to conducting investigations of sexual violence, the effects of trauma, impartiality, the rights of the respondent, including the right to a presumption that the respondent is "not responsible" until a finding of responsibility is made, how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability, SUNY Schenectady's policies and procedures, and other issues including, but not limited to domestic violence, dating violence, stalking and sexual assault.

3. Appeals Following a Hearing and Final Determination

- A final determination by the Vice President of Student Affairs following a hearing may be appealed by the respondent or the complainant to an Appeals Board within two (2) business days of receipt of the decision. Such appeals shall be in writing and shall be delivered to the Vice President of Student Affairs. Upon receipt of an appeal, the Vice President of Student Affairs will confirm that the appeal is supported by one of the reasons listed in section XVI(A)(1), above.
- If no appeal is submitted to the Vice President of Student Affairs within two (2) business days of the decision, the determination of the Vice President of Student Affairs will become final, unless the individual filing the appeal
can establish good cause for the delay in filing the appeal.
- If a proper appeal is not filed, the Vice President of Student Affairs shall dismiss the appeal. If the Vice President of Student Affairs determines that the appeal falls within one of the above-listed categories, a copy of the record of the hearing will be made available to both parties as soon as it is available.
- Once the appellant receives the hearing record, the appellant will have five (5) business days from their review of the hearing record to present their reasons for the appeal with supporting documentation. The other party must be provided with notice of the appeal, with access to the same evidence made available to the appellant, and with the same opportunity to submit supporting documentation. However, the other party is not required to submit supporting documentation.

- If the appellant fails to submit supporting documentation within five (5) business days after review of the hearing record, the determination of the Vice President of Student Affairs will become final, unless the appellant can establish good cause for the delay in filing the submission.
- If a proper appeal and submission are filed, the Vice President of Student Affairs shall appoint an Appeals Board. The submission, hearing record, and all case documentation shall be delivered to each member of the Appeals Board.
- The Vice President of Student Affairs shall convene an Appeals Board within ten (10) days of receiving the appellant's supporting documentation. The Appeals Board shall reach a determination within ten (10) business days of being convened.
- The parties will be informed, in writing, of the result of the appeal. The parties will also be informed in writing of the Appeals Board's recommended sanctions, the rationale for the result and for the Appeals Board's recommended sanctions, and the Appeals Board's findings of fact. Delivery of this outcome will not be delayed to either party, and should occur as nearly simultaneously as possible, without unnecessarily bringing those in conflict into close proximity to each other.

G. Student Disciplinary Files and Records

If a student is suspended or expelled after being found responsible for Sexual Misconduct, SUNY Schenectady must make a notation on the student's transcript that they were "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." If a student withdraws from SUNY Schenectady while such conduct charges related to crimes of violence are pending against the student, and declines to complete the disciplinary process, SUNY Schenectady must make a notation on the student's transcript that they "withdrew with conduct charges pending." These transcript notations can be appealed by contacting the Registrar, 518-381-1388, registrar@sunysccc.edu, Elston 208. Transcript notations for violence-related suspensions shall not be removed prior to one year after conclusion of the suspension. Transcript notations for violence-related expulsions shall never be removed from a student's transcript. If a finding of responsibility is vacated for any reason, however, the transcript notation must be removed.

VI. Employee Discipline for Sexual Misconduct

Employee discipline will be handled through the Office of Human Resources, in accordance with its procedures for complaints against management confidential employees, or for complaints against an employee who is a member of a union, in accordance with the disciplinary procedures set forth in the applicable Collective Bargaining Agreements.

The disciplinary sanctions which may be imposed on employees who have been found responsible for committing Sexual Misconduct are the following:

- counseling, warning, or reprimand;
- additional training;
- suspension without pay; or
- discharge.

All parties will be informed of their potential rights to exercise a request for an appeal of the disciplinary determination under the Employee Handbook, Contract, and/or collective bargaining agreement with SUNY Schenectady.

VII. Legal Consequences of Sexual Misconduct

Engaging in Sexual Misconduct may also lead to civil and/or criminal action under the New York State Penal Law. Any employee who, in violation of SUNY Schenectady's policy, engages in Sexual Misconduct, is acting outside the scope of their employment and may be personally liable for such actions and their consequences. In the event legal proceedings are commenced against such an employee, SUNY Schenectady may decline to provide legal, financial, or other assistance.

VIII. Prohibition of Retaliation

It is a violation of federal and state law and this policy for any employee or student to retaliate against any student or employee for exercising any rights or responsibilities under the Violence Against Women Act, the Clery Act, and/or Title IX. This includes retaliating against a student or employee who reports an incident of an incident of Sexual Misconduct in good faith, or furnishes information or participates in any manner in an investigation of such a report. Retaliation includes any conduct directed at someone because they engaged in such protected activity, which might deter a reasonable student or employee from making or supporting such a report.

Retaliation is unlawful and will not be tolerated. SUNY Schenectady will protect students and employees from retaliation by SUNY Schenectady, any student, any employee, the accused and/or the respondent, and/or their friends, family and acquaintances within SUNY Schenectady's jurisdiction. Any individual found to have engaged in retaliation will be subject to disciplinary action, up to and including, termination of employment and/or dismissal from SUNY Schenectady.

Any employee or student who feels as though someone has subjected them to retaliation as a result of a report or participation into the investigation of a report should contact Ben DeAngelis, Title IX Coordinator for students, titleix@sunysccc.edu Edmund McTernan, Executive Director for Human Resources, mcternej@sunysccc.edu, 518)-381-1331 for employees immediately.

IX. Additional Training Provided by SUNY Schenectady

In addition to the training outlined in the Policies, SUNY Schenectady also offers specific training to international students, students that are also employees, leaders and officers of registered or recognized student organizations, and online and distance education students, and members of any high-risk populations, as determined by SUNY Schenectady.

Additionally, SUNY Schenectady offers general and specific training on each of the following topics to all students and employees:

1. SUNY Schenectady's policy prohibiting relationship violence, sexual assault, and stalking;
2. the definitions of "dating violence," "domestic violence," "sexual assault," and "stalking" under federal law, New York law, and SUNY Schenectady's policies;
3. the definition of "consent," in reference to sexual activity, under federal law, New York law, and SUNY Schenectady's policies;

4. a description of SUNY Schenectady's educational programs and campaigns to promote the awareness of relationship violence, sexual assault, and stalking;
5. procedures victims should follow if a crime of relationship violence, sexual assault, or stalking has occurred, including information about:
 - a. the importance of preserving evidence that may assist in proving that the alleged criminal offense occurred or may be helpful in obtaining a protection order;
 - b. how and to whom the alleged offense should be reported;
 - c. options about the involvement of law enforcement and campus authorities, including notification of the victim's option to: (i) notify proper law enforcement authorities, including on-campus and local police; (ii) be assisted by campus authorities in notifying law enforcement authorities if the victim so chooses; and (iii) decline to notify such authorities;
6. the rights of victims and SUNY Schenectady's responsibilities for orders of protection, "no-contact" orders, restraining orders, or similar lawful orders issued by a criminal, civil, or tribal court or by SUNY Schenectady;
7. information about how SUNY Schenectady will protect the confidentiality of victims and other necessary parties, including how it will:
 - a. complete publicly available recordkeeping without including personally identifying information about the victim; and
 - b. maintain as confidential any accommodations or protective measures provided to the victim, to the extent that maintaining such confidentiality would not impair the ability of SUNY Schenectady to provide the accommodations or protective measures;
8. SUNY Schenectady's policy of providing written notification to students and employees about existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available for victims, both within SUNY Schenectady and in the community; and
9. SUNY Schenectady's policy of providing written notification to victims about options for, available assistance in, and how to request changes to academic, living, transportation, and working situations or protective measures;
10. SUNY Schenectady's policy that, when a student or employee reports to SUNY Schenectady that the student or employee has been a victim of relationship violence, sexual assault, or stalking, whether the offense occurred on or off campus, the institution will provide the student or employee a written explanation of the student's or employee's rights and options;
11. a description of SUNY Schenectady's disciplinary proceedings regarding alleged incidents of relationship violence, sexual assault, or stalking, which:
 - a. include a prompt, fair, and impartial process from the initial investigation to the final result;
 - b. are conducted by officials who, at a minimum, receive annual training on the issues related to relationship violence, sexual assault, and stalking and on how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability;
 - c. provide the accuser and the accused with the same opportunities to have others present during any institutional disciplinary proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice;
 - d. do not limit the choice of advisor or presence for either the accuser or the accused in any meeting or institutional disciplinary proceeding; and
 - e. require simultaneous notification, in writing, to both the accuser and the accused, of (i) the result of any institutional disciplinary proceeding that arises from an allegation of dating violence, domestic violence, sexual assault, or stalking; (ii) the institution's procedures for the accused and the victim to appeal the result of the institutional

- disciplinary proceeding, if such procedures are available; (iii) any change to the result; and (iv) when such results become final.
12. information on how to prevent and identify sexual violence;
 13. the potential for re-victimization by responders and its effect on students and employees;
 14. the impact of trauma on victims;
 15. the role alcohol and drugs can play in sexual violence incidents;
 16. appropriate methods for responding to a student or employee who may have experienced sexual violence, including the use of nonjudgmental language;
 17. reporting obligations, including what should be included in a report, any consequences for failing to report, and how requests for confidentiality should be treated;
 18. protections against retaliation; and
 19. other information to prevent violence, promote safety and reduce perpetration.

Additionally, all employees and students are offered information regarding risk reduction. Risk reduction means options designed to decrease perpetration and bystander inaction, and to increase empowerment for victims in order to promote safety and to help individuals and communities address conditions that facilitate violence.

SUNY Schenectady shares information on sexual and interpersonal violence and Sexual Misconduct prevention with parents of enrolling students. Information for parents can be found on SUNY Schenectady's website, at <https://sunysccc.edu/About-Us/Diversity-Equity-and-Inclusion/index.html>.

SUNY Schenectady regularly assesses programs and policies established pursuant to federal and state law to determine effectiveness and relevance for students and employees.

The Title IX Coordinator, and designees (if any), receive annual training on:

- issues related to sexual assault, relationship violence, and stalking,
- how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability,
- how to conduct investigations of sexual violence,
- the effects of trauma,
- impartiality,
- the rights of the respondent, including the right to a presumption that the respondent is "not responsible" until a finding of responsibility is made, and
- SUNY Schenectady's policies and procedures, and other issues.

Further, SUNY Schenectady trains all Title IX Coordinators and all investigators, decision-makers, individuals involved in informal resolution processes under the Title IX Grievance Procedure, on the following:

- the scope of SUNY Schenectady's education program or activity,
- how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and
- how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

Decision-makers under the Title IX Grievance Procedure also receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant under the Title IX Grievance Procedure.

Investigators under the Title IX Grievance Procedure receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

Any materials used to train Title IX Coordinators and Title IX Grievance Procedure investigators, decision-makers, and informal mediators:

- do not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment;
- are publicly available on SUNY Schenectady's website; and
- are maintained by SUNY Schenectady for a period of seven years.

X. Bystander Intervention Training Provided by SUNY Schenectady

SUNY Schenectady also offers training on bystander intervention. Bystander intervention means safe and positive options that may be carried out by an individual or individuals to prevent harm or intervene when there is a risk of relationship violence, sexual assault, or stalking. Bystander intervention includes recognizing situations of potential harm, understanding institutional structures and cultural conditions that facilitate violence, overcoming barriers to intervening, identifying safe and effective intervention options, and taking action to intervene.

SUNY Schenectady expects all members of the campus community to take reasonable and prudent actions to prevent or stop an act of sexual misconduct. Educating and engaging bystanders are effective ways to help prevent acts of sexual misconduct. Bystanders can help in several different ways, including direct invention, seeking assistance from an authority figure, notifying campus security, or calling State or local law enforcement.

If you see an act of sexual misconduct: It is important to understand that no individual has the right to be violent, regardless of whether people are in a relationship. Recognizing when acts of sexual misconduct are occurring is the first step to intervening. Required campus education and training programs give a full synopsis on recognizing when sexual misconduct is taking place. If you make the decision to intervene, do so safely – violence does not stop violence, and, if you cannot stop the act with your words, call law enforcement. Do not be afraid to ask an employee or other students for help.

If a victim confides in you: It is important to let victims tell their stories. Listen respectfully, and help them explain and identify what has happened to them. Do not contradict them or play “devil’s advocate” even if parts of the story don’t immediately make sense or even if you would have made other choices when presented with the same scenario or challenges. Help the victim identify others in their network who they can confide in. Ask the victim what they need to feel safe, encourage them to seek medical attention and counseling, and encourage them to report the act if they feel comfortable doing so. The first people that a victim talks to can have a significant impact on the person and their ability to report and get through an ordeal. Be a supportive, kind, understanding and nonjudgmental person and you can be a positive force for this victim in seeking the help they require to move forward.

XI. SUNY Schenectady Public Awareness and Advocacy Events

As part of SUNY Schenectady’s public awareness campaign, SUNY Schenectady may from time to time schedule primary prevention, public awareness, and advocacy programs for students and

employees. Contact Student Activities for additional information - <https://sunysccc.edu/Current-Students/Student-Life-and-Resources/Student-Activities/index.html>.

If an individual discloses information through a public awareness event such as candlelight vigils, protests, or other public event, SUNY Schenectady is not obligated to begin an investigation based on such information. However, SUNY Schenectady may use the information provided at such an event to inform its efforts for additional education and prevention efforts.

XII. SUNY Schenectady Memoranda of Understanding

SUNY Schenectady has entered into memoranda of understanding with providers to:

1. provide sexual assault forensic examination to students;
2. provide legal assistance to students (including both accused/respondents and reporting individuals); and
3. provide victim advocacy and support services to victims of sexual violence

Please see the College's Title IX page at <https://sunysccc.edu/About-Us/Title-IX/index.html> for more information.

SUNY Schenectady has also entered into a memorandum of understanding with local law enforcement authorities, regarding the protocols and procedures for referring allegations of sexual violence, relationship violence, and stalking, sharing information and conducting contemporaneous investigations regarding such allegations.

See <http://sunysccc.edu/About-Us/Campus-Safety> for more information.

Appendix A

A Plain Language Explanation of Distinctions Between the New York State Penal Law and SUNY Schenectady’s Disciplinary Processes¹

	Criminal Justice System	SUNY Schenectady Disciplinary System
Goals.	Public safety, deterrence, and punishment.	Education; safety; safe and supportive campus environment.
Governing Law.	New York State Penal Code; New York State Rules of Criminal Procedure (or another state’s rules if the crime took place there), Federal Criminal Law, and Rules of Evidence.	Title IX; The Clery Act as amended by the Violence Against Women Act; NYS Education Law sections 129-A and 129-B. More specific rules govern particular colleges and universities.
How to report and whether there must be action once a report is made.	Crimes involving sexual violence may be reported to campus police (if the campus has police officers), the local police agency, or to the New York State Police. Certain crimes may also be reported to federal law enforcement agents. Once a report is made, the decision whether to investigate is made by the police/law enforcement agency, often in consultation with a District Attorney or other prosecuting agency. An investigation may be conducted without the consent or participation of a reporting individual. The ultimate decision of whether to initiate a criminal prosecution is initially made by a prosecutor. In cases involving felony charges, the final charging decision is made by a Grand Jury.	Victims may disclose sexual violence to various college employees who are designated confidential resources or to others who will try to ensure privacy to the extent consistent with the institution’s obligation to provide a safe educational environment. Disclosures made to a confidential resource will not trigger an investigation. When a report is made to the Title IX Coordinator (TIXC) or another Non-Confidential resource, the TIXC will determine whether an investigation is necessary by weighing a request for confidentiality by the reporting individual against the continuing safety of that person and the safety and best interests of the campus community.

¹ Originally published by Chantelle Cleary, Title IX Coordinator, University at Albany; Lori Fox, General Counsel, Teachers College; Rachel J. Nash, Associate General Counsel, City University of New York; Andrea Stagg, Deputy General Counsel, Barnard College; and Joseph Storch, Associate Counsel, State University of New York on October 28, 2015.

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Who investigates?	Police or other law enforcement officials.	Investigators employed or retained by SUNY Schenectady; these individuals may work for different departments within SUNY Schenectady, including, but not limited to, the campus safety department, student affairs and academic affairs.
Procedures	See Governing Law. Procedures established by police departments, prosecutors' offices, etc.	SUNY Schenectady policies and Bylaws, which generally incorporate requirements of Governing Law. Collective bargaining agreements may impact some procedures.
Standard of Evidence.	Crimes must be proven "Beyond a Reasonable Doubt"	A violation of disciplinary rules must be found by a "Preponderance of the Evidence" (more likely than not)
Confidentiality.	Law enforcement agencies offer some confidential assistance, but a criminal charge and trial must be public.	SUNY Schenectady offers confidential resources, but a disciplinary proceeding requires that relevant information be shared with those involved.
Privacy.	Criminal trials must be public.	Disciplinary proceedings are kept as private as possible, but information must be shared with certain individuals within the college, the parties, and pursuant to law.
Who are the parties?	The prosecution and defendant. The victim/survivor is not a party, but often the critical witness for the prosecution	SUNY Schenectady and the respondent are parties, and the reporting individual has certain rights to participate, as the law provides.
Participation in the process.	In limited circumstances, a criminal prosecution can proceed without the participation or cooperation of the reporting individual, but without a reporting individual's participation, it is generally more difficult to prove a crime beyond a reasonable doubt.	Reporting students cannot be required to participate in the SUNY Schenectady process. However, SUNY Schenectady will be limited in its ability to respond if a reporting individual does not participate.

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Who initiates the proceedings?	A prosecutor, acting on behalf of the state (or the United States in federal cases).	SUNY Schenectady initiates proceedings. While rules vary from school to school, they most provide an active role for the reporting individual.
Testimony.	In a court, testimony is generally public. Other parties are, through counsel, entitled to cross-examine witnesses.	SUNY Schenectady provides for alternative approaches that permit students to testify without having other parties in the room and/or to ask cross-examination questions only through the Hearing Board, investigator, or representative of the reporting individual and/or respondent.
Role of attorneys.	Both the state and the defendant are represented by counsel; counsel may question witnesses.	Parties may be advised by attorneys, but the attorneys' roles are limited to quietly speaking with their clients or passing notes, or conducting cross-examination under the Title IX Grievance Policy.
Mental Health and Sexual History.	In New York, a reporting individual's prior sexual and mental health history is generally, but not always, inadmissible in a criminal case. There are limited circumstances under which directly relevant evidence of that kind may be admitted.	Generally not admissible, but subject to quite limited exceptions. Education Law 129-b permits parties to exclude information about their prior sexual history with persons other than the other party and also to exclude evidence of their own mental health history in the fact finding phase of the disciplinary process.

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Possible Results.	<p>If a prosecution takes place, the defendant may</p> <ul style="list-style-type: none"> • plead guilty or “no contest” • have the case dismissed by the judge (on legal grounds) • be found “guilty” or “not guilty” by a judge or jury 	<p>Mediation or similar procedures may be permitted if the parties agree. If there is a formal proceeding, the respondent may be found “responsible” or “not responsible” for violations of the institution’s rules. Respondents may also accept responsibility before a finding by an adjudicator.</p>
Sanctions.	<p>An individual found guilty may be fined, imprisoned, or both. In some courts, alternative sanctions are sometimes used.</p>	<p>An individual found responsible for violating SUNY Schenectady policy may be given a range of sanctions (depending on the severity of the conduct and other factors, such as prior judicial history), ranging from a warning to suspension or expulsion from the institution.</p>