

# STUDENT CODE OF CONDUCT

## I. POLICY STATEMENT

Students enrolling at SUNY Schenectady County Community College (“SUNY Schenectady” or the “College”) assume an obligation to conduct themselves in a manner compatible with the academic standards, policies, procedures, rules and regulations of the College and its entities. The SUNY Schenectady Student Code of Conduct (the “Code”) defines the expectations, rights and responsibilities of all members of the student body. Students are members of the College community and are expected to act responsibly and to not interfere with the rights, comfort, or safety of other members of the College community. All students are held accountable for their actions. Behavior that adversely affects the student’s responsible membership in the academic community shall result in appropriate disciplinary action.

## II. NONDISCRIMINATION

SUNY Schenectady applies the protections set forth in these policies and procedures 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 characteristic protected by law. Students may exercise civil rights and practice religion without interference by SUNY Schenectady’s investigative, criminal justice, or judicial or conduct process.

## III. PURPOSE OF THE CODE

The Student Code of Conduct and the accompanying student disciplinary processes are intended to assist students in their personal development by providing a fair conduct review procedure that issues consistent responses for behaviors that are incongruent with the College’s expectations. In furthering the educational aims of the college and maintaining compliance with the provisions of Article 129-A of the Education Law of the State of New York, the Code outlines the practices to be utilized in administering the student disciplinary system at SUNY Schenectady.

## IV. PHILOSOPHY

The Code embraces several core philosophies: preservation of the freedom of speech and the rights of peaceable assembly; respect for academic freedom and constructive criticism; a conviction that honesty and integrity are key values to the College community; and the belief that all members of the institution should be part of a campus environment that respects and appreciates differences. Procedures used to enforce standards contribute to teaching appropriate individual and group behaviors as well as protecting the rights of individuals and the campus community from disruption and/or harm. The disciplinary experience is intended to make clear to students the limits of acceptable behavior and to provide students who violate the Code an opportunity to more fully understand the rules and incorporate the experience into his/her personal growth and development. The disciplinary experience is designed to be both educational and corrective.

## V. DEFINITIONS

- A. The “Assistant Vice President of Student Affairs” is the senior officer designated by the President of SUNY Schenectady to be responsible for the administration of the Student Conduct Code. The Assistant Vice President, or his or her designee, is responsible for the day to day administration of the Student Conduct Code.
- B. The term “member of the College community” includes any person who is a student, faculty member, SUNY Schenectady official or any person employed by SUNY Schenectady. A person’s status in a particular situation shall be determined by the Assistant Vice President of Student Affairs.
- C. The term “SUNY Schenectady premises” includes all land, buildings, facilities, vehicles, and other property used, or in the possession of, or owned or controlled by SUNY Schenectady (including adjacent streets and sidewalks).

- D. The term “complainant” means the College on behalf of an individual or department in SUNY Schenectady community.
- E. The term “co-complainant” means the member of the College community who may have initiated the complaint.
- F. The term “affirmative consent” means a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant’s sex, sexual orientation, gender identity, or gender expression.
- Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.
  - Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
  - Consent may be initially given but withdrawn at any time.
  - Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.
  - Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
  - When consent is withdrawn or can no longer be given, sexual activity must stop.
- G. The term “Sexual Offense” means sexual activity, sexual assault, relationship violence, and stalking, as defined in SUNY Schenectady’s Sexual Assault, Relationship Violence, and Stalking Policies & Procedures For Students and Employees, available at <https://www.sunysccc.edu/About-Us/Policies-and-Procedures/Student-Policies>.
- H. The term “Sexual Offense Conduct Proceeding” means a conduct proceeding that involves allegations of one or more Sexual Offenses, as that term is defined above.
- I. The term “crime of violence” means murder, Sexual Offense, robbery, aggravated assault, burglary, motor vehicle theft, manslaughter, and arson.
- J. The term “bystander” shall mean a person who observes a Sexual Offense, crime, impending crime, conflict, potentially violent or violent behavior, or conduct that is in violation of rules or policies of SUNY Schenectady.
- K. The term “Compliance Officer” shall mean an investigator designated by the Assistant Vice President of Student Affairs to promptly conduct a fair, complete, thorough, and impartial investigation regarding an alleged Sexual Offense. Compliance Officers 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, SUNY Schenectady’s Sexual Assault, Relationship Violence, and Stalking Policies & Procedures For Students and Employees, and other issues related to Sexual Offenses.
- L. The term “Student Affairs Committee” shall mean a group of SUNY Schenectady administrative, faculty, staff, and student members from which Student Affairs Subcommittee on Discipline members are chosen.
- M. The term “Student Affairs Subcommittee on Discipline” (hereinafter the “Subcommittee”) shall mean a group designated by the Chairperson of SUNY Schenectady’s Student Affairs Committee to hear a case of alleged student misconduct, containing three members from the Student Affairs Committee, one of whom will be a student. The Assistant Vice President of Student Affairs or her/his designee serves as a nonvoting chairperson and procedural

officer. The Student Affairs Subcommittee on Discipline is charged with determining whether a student has violated the Student Code of Conduct and to levy sanctions when a rules violation has been committed.

- In cases involving one of more Sexual Offense charges only: Members of the Subcommittee 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, SUNY Schenectady’s Sexual Assault, Relationship Violence, and Stalking Policies & Procedures For Students and Employees, and other issues related to Sexual Offenses.

N. The term “Appellate Board” means:

- In cases that do not involve any Sexual Offense charges: any one or more persons appointed by the Assistant Vice President of Student Affairs to consider an appeal from a Subcommittee’s determination, and/or from the sanctions imposed by the Subcommittee.
- In cases involving one or more Sexual Offense charges: any three or more persons authorized by the Assistant Vice President of Student Affairs to consider an appeal from a Compliance Officer’s determination that no Sexual Offense violation occurred, and from a Subcommittee’s final determination regarding responsibility and/or sanctions. Such board shall be appointed by the Assistant Vice President of Student Affairs and consists of a panel of administrator(s) or faculty member(s) (chosen from a list of SUNY Schenectady faculty who have been designated to serve in this capacity). Members of the Appellate 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, SUNY Schenectady’s Sexual Assault, Relationship Violence, and Stalking Policies & Procedures For Students and Employees, and other issues related to sexual assault, domestic violence, dating violence, and stalking.

O. The term “business day” is defined as any day between Monday through Friday with the exception of legal holidays.

P. The term “respondent” means a person accused of a violation who has entered SUNY Schenectady’s judicial or conduct process.

Q. The term “reporting Individual” shall encompass the terms victim, survivor, complainant, claimant, witness with victim status, and any other term used by an institution to reference an individual who brings forth a report of a violation.

## **VI. STUDENTS’ BILL OF RIGHTS.**

The State University of New York and SUNY Schenectady are committed to providing options, support and assistance to victims and survivors of sexual assault, domestic violence, dating violence, and/or stalking to ensure that they can continue to participate in College-wide and campus programs, activities, and employment. All victims and 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 characteristics have the following rights, regardless of whether the crime or violation occurs on campus, off campus, or while studying abroad:

A. All students have the right to:

1. Make a report to local law enforcement and/or state police;
2. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
3. Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure by SUNY Schenectady;

4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
5. Be treated with dignity and to receive from SUNY Schenectady courteous, fair, and respectful health care and counseling services, where available;
6. Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
7. Describe the incident to as few SUNY Schenectady representatives as practicable and not be required to unnecessarily repeat a description of the incident;
8. Be protected from retaliation by SUNY Schenectady, any student, the accused and/or the respondent, and/or their friends, family and acquaintances within the jurisdiction of SUNY Schenectady;
9. Access to at least one level of appeal of a final determination;
10. Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or respondent throughout the judicial or conduct process including during all meetings and hearings related to such process; and
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of SUNY Schenectady.

B. Options in Brief:

Victims/survivors have many options that can be pursued simultaneously, including one or more of the following:

- Receive resources, such as counseling and medical attention;
- Confidentially or anonymously disclose a crime or violation;
- Make a report to:
  - o An employee with the authority to address complaints, including the Title IX Coordinator, a Student Conduct employee, or a Human Resources employee;
  - o Campus security;
  - o Local law enforcement; and/or
  - o Family Court or Civil Court.

A complete description of all options for victims and reporting individuals can be found in SUNY Schenectady's Policy on Sexual Assault, Relationship Violence, and Stalking for Students and Employees, available at: <https://www.sunysccc.edu/About-Us/Policies-and-Procedures/Student-Policies>.

## **VII. JURISDICTION**

The College will have jurisdiction over misconduct that occurs on College premises and/or at College sponsored activities. The College may also address off campus behavior if the College determines that the behavior, or the continued presence of the student, impairs, obstructs, interferes with or adversely affects the mission, processes or functions of the College. The College will also have jurisdiction over Sexual Offenses that occur on or off campus, or while students are studying abroad.

## **VIII. STUDENT AMNESTY POLICY**

The health and safety of every student at the State University of New York and its State-operated and community colleges 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 SUNY Schenectady 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 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.

## IX. VIOLATIONS.

- A. REFERRALS. Complaints, incidents, or referrals regarding student behavior as hereinafter described in paragraph "B" should be reported to the Division of Student Affairs (Room 222, Elston Hall). The Assistant Vice President of Student Affairs or his/her designee, will investigate each report and determine the action to be taken.
- B. BEHAVIOR SUBJECT TO DISCIPLINE. All of the following behaviors are a violation of the Code and may subject a student to disciplinary action as set forth below. A violation occurs when there is evidence of a student having committed actual misconduct, attempting to commit misconduct but not completing the violation (i.e. offering to sell illegal substances to an individual who does not buy them or trying to steal an item but stopping or being stopped before removing the item from its location), assisting or convincing another person to commit misconduct, and misconduct or attempted misconduct by a student's guest.
  1. ACADEMIC MISCONDUCT. Commission of an act which violates the academic integrity of SUNY Schenectady County Community College as detailed in section G-2 of the Academic Code, including, but not limited to, academic cheating; plagiarism; the sale, purchase or exchange of papers, or research; or theft of another's work from any source is a violation of the Code.
  2. ALCOHOLIC BEVERAGE VIOLATION. Except for appropriate classroom activities or approved student activities, the possession and/or consumption of any alcoholic beverage is a violation of this College Code. Students under the influence of alcohol on campus property is also a violation of the code. Possession and/or consumption of alcoholic beverages by students participating in a College club or College sponsored trip or an off-campus activity is also prohibited. Any action that involves the forced consumption of alcohol for the purpose of initiation into or affiliation with any organization is also strictly prohibited, and will be subject to disciplinary action.
  3. DRUGS AND/OR DRUG PARAPHERNALIA. Possession or use of any illegal controlled substance, drug, or drug paraphernalia is prohibited and will be reported to local and state authorities and will also be subject to disciplinary action by the College. Being under the influence of drugs including, but not limited to, marijuana, and any cannabinoid containing product is prohibited on College premises or at any College function. Any action that involves the forced consumption of illegal drugs for the purpose of initiation into or affiliation with any organization is also strictly prohibited, and will be subject to disciplinary action. The College will cooperate with local and state authorities on any cases of suspected illegal use, possession or distribution of state- controlled drugs.
  4. COMPUTER MISUSE. Engaging in any unauthorized use of the College's hardware, software, or network systems is prohibited, including:
    - A. unauthorized access, entry, or use of a computer, computer system, network, software, password, account or data;
    - B. unauthorized alteration or tampering with computer equipment, software, network, or data;
    - C. unauthorized copying or distribution of computer software or data, use of computer facilities' equipment to send obscene, harassing, threatening or abusive messages or images;
    - D. use of computers to falsify records, tamper with records or commit any act of academic dishonest;
    - E. Any other act in violation of the law and/or the College policies and guidelines regulating computer-related use.

5. **CRIMINAL ACTS.** Any alleged criminal act committed by a student off campus, which is of such serious nature that it threatens the health or safety of the College community, is a violation of this Code.
6. **DEMONSTRATIONS.** Any individual or group behavior which endangers life, public or private property or violates local, state or federal law is a violation of the Code.
7. **DISCRIMINATION.** It is a violation of the code to engage in unlawful Discrimination, as defined in SUNY Schenectady's Procedures for Resolving Complaints of Discrimination, Harassment, and Retaliation, available at: <https://www.sunysccc.edu/About-Us/Policies-and-Procedures/Student-Policies>.
8. **DISHONESTY.** The falsification of information which includes any form of providing false or misleading information in writing, orally, or electronically in a manner which has the intent or effect of deceiving college personnel, or altering or falsifying official College records or documents; and/or the misrepresentation of oneself as an agent of the College is a violation of the Code.
9. **DISRUPTIVE CONDUCT.** Any behavior that substantially threatens, harms, or interferes with the peace and good order of the College community, students, visitors, personnel and/or other College processes and functions, including but not limited to, lewd, indecent, or obscene conduct or expression; unreasonable and disruptive noise; public intoxication; or prohibited athletic activity on College owned or controlled property or at a College sponsored or supervised function is a violation of the Code.
10. **FAILURE TO COMPLY.** The willful obstruction and/or the failure to comply with the directions of any College official acting in performance of his/her prescribed duty; failure to provide valid student identification upon request of a College official; failure to comply with all regulations regarding student conduct on campus, and/or any violation of a College policy or procedure is a violation of the Code.
11. **FIRE SAFETY VIOLATION.** Violation of campus safety regulations, including but not limited to, setting unauthorized fires, tampering with fire safety and/or firefighting equipment or rendering such equipment inoperable, pulling or turning in a false fire alarm, tampering or improper use of campus emergency phones, falsely reporting a hazard, or failure to evacuate facilities upon the sounding of a fire alarm or drill is a violation of the Code.
12. **GAMBLING.** Gambling for money or prizes except for approved college activities is prohibited on College owned or controlled property or at any College sponsored or supervised function is a violation of the Code.
13. **HARASSMENT.** It is a violation of the code to engage in sexual or other unlawful Harassment, as defined in SUNY Schenectady's Procedures for Resolving Complaints of Discrimination, Harassment, and Retaliation, available at: <https://www.sunysccc.edu/About-Us/Policies-and-Procedures/Student-Policies>.
14. **IDENTIFICATION CARD VIOLATION.** SUNY Schenectady identification cards should be carried at all times and must be produced, upon request, to any college personnel. The use of an identification card by anyone else other than the rightful owner is a violation of the Code.
15. **REMOVAL OF LIBRARY BOOKS AND MATERIALS.** Removal of books or other materials from the College Library in violation of the normal checkout procedures is a violation of the Code. Students with such materials and books in their possession will be considered as knowingly participating in the use of stolen materials.
16. **RETALIATION.** It is a violation of the code to engage in unlawful Retaliation, as defined in SUNY Schenectady's Procedures for Resolving Complaints of Discrimination, Harassment, and Retaliation, available at: <https://www.sunysccc.edu/About-Us/Policies-and-Procedures/Student-Policies>, and in SUNY Schenectady's Policy on Sexual Assault, Relationship Violence, and Stalking for Students and Employees, available at: <https://www.sunysccc.edu/About-Us/Policies-and-Procedures/Student-Policies>.

17. SANCTION VIOLATION. Violations of a College judicial sanction including, but not limited to, failing to meet the terms of the sanction, failure to complete a specified condition or assignment of a sanction, or violating the Student Code of Conduct when on disciplinary probation is a violation of the Code.
18. SEXUAL OFFENSE. It is a violation of the code to engage in a Sexual Offense, as defined above, and in SUNY Schenectady's Policy on Sexual Assault, Relationship Violence, and Stalking for Students and Employees, available at <https://www.sunysccc.edu/About-Us/Policies-and-Procedures/Student-Policies>.
19. SOLICITING. The advertisement, solicitation or sale of any item or service on College property, unless a part of an approved club activity, is a violation of the Code unless the prior approval of the Vice President of Student Affairs, Vice President of Administration or College President has been secured.
20. THEFT. Theft or attempted theft of the property or services of the College, any organization, or any individual by means of taking, selling, deceiving, misappropriating, or misusing, as well as receiving and or possessing such stolen property is a violation of the Code.
21. THREAT OF HARM. Conveyance of threats or the commission of any act which results in, or which may result in, harm to any person or the damage to College property or the property of others by willful and deliberate means is a violation of the Code. This offense includes any form of harassment, physical assault, verbal abuse, threatening or attempting physical assault upon any person not to include dating violence, domestic violence or sexual misconduct, or threats to destroy College property or the property of others. Any action or behavior that endangers the health, safety or welfare of any member of the College community or visitors is a violation of this Code.
22. TRESPASSING. Unauthorized entry, use or occupancy of any building, structure, facility or college grounds is a violation of the Code.
23. VANDALISM. The intentional and/or reckless, but not accidental, destruction of property; damaging, destroying, defacing, tampering, misuse, or abuse of student, staff or College property, including rentals or leased facilities, is a violation of the Code.
24. WEAPONS. The threat of use or actual use of any weapon on campus is strictly prohibited and will be reported to local and/or state authorities. For purposes of this provision, a weapon is defined as:
  - A. anything within the definition of a weapon set forth in Penal Law 265.00;
  - B. any instrument, device, or object designed or specifically adapted for the purpose of inflicting physical harm or death;
  - C. any instrument, device or object possessed, carried, or used for the purpose of inflicting or threatening physical harm or death.
25. IMPROPER CULINARY KNIFE STORAGE. It is a violation of the code to have culinary knives outside of their cases when not in the culinary labs.
26. EXPLOSIVES. The possession, storage, or use of firecrackers or other explosive device of any description for any purpose is a violation of this Code.
27. VIOLATION OF LAW. A violation of any municipal, state or federal criminal law or engaging in behavior that is a civil offense, or a violation of any policy, procedure, rule, regulation or directive of the College or any of its affiliated entities is a violation of this Code, even if the specific conduct is not listed as a prohibited act in the Code. The College regards criminal conduct/civil offense as a violation of the Code regardless of whether the criminal violation/civil offense are pursued in a court of law. The College may, to the extent permitted by law (including without limitation to FERPA), inform law enforcement agencies of perceived criminal violations and may elect to defer internal disciplinary action until prosecution of the criminal violation has been completed. Proceedings under

the Code may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus at the discretion of the College.

- Generally, proceedings under this Code may be carried out prior to, simultaneously with, or following civil or criminal proceedings off-campus at the discretion of the Vice President of Student Affairs. For Sexual Offense charges or complaints, however, the judicial or conduct process will run concurrently with a criminal justice investigation and proceeding, except for temporary delays as requested by external law enforcement 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. Determinations made or sanctions imposed under this Code 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.

28. VIOLATION OF PRIVACY. Making a video recording, audio recording, taking photographs, or streaming audio/visual of any person in a location where the person has a reasonable expectation of privacy, without that person's knowledge and expressed consent, is a violation of the code.
29. BULLYING BEHAVIORS. Repeated unwanted direct or indirect, written, verbal, electronic, and/or physical acts that may harm or humiliate another person are a violation of the Code.

## **X. DISCIPLINARY PROCEDURE**

### **A. Initiation of the Disciplinary Process**

1. Any member of the SUNY Schenectady community may file a complaint or charges against any student for misconduct. Any complaint or charges should be referred to the Dean of Student Affairs.
2. The Dean of Student Affairs will respond promptly to any complaint or charge filed. The Dean of Student Affairs will also promptly respond whenever he or she has knowledge that a violation of the Code may have occurred.
3. All charges shall be presented to the accused student in written form.
4. The Dean of Student Affairs will determine a) whether or not the alleged misconduct is within the purview of the Student Conduct Code; b) the appropriate hearing body.
5. Designation of an Appropriate Hearing Body
  - a. Cases Not Involving Sexual Offense Charges

Upon receipt of a charge or complaint, the Dean of Student Affairs or his or her designee may conduct an investigation to determine if the charges have merit and/or if they can be disposed of administratively by mutual consent of the parties involved on a basis acceptable to SUNY Schenectady. Such disposition shall be final and there should generally be no subsequent proceedings. If the charges are not admitted and/or cannot be disposed of by mutual consent, the Dean of Student Affairs will prepare written charges and refer the case to the Chairperson of the Student Affairs Committee or his/her designee. The Chairperson of the Student Affairs Committee will appoint an appropriate Subcommittee of the Student Affairs Committee and refer the charges to the Subcommittee for a hearing. If the student admits violating institutional rules, but sanctions are not agreed to, subsequent process, including a hearing if necessary, shall be limited to determining the appropriate sanction(s).

#### **b. Cases Involving Sexual Offense Charges**

1. Cases Involving Initial or Ongoing Compliance Officer Investigations

Upon receipt of a charge or complaint for which an investigation under SUNY Schenectady's Sexual Assault, Relationship Violence, and Stalking Policies & Procedures For Students and Employees, available at



[www.sunysccc.edu/About-Us/Policies-and-Procedures/Student-Policies](http://www.sunysccc.edu/About-Us/Policies-and-Procedures/Student-Policies) has not already been initiated, the Title IX Coordinator will designate a Compliance Officer who does not have a conflict of interest to promptly conduct a fair, complete, thorough, and impartial investigation that provides a meaningful opportunity to be heard, pursuant to SUNY Schenectady's Sexual Assault, Relationship Violence, and Stalking Policies & Procedures For Students and Employees.

Upon receipt of a charge or complaint for which an investigation under the Sexual Assault, Relationship Violence, and Stalking Policies & Procedures For Students and Employees has already been initiated, the Title IX Coordinator will inform the Compliance Officer who is conducting the investigation that the disciplinary charge or complaint is pending, and instruct the Compliance Officer to investigate the charge or complaint as part of his or her investigation pursuant to SUNY Schenectady's Sexual Assault, Relationship Violence, and Stalking Policies & Procedures For Students and Employees, and to make a determination regarding the charges.

Following an investigation by a Compliance Officer, the Compliance Officer or other trained investigator will prepare written findings of fact and recommendations, with respect to whether it is more likely than not that the Sexual Offense occurred, appropriate disciplinary actions, if any, and/or other appropriate remedial measures. The parties will be informed, in writing, of the result of the investigation, any recommended sanctions, the rationale for the result and any recommended sanctions, the findings of fact, whether the disciplinary process will continue, information regarding sanctions that may be imposed as a result of the continuation of the disciplinary process, and any potential rights to appeal at that time. 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.

- If the Compliance Officer or other trained investigator determines that it is more likely than not that the student violated SUNY Schenectady's Sexual Assault, Relationship Violence, and Stalking Policies & Procedures For Students and Employees, or any other provision of the Code of Conduct, the Compliance Officer will make a recommendation regarding any appropriate sanctions, and the Title IX Officer will refer the conduct charges to the Chairperson of the Student Affairs Committee or his/her designee. The Chairperson of the Student Affairs Committee will appoint an appropriate Subcommittee and refer the charges to an appropriately trained Subcommittee for a hearing.
- If the Compliance Officer or other trained investigator determines that the student did not violate SUNY Schenectady's Sexual Assault, Relationship Violence, and Stalking Policies & Procedures For Students and Employees, or any other provision of the Code of Conduct, the Compliance Officer will not refer the conduct charges to the Chairperson of the Student Affairs Committee, and the charges will be dismissed. Upon receipt of the Compliance Officer's written determination, the co-complainant shall have the right to appeal the Compliance Officer's decision to an Appellate Board within two (2) business days of the decision, pursuant to the procedures set forth below.

## 2. Cases Involving Completed Compliance Officer Investigations

If a charge or complaint is received after a Compliance Officer has completed an investigation into the incident under the Sexual Assault, Relationship Violence, and Stalking Policies & Procedures For Students and Employees by a Compliance Officer and issued a written determination to the parties (as outlined below), the Title IX Officer will determine whether to refer the charge to the Chairperson of the Student Affairs Committee, based on the Compliance Officer's determination. If the Compliance Officer determines it is more likely than not that the student committed a Sexual Offense, the Title IX Officer will refer the charges to the Chairperson of the Student Affairs Committee or his/her designee. The Chairperson of the Student Affairs Committee will appoint an appropriate Subcommittee and refer the charges to the Subcommittee for a hearing. If the

Compliance Officer determines that the student did not commit a Sexual Offense, the Title IX Officer will not refer the charges to the Chairman of the Student Affairs Committee, will dismiss the charges, and will inform the co-complainant of his or her right to appeal the Compliance Officer's decision to an Appellate Board within two (2) business days of the decision, pursuant to the procedures set forth below.

6. 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 or employee violated the Code of Conduct.
7. If any disciplinary action is pending against a student, degrees, grade reports, and transcripts will not be issued until the matter is resolved.
8. If the student withdraws from SUNY Schenectady while student conduct proceedings are in process, the student does so with charges pending. The Colleges reserve the right to adjudicate those charges when/if the student returns to SUNY Schenectady.
9. A time shall be set for a hearing, not less than five (5) nor more than fifteen (15) business days after the student has been notified. Minimum and maximum time limits for scheduling of hearings may be modified at the discretion of the Assistant Vice President of Student Affairs.

#### B. Interim Pre-Hearing Measures

1. Interim Suspension: In certain circumstances, the Assistant Vice President of Student Affairs, or a designee, may impose a College suspension prior to the hearing before a Subcommittee.
  - Interim suspension 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; or 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.
  - If a student accused of a Sexual Offense is determined to present a continuing threat to the health and safety of the community, SUNY Schenectady must subject the accused or respondent to interim suspension pending the outcome of a judicial or conduct process. SUNY Schenectady provides both the accused or respondent 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.
  - During the interim suspension, students shall be denied access to the campus (including classes) and/or all other College activities or privileges for which the student might otherwise be eligible, as the Assistant Vice President of Student Affairs or his or her designee may determine to be appropriate.
2. Additional Pre-Hearing Measures for Students Accused of Sexual Offenses
  - Mandatory No Contact Order
    - o Upon receipt of a report of sexual assault, stalking, dating violence and/or domestic violence by a student, SUNY Schenectady will issue a "no contact order," whereby: (1) continued intentional contact with the reporting individual is a violation of SUNY Schenectady's policy that is subject to additional conduct charges; and (2) if the accused or respondent and a reporting individual observe each other in a public place, it is the responsibility of the accused or respondent 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.

- o Upon request, both the accused (or respondent) 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.
  - Interim Measures
    - o 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.
    - o Upon request, SUNY Schenectady will provide both the accused (or respondent) 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 him or her, in which he or she is allowed to submit evidence in support of his or her request.
- C. Hearing Procedure For All Hearings. The following procedures regarding hearings before Subcommittees generally apply:
1. Hearings normally shall be conducted in private.
  2. The complainant, accused student, the co-complainant, and their advisor(s), if any, shall be allowed to attend the entire portion of the Subcommittee Hearing at which information is presented.
  3. After the portion of the Subcommittee Hearing concludes in which all pertinent information has been received, the Subcommittee shall determine (by majority vote if the Subcommittee consists of more than one person) whether the accused student has violated each section of the Student Conduct Code which the student is charged with violating.
  4. The Subcommittee's determination shall be made using the preponderance of the evidence standard, on the basis of whether it is more likely than not that the accused student violated the Student Conduct Code.
  5. When requested, a student must appear before a Subcommittee, Appellate Board, or College official for the purposes of providing information relevant to a Student Conduct Code proceeding. Failure to appear or willful failure or refusal to provide such information, unless it will result in self-incrimination, may result in student conduct action. The Subcommittee may draw a negative inference from the failure or refusal to provide information, even if such failure or refusal is due to concerns about self-incrimination.
  6. If an accused student, with notice, does not appear at a Subcommittee Hearing, the information in support of the charges shall be presented and considered, even if the accused student is not present.
  7. The Subcommittee may accommodate concerns for the personal safety, well-being and/or fears of confrontation of the complainant, co-complainant, accused student, 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.
  8. If the accused student or the co-complainant wishes to challenge the placement of any member(s) of the Subcommittee, he or she must raise this issue at the start of the Subcommittee Hearing. If the Subcommittee consists of only one individual, that individual must bring the challenge to the attention of the Assistant Vice President of Student Affairs, who will hear the reasons for such challenge. Any deliberations before the Subcommittee as to the challenge should be made without the accused student or the co-complainant present. The Assistant Vice President of Student Affairs, will determine whether to support the challenge. Any member(s) so removed will be replaced as quickly as possible by the Assistant Vice President of Student Affairs, or, in the case of a Subcommittee made up of multiple individuals, the Subcommittee Hearing may simply proceed without the removed member, at the discretion of the Assistant Vice President of Student Affairs.

9. Formal rules of process, procedure, and/or technical rules of evidence, such as those which are applied in criminal or civil court, are not used in Student Conduct Code proceedings.
10. If a complaint is withdrawn, no Subcommittee Hearing will be held. In the event that the complaint is allowed to be withdrawn after a Hearing has been completed, the Hearing shall cease and no determination will be made. In the event that the complaint is allowed to be withdrawn after the Hearing has been completed, any determination or sanctions will be reversed automatically. If the Assistant Vice President of Student Affairs does not allow the complaint to be withdrawn, the Subcommittee Hearing will proceed under the normal process; the Board will disregard the attempted withdrawal of the complaint in making its determinations and recommending sanctions.
11. The Subcommittee on Discipline 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 his/her 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 his/her 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 Subcommittee.
12. A single verbatim record of the hearing will be made. The record can initially be a tape recording, however, this tape recording should be transcribed following the hearing. The record of the hearing will be confidential, except as otherwise provided herein. The record shall be the property of SUNY Schenectady. The record, including the documents entered into evidence, will be transmitted to the Student Affairs Office along with the Subcommittee's report and recommendation.

D. Cases Involving One or More Sexual Offense Charges Only:

1. Students must receive reasonable advance written or electronic notice of:
  - any meeting they are required to or are eligible to attend,
  - the specific rule, rules, laws, and/or code of conduct provisions alleged to have been violated;
  - the date, time, location and factual allegations concerning the violation; and
  - in what manner the specific rule, rules or laws are alleged to have been violated.
2. Co-complainants and accused will be given the opportunity to review and present available evidence in the case file, or otherwise in SUNY Schenectady's possession or control, and relevant to the conduct case, in order to prepare for the hearing before the Subcommittee.
3. Co-complainants and accused will be provided the opportunity to present evidence and testimony at the hearing before the Subcommittee.

4. The co-complainant and the accused may select any advisor of their own choosing, including an attorney, who must be permitted to assist and advise a co-complainant, accused, or respondent throughout the process, including during all meetings and hearings related to such process. The co-complainant and/or the accused student is responsible for presenting his or her own information, and therefore, advisors (including an attorney, when applicable), are not permitted to speak or to participate directly in any hearing before a Subcommittee.
  5. Subcommittee hearings must be conducted by Subcommittee members who do not have a conflict of interest and 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.
  6. Timeframes for hearings involving one or more charges may be extended for good cause upon written notice to the accuser and the accused.
  7. At any hearing conducted by the Subcommittee, the accused student 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, accused student, and/or the co-complainant, at least two weekdays prior to the Subcommittee Hearing.
  8. 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 Compliance Officer, Subcommittee, and Appeals Board). However, past findings of domestic violence, dating violence, stalking, or sexual assault may be admissible in disciplinary stages that determine sanctions.
  9. Students will have the right to ask questions of the decision maker and, via the decision maker, indirectly request responses from other parties and any other witnesses present.
  10. Students will have the right to make an impact statement during the point of the proceeding where the decision maker is deliberating on appropriate sanctions.
  11. The accused student and complainant will have 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.
  12. Students have the option to choose whether to disclose or discuss the outcome of the Subcommittee Hearing.
  13. 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.
  14. The co-complainant must be permitted to withdraw his or her complaint and/or withdraw from SUNY Schenectady’s investigation and/or disciplinary process at any time.
  15. Students will have 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.
- E. Cases That Do Not Involve Sexual Offense Charges:
1. The complaining party, respondent and their advisors, if any, shall be allowed to attend the entire portion of the hearing at which information is received (excluding deliberations). Admission of any other person to the meeting shall be at the discretion of the Subcommittee. The Subcommittee may remove and prohibit the participation of anyone disrupting the hearing.

2. At the beginning of the Hearing, the Subcommittee shall delineate the hearing process. All questions regarding whether potential information will be admissible in the hearing and all procedural questions with respect to the hearing, shall be resolved in the discretion of the Subcommittee.
3. The Subcommittee will be responsible for maintaining a disciplinary procedure that makes reasonable efforts to accommodate concerns for the personal safety, well-being and/or fears of confrontation of the complaining party, the respondent, and/or witnesses during the hearing by providing security present at the hearing, permitting participation by telephone or other web-based access, permitting witnesses to submit written statements, or other means as determined in the sole judgment of the hearing officer to be appropriate.
4. Hearings will convene as scheduled unless the Subcommittee has been notified of and approves a request to reschedule. The hearing will proceed even if the respondent, advisor, and/or witness are not in attendance.
5. Both the complaining party and the respondent charged with misconduct may be present at the hearing. Each party may present and cross-examine witnesses. The Subcommittee may limit the testimony to information relevant to the disposition of the charge(s) and prohibit repetitious or redundant testimony.
6. Pertinent records, exhibits, and written statements (including Student Impact Statements, written statements made by members of the Colleges' community dealing with the impact that the accused student's conduct has had on a particular student or students or upon SUNY Schenectady students in general) may be accepted as information for consideration by a Subcommittee at the discretion of the Subcommittee.
7. The complainant or co-complainant may be permitted to withdraw his or her complaint subsequent to its submission to the Assistant Vice President of Student Affairs, if, and only if, the Assistant Vice President of Student Affairs is satisfied that the co-complainant's decision is not the result of pressure or intimidation.

## **XI. PENALTIES AND SANCTIONS**

- A. The Assistant Vice President of Student Affairs may, following a review of the record, accept or reject the Subcommittee's determination of fact and the sanction recommendation. The Assistant Vice President of Student Affairs reserves the right to review and amend any decision of the Hearing Committee. If the report and recommendation of the Subcommittee is accepted, the Assistant Vice President of Student Affairs may impose one or more of the penalties listed hereinafter.
  - 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;
  - Other Secondary Sanctions: such sanctions may be imposed instead of or in addition to those specified above;

- 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.

## **XII. NOTIFICATION**

- A. Within five (5) business days of the receipt of the Subcommittee's written report and recommendation, the Assistant Vice President of Student Affairs will notify both parties simultaneously in writing of the result of the investigation, any sanctions imposed, the rationale for the result 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. The parties will also be informed of their right to appeal the decision to an Appellate Board within two (2) business days of the decision, pursuant to the procedures set forth below.
- B. The decision of the Assistant Vice President of Student Affairs or his/her 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.

## **XIII. APPEAL PROCESS**

- A. A final determination by a Compliance Officer, Subcommittee, or Assistant Vice President of Student Affairs may be appealed by the accused student(s), the co-complainant, and/or the complainant to an Appellate Board within two (2) business days of the decision. Such appeals shall be in writing and shall be delivered to the Assistant Vice President of Student Affairs. Upon receipt of an appeal, the Assistant Vice President of Student Affairs will confirm that the appeal is supported by one of the reasons listed in section 3 below.
- B. If no appeal is submitted to the Assistant Vice President of Student Affairs within two (2) business days of the decision, the determination of the Compliance Officer, Subcommittee, or Assistant Vice President of Student Affairs will become final, unless:
  - An appeal is filed by the accused student(s), the co-complainant, and/or the complainant after the deadline, and
  - The appellant can establish good cause for the delay in filing the appeal.
- C. 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 Subcommittee's finding are 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 a Compliance Officer's final determination that no Sexual Offense violation occurred; and

- To review any portion of a Student Conduct Board’s final determination regarding a Sexual Offense charge or complaint.
- D. Appellate Board proceedings regarding Sexual Offense charges must be conducted by Appellate Board members 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.
- E. If the Assistant Vice President of Student Affairs determines that the appeal falls within one of the above-listed categories, a copy of the hearing transcript will be made available to the appellant as soon as it is available.
- F. Once the appellant receives the transcript, the appellant will have five (5) business days from his or her review of the transcript to present his/her 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 (including the transcript), and with the same opportunity to submit supporting documentation. However, the other party is not required to submit supporting documentation.
- G. If the appellant fails to submit supporting documentation within five (5) business days after review of the transcript, the determination of the Compliance Officer, Subcommittee, or Assistant Vice President of Student Affairs will become final, unless:
- The appellant’s submission is filed after the deadline, and
  - The appellant can establish good cause for the delay in filing the submission.
- H. If a proper appeal and submission are filed, the Assistant Vice President of Student Affairs shall appoint an Appellate Board. The transcripts and all case documentation, including any appeals and submissions, shall be delivered to each member of the Appellate Board.
- I. The Assistant Vice President of Student Affairs shall convene an Appellate Board within ten (10) days of receiving the appellant’s submission. The Appellate Board shall reach a determination within ten (10) business days of receiving the appeal.
- J. Except as required to explain the basis of new evidence, an appeal shall be limited to review of the verbatim record of the initial hearing and supporting documents.
- K. The parties will be informed, in writing, of the result of the appeal. In cases involving Sexual Offenses, the parties will also be informed in writing of the Appellate Board’s recommended sanctions, the rationale for the result and for the Appellate Board’s recommended sanctions, and the Appellate 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.

#### **XIV. STUDENT DISCIPLINARY FILES AND RECORDS.**

- A. Cases Not Involving Any Sexual Offense or Crime of Violence Charges: The Assistant Vice President of Student Affairs will establish a student disciplinary file whenever a case is referred for investigation of a possible conduct code violation. A student’s file will be destroyed if the investigation indicates that no violation occurred. Other than in cases involving College suspension or expulsion, prohibition from professional practice or revocation of degree, or crimes of violence (including but not limited to Sexual Offenses), the file of a student found to have violated the Code will be retained for four years from the date of the disciplinary hearing decision. However, records may be retained longer or permanently if the student was suspended or permanently dismissed, or if there is reason to believe the case could



result in future litigation. The case summary will be retained on the campus database indefinitely. The record shall be maintained separate and apart from the student's permanent record by the Student Affairs Office.

- B. Cases Involving Sexual Offense or Crime of Violence Charges: If a student is suspended or expelled after being found responsible for a crime of violence (including but not limited to a Sexual Offense), 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 he or she "withdrew with conduct charges pending." These transcript notations can be appealed by contacting the Title IX Coordinator, Theresa Hobbs, Chief Diversity Officer and Title IX Coordinator, Elston Hall, Room 322; phone (518) 381-1440, [hobbsta@sunysccc.edu](mailto:hobbsta@sunysccc.edu).

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.