



The State University
of New York

Office of General Counsel

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SUNY Policies on Sexual Violence Prevention and Response December 1, 2014, Redlined Against New York State Legislation, June 2015

These policies reflect comments from:

- October 27, 2014 SUNY Working Group Full Day Meeting
- November 7, 2014 SUNY Community Webinar Town Hall
- November 10, 2014 SUNY Community Webinar Town Hall
- November 10, 2014 External Advocates Meeting
- November 14, 2014 SUNY Working Group Full Day Meeting
- November 21, 2014 External Advocates Meeting
- **June 2015 Updated to reflect New York State law, Chapter 76 of the Laws of 2015**

For more information about the Chancellor's Temporary Working Group on Continual Improvement to Sexual Violence Prevention Policies and its membership, visit: <http://system.suny.edu/sexual-violence-prevention-workgroup/>

For the SUNY Board of Trustees' resolution calling for the establishment of these policies, visit: <http://www.suny.edu/media/suny/content-assets/documents/boardoftrustees/memos/Sexual-Assault-Response-Prevention-REVISED.pdf>

The State legislation can be viewed here: <http://open.nysenate.gov/legislation/api/1.0/pdf/bill/S5965-2015>

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SUNY Policies on Sexual Violence Prevention and Response

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Definition of Affirmative Consent

Verbatim Language:

“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.”

Additional Mandatory Language That May Be Worded as Appropriate for Each Institution:

- a) 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.
- b) Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- c) Consent may be initially given but withdrawn at any time.
- d) 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.
- e) Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
- f) When consent is withdrawn or can no longer be given, sexual activity must stop.

Policy for Alcohol and/or Drug Use Amnesty in Sexual and Interpersonal Violence Cases

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. [College/University] 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. [College/University] strongly encourages students to report incidents of 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 that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to [College/University] officials or law enforcement will not be subject to [College/University'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.

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,¹ each State University of New York State-operated and community college will conduct a uniform climate survey that ascertains student experience with and knowledge of reporting and college adjudicatory processes for sexual harassment, including sexual violence, and other related crimes.

The survey 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 the College/University 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.

Every institution shall take steps to ensure that answers remain anonymous and that no individual is identified.² Results will be published on the campus website providing no personally identifiable information shall be shared.

Beginning in the spring semester of 2015, the Chancellor or designee will convene a group of scholars and practitioners to review methods of assessing campus climate, specific questions asked in past surveys, relevant data on responses and response rates, issues and problems encountered in survey implementation, and lessons learned from past surveys. The Chancellor or designee will gather this data and seek to develop a standardized survey, with the advice of relevant members of the SUNY community and knowledgeable outside entities, that uses established measurement tools, to be implemented every two years by all SUNY State-operated and community colleges beginning in the 2015-2016 academic year. This policy may be changed by the Chancellor or designee should federal and/or State legislation require a different process or duplicate efforts to assess campus climate via survey.

¹ The statutory requirement would become effective one year after enactment of the law.

² Section 6445 (4) of the legislation states that “[i]nformation discovered or produced as a result of complying with this section shall not be subject to discovery or admitted into evidence in any federal or state court proceeding or considered for other purposes in any action for damages brought by a private party against an Institution, unless, in the discretion of the court, any such information is deemed to be material to the underlying claim or defense.”

Students' Bill of Rights

The State University of New York and [College/University] 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 College/University-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, or criminal conviction, 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 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 from the institution;
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 the institution 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 institutional representatives as practicable and not to be required to unnecessarily repeat a description of the incident.
8. Be free from retaliation by the institution, the accused and/or the respondent, and/or their friends, family and acquaintances within the jurisdiction of the institution;
9. Access to at least one level of appeal of a determination³;
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;
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the College.

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 (for detailed information on confidentiality and privacy, visit [LINK TO Options for Confidentially Disclosing Sexual Violence]).
- Make a report to:
 - An employee with the authority to address complaints, including the Title IX Coordinator, a Student Conduct employee, or a Human Resources

³ Appeal must be considered by a panel—not one person. The panel may include one or more students.

- employee;
- [University Police/Campus Security];
- Local law enforcement; and/or
- Family Court or Civil Court.

Copies of this Bill of Rights shall be distributed annually to students, made available on every college’s website, and posted in each campus residence hall, dining hall, and student union or campus center and shall include links or information to access the Sexual Violence Response Policy below and the Options for Confidentially Disclosing Sexual Violence.

Sexual Violence 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 options below:

I- Reporting:⁴

- To disclose *confidentially* the incident to one of the following college officials, who by law may maintain confidentiality, and can assist in obtaining services (more information on confidential report is available in the Options for Confidentially Disclosing Sexual Violence Policy [link]):
 - Anonymously via an internet or telephone anonymous reporting system [link];
 - Counseling Office [contact information]; and
 - [other].
- To disclose *confidentially* the incident and obtain services from the New York State, New York City or county hotlines: <http://www.opdv.ny.gov/help/dvhotlines.html>. Additional disclosure and assistance options are catalogued by the Office for the Prevention of Domestic Violence and presented in several languages: <http://www.opdv.ny.gov/help/index.html> (or by calling 1-800-942-6906), and assistance can also be obtained through:
 - SurvJustice: <http://survjustice.org/our-services/civil-rights-complaints/>;
 - Legal Momentum: <https://www.legalmomentum.org/>;
 - NYSCASA: <http://nyscasa.org/responding>;
 - NYSCADV: <http://www.nyscadv.org/>;
 - Pandora’s Project: <http://www.pandys.org/lgbtsurvivors.html>;
 - GLBTQ Domestic Violence Project: <http://www.glbtqadv.org/>; and
 - RAINN: <https://www.rainn.org/get-help>.
 - Safe Horizons: <http://www.safehorizon.org/>.

(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).
- To disclose the incident to one of the following college officials who can offer *privacy* and can provide information about remedies, accommodations, evidence preservation, and how to obtain resources. Those officials will also provide the

⁴ The purpose of this policy is to provide clear information to students. Colleges should fill in the brackets with one or more relevant links. If a college does not have a certain resource (such as a counseling center), compliance does not require a wasted sentence saying “Counseling Center: No Counseling Center available.” That line should be skipped when providing resource information.

information contained in the Students' Bill of Rights, including the right to choose when and where to report, to be protected by the institution from retaliation, and to receive assistance and resources from the institution. These college officials will disclose 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, including but not limited to the Title IX Coordinator. They will notify reporting individuals that the criminal justice process uses different standards of proof and evidence than internal procedures, and questions about the penal law or the criminal process should be directed to law enforcement or district attorney,:

- Title IX Coordinator;
- [University Police/Campus Security – note hours of availability/24 hour⁵]; and
- [Other].
- To file a criminal complaint with [University Police/Campus Security] and/or with local law enforcement and/or state police:
 - [College/University police or security office, phone number, address]
 - [Local law enforcement office, phone number, address]
 - State police 24-hour hotline to report sexual assault on a NY college campus: 1-844-845-7269.
- To receive assistance by [institutional official/office] in initiating legal proceedings in family court or civil court.
- To file a report of sexual assault, domestic violence, dating violence, and/or stalking, and/or talk to the Title IX Coordinator for information and assistance. Reports will be investigated in accordance with [College/University] policy and the reporting individual's identity shall remain private at all times if said reporting individual wishes to maintain privacy. If a reporting individual wishes to keep his/her identity anonymous, he or she may call [applicable office] anonymously to discuss the situation and available options ([Link to applicable policy]):
 - [Title IX Coordinator/Office, phone number, address, email address]
- When the accused is an employee, a reporting individual may also report the incident to the [College/University Office of Employee Relations or Office of Human Resources] or may request that one of the above referenced confidential or private employees assist in reporting to Employee Relations or Human Resources. Disciplinary proceedings will be conducted in accordance with applicable collective bargaining agreements. 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

⁵ Section 6444 (1) (b) of the legislation requires that colleges “have emergency access to a Title IX Coordinator or other appropriate official trained in interviewing victims of sexual assault who shall be available upon the first instance of disclosure by a reporting individual to provide information regarding options to proceed, and, where applicable, the importance of preserving evidence and obtaining a sexual assault forensic examination as soon as possible, and detailing that the criminal justice process 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. Such official shall also explain whether he or she is authorized to offer the reporting individual confidentiality or privacy, and shall inform the reporting individual of other reporting options.” While a college or university *may* have a Title IX Coordinator available 24 hours per day, it was important to SUNY to have flexibility to have that role played by another appropriate official. At SUNY State-operated and community colleges we almost uniformly have University Police or Campus Security professionals who are available at all hours, and they may be listed as the individuals who can provide this information. Additionally, the elements established in this section include information already provided to students by these offices.

non grata letter, subject to legal requirements and college policy.

- o [Employee Relations or Human Resources Office, phone number, and address]
- You may withdraw your complaint or involvement from the [College/University] process at any time.

- Every college shall ensure that, at a minimum, at the first instance of disclosure by a reporting individual to a college representative, the following information shall be presented to the reporting individual: “You have the right to make a report to University Police or Campus Security, 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.”⁶

II- Resources:

- To obtain effective intervention services.
 - o [Counseling center, address, phone number]. [Describe applicable charges or include a statement of no charge].
 - o [Student health center, address, phone number]. [Describe applicable charges or include a statement of no charge]. Sexual contact can transmit Sexually Transmitted Infections (STI) and may result in pregnancy. Testing for STIs and emergency contraception is available [provide contact information for one or multiple on or off-campus locations where students can obtain tests for STIs and describe whether such testing is free or at a cost].
 - o [Other applicable available on- and off-campus centers and services, and their addresses, phone numbers, and web sites].
 - Within 96 hours of an assault, you can get a Sexual Assault Forensic Examination (commonly referred to as a rape kit) at a hospital. 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 here: http://www.ovs.ny.gov/files/ovs_rights_of_cv_booklet.pdf, or by calling 1-800-247-8035. Options are explained here: <http://www.ovs.ny.gov/helpforcrimevictims.html>.
 - 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.

III- Protection and Accommodations:

- When the accused is a student, to have the college issue a “No Contact Order,” consistent with college policy and procedure, meaning that continuing to contact the protected individual is a violation of college policy subject to additional conduct charges; if the accused and a protected person observe each other in a public place, it is the responsibility

⁶ It is advisable to also place this information on the college or university’s reporting web site.

of the accused to leave the area immediately and without directly contacting the protected person. Both the accused/respondent and reporting individual may request a prompt review of the need for and terms of a No Contact Order, consistent with [College/University] policy. Parties may submit evidence in support of their request.⁷

- To have assistance from [University Police/Campus Security] 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.
- 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,⁸ 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).
- To an explanation of the consequences for violating these orders, including but not limited to arrest, additional conduct charges, and interim suspension.
- To have assistance from [University Police/Campus Security] 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 [University Police/Campus Security] or, if outside of the jurisdiction or [if Campus Security does not have arresting powers] 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, to have the accused subject to interim suspension pending the outcome of a conduct process. Parties may request a prompt review of the need for and terms of an interim suspension.⁹
- When the accused is not a student but is a member of the college community and presents a continuing threat to the health and safety of the community, to subject the accused to interim measures in accordance with applicable collective bargaining agreements, employee handbooks, and [College/University] policies and rules.
- When the accused is not a member of the college community, to have assistance from [University Police/Campus Security] or other college officials in obtaining a persona non grata letter, subject to legal requirements and college policy.
- To obtain reasonable and available interim measures and accommodations 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. Parties may request a prompt review of the need for and terms of any interim measures and accommodations that directly affect them. While reporting individuals may request accommodations through any of the offices referenced in this policy, the

⁷ Colleges may, but are not required to, establish a schedule for each individuals' use of certain facilities. Section 6444 (4) (a).

⁸ Each college should post information about personnel, likely in University Police, Campus Security, or Student Affairs, who can assist a student in understanding an Order of Protection, and a clear method for contacting that office. To comply with the VAWA requirement of even-handedness, such explanations should be available both to students who are protected by Orders of Protection and to those who are subject to Orders of Protection.

⁹ Campuses must have a procedure by which the accused/respondent or victim/survivor can request a review of the terms of an interim suspension. The review must be prompt, although reasonable under the circumstances. The requests may be for potential modification of the suspension, and the party or parties can submit evidence in support of the request. To be consistent with Title IX and the need for equal opportunity, notify the other party the way you would when one party appeals after a hearing.

following office can serve as a point to assist with these measures:

- [Office name and contact information]

IV- Student Conduct Process:

- To request that student conduct charges be filed against the accused. Conduct proceedings are governed by the procedures set forth in the [College/University handbook] ([link to handbook]) as well as federal and New York State law, including the due process provisions of the United States and New York State Constitutions.
- Throughout conduct proceedings, the respondent and the reporting individual will have:
 - The same opportunity to be accompanied by an advisor of their choice who may assist and advise the parties throughout the conduct process and any related hearings or meetings. Participation of the advisor in any proceeding is governed by federal law and the Student Code of Conduct;
 - The right to a prompt response to any complaint and to have 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 the [College/University]).
 - 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 decision maker and via the decision maker indirectly request responses from other parties and any other witnesses present.
 - The right to make an impact statement during the point of the proceeding where the decision maker is deliberating on appropriate sanctions.

- The right to simultaneous (among the parties) written or electronic notification of the outcome of a conduct proceeding, including the decision, any sanctions, and the rationale for the decision and 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,¹⁰ the available sanctions are suspension with additional requirements and expulsion/dismissal.
- Access to at least one level of appeal of a determination before a panel, which may include one or more students, that is fair and impartial and does not include individuals with a conflict of interest.
- The right to have access to a full and fair record of a student conduct hearing, which shall be preserved and maintained for at least five years.
 - [Student Judicial/Conduct Office, phone number, and address]
- The right to choose whether to disclose or discuss the outcome of a conduct hearing.¹¹
- The right to have all information obtained during the course of the conduct or judicial process be protected from public release until the appeals panel makes a final determination unless otherwise required by law.

¹⁰ Sexual assault is defined to be a Code of Conduct violation consistent with the Federal definition of rape adopted by the Department of Education in Final Regulations (<http://www.gpo.gov/fdsys/pkg/FR-2014-10-20/pdf/2014-24284.pdf>, page 62789), from the Uniform Crime Reporting system of the Federal Bureau of Investigations. “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.” Consent for these purposes is the consent definition in these policies and the legislation.

¹¹ This means that students may not be required to sign a non-disclosure agreement or other document forbidding them from discussing their case. This applies to respondents and reporting individuals. Participants are not themselves barred by FERPA from sharing this information. Note, however, that this does not allow students to unreasonably share private information in a manner intended to harm or embarrass another individual, or in a manner that would recklessly do so regardless of intention. Such sharing may be retaliation which can result in separate charges under the Code of Conduct.

Options for Confidentially Disclosing Sexual Violence

The State University of New York and [College/University] 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.

In this Policy:

- Privileged and Confidential Resources.
- Non-Professional Counselors and Advocates.
- Privacy versus Confidentiality.
- Requesting Confidentiality: How the College/University Will Weigh the Request and Respond.
- Public Awareness/Advocacy Events.
- Anonymous Disclosure.
- Institutional Crime Reporting.

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 [College/University], this includes:

- [College/University]'s Counseling Services: [names and/or phone numbers, address, web site]
- Individuals serving in a pastoral role under [applicable campus ministries, if any]: [names and/or phone numbers, address, web site]
- [College/University] physicians, licensed medical professionals or supervised interns when they are engaged in a physician/patient relationship: [names and/or phone numbers, address, web site]
- [College/University] confidential victim advocates: [names and/or phone numbers, address, web site].

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.
 - [Check <http://nyscasa.org/>. Provide specific names if possible, contact information, and information about office, such as whether it provides compensation to victims/survivors of crimes or helps replace property lost or damaged during the crime].
 - [Local SANE hospitals and programs]
- Off-campus healthcare providers
 - 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: http://www.ovs.ny.gov/files/ovs_rights_of_cv_booklet.pdf, or by calling 1-800-247-8035. Options are explained here: <http://www.ovs.ny.gov/helpforcrimevictims.html>.

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

Non-Professional Counselors and Advocates:

Non-professional counselors and advocates can also assist you without sharing information that could identify you. At [College/University], this includes members of [any existing campus advocacy, peer counseling, and other applicable centers – provide contact information including email, phone number, and address]. These individuals will report the nature, date, time, and general location of an incident to [College/University]'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.

Privacy versus Confidentiality:

Even [College/University] offices and employees who cannot guarantee *confidentiality* 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. [College/University] will limit the disclosure as much as possible, even if the Title IX Coordinator determines that the request for confidentiality cannot be honored.

Requesting Confidentiality: How [College/University] Will Weigh the Request and Respond:

If you disclose an incident to a [College/University] 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 institution's request to initiate an investigation, the Title IX Coordinator must weigh your request against our obligation to provide a safe, non-discriminatory environment for all members of our community, including you.

We will assist you with academic, housing, 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 [Office name and contact information]. 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 the [College/University]'s failure to act does not adequately mitigate the risk of harm to you or other members of the

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

Public Awareness/Advocacy Events:

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

Anonymous Disclosure:

[Outline options and instructions for anonymous support and assistance that are available at your College/University, including a hotline or an online form]. The Hotline is for crisis intervention, resources and referrals and is not a reporting mechanism.
New York State Hotline for Sexual Assault and Domestic Violence: 1-800-942-6906

Institutional Crime Reporting

Reports of certain crimes occurring in certain geographic locations will be included in the [College/University] Clery Act Annual Security Report in an anonymized manner that neither identifies the specifics of the crime or the identity of the reporting individual or victim/survivor. [Contact information for Title IX Coordinator, Deputy Coordinators/designees, and other related campus individuals].

[College/University] 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 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, [College/University] will not share information about a report of sexual violence with parents without the permission of the reporting individual.

Student Onboarding and Ongoing Education Guide

The State University of New York and its State-operated and community colleges 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 campuses 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 will, during the course of their onboarding to a SUNY State-operated or community college, receive training on the following topics, using a method and manner appropriate to the institutional culture of each campus:

- The institution 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.
- Relevant definitions including, but not limited to, the definitions of sexual violence and consent.
- Policies apply equally to all students regardless of sexual orientation, gender identity, or gender expression.
- The role of the Title IX Coordinator, University Police/Campus Security, and other relevant offices that address violence prevention and response.
- Awareness of violence, its impact on victims/survivors and their friends and family, and its long-term impact.
- The Students' Bill of Rights and Sexual Violence Response Policy, including:
 - How to report sexual violence and other crimes confidentially, and/or to college officials, campus law enforcement and security, and local law enforcement.
 - How to obtain services and support.
- Bystander Intervention and the importance of taking action, when one can safely do so, to prevent violence.
- The protections of the Policy for Alcohol and/or Drug Use Amnesty in Sexual and Interpersonal Violence Cases.
- Risk assessment and reduction¹² including, but not limited to, steps that potential victims/survivors *and* potential assailants and bystanders to violence can take to lower the incidence of sexual violence.
- Consequences and sanctions for individuals who commit these crimes.

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

¹² May include information about alcohol and drugs. Section 6447 (2) (g) requires that colleges include information about “[r]isk 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.”

will conduct these trainings for all new students, whether first-year or transfer, undergraduate, graduate, or professional. Each campus 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 State-operated and community college 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.

Beginning in the 2015-2016 academic year, SUNY State-operated and community colleges will require that student leaders and officers of registered/recognized student organizations and those seeking recognition complete training on domestic violence, dating violence, sexual assault, or stalking prevention as part of the approval process and require student-athletes to complete training in domestic violence, dating violence, sexual assault, or stalking prior to participating in intercollegiate athletics.¹³

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.

Each SUNY campus must report back to the Chancellor on or before March 31, 2015 on their

¹³ Colleges have significant flexibility in how to offer this training. It may be a single training or series of trainings for all athletes or student leaders or it may allow such students to attend one of many trainings offered by the college over the course of the semester. Colleges should endeavor to accomplish this in good faith. The training requirement is not measured by the organization or team being trained once, but by each officer, leader, or athlete completing the training her or himself.

plan to comply with this policy. Each institution must engage in a regular assessment of their programming and policies to determine effectiveness. The institution 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.

New Policies Required by Legislation:

Policy for the review of no contact order

Both the accused or respondent and the reporting individual shall, upon request and consistent with institution 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 his or her request. Institutions may establish an appropriate schedule for the accused and respondents to access applicable institution buildings and property at a time when such buildings and property are not being accessed by the reporting individual.

Plain language:

The campus will promptly review existing no contact orders at a party's request, including requests 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.

Policy for review of an interim suspension

Both the accused or respondent and the reporting individual shall, upon request and consistent with the institution'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 his or her request.

Plain language:

The campus 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.

Policy for review of interim measures/accommodations

Both the accused or respondent and the reporting individual shall, upon request and consistent with the institution's policies and procedures, be afforded 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, and shall be allowed to submit evidence in support of his or her request.

Plain language:

The campus 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.

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 Act¹⁴ established in 20 U.S.C. 1092(f)(1)(F)(i)(I)-(VIII), institutions shall make a notation on the transcript of students found responsible after a conduct process that they were "suspended after a finding of responsibility for a

¹⁴ Violations equivalent to the Clery Act (as updated by the Violence Against Women Act Final Regulations) Part I crimes covered under the legislation that would require a transcript notation are: murder; rape, fondling, incest and statutory rape; robbery; aggravated assault; burglary; motor vehicle theft; manslaughter; and arson. Institutions may, but are not required to, include transcript notations for additional violations.

code of conduct violation” or “expelled after a finding of responsibility for a code of conduct violation.” For the respondent who withdraws from the institution while such conduct charges are pending, and declines to complete the disciplinary process, institutions shall make a notation on the transcript of such students that they “withdrew with conduct charges pending.” Each institution shall publish a policy on transcript notations and appeals seeking removal of a transcript notation for a suspension, provided that such notation shall not be removed prior to one year after conclusion of the suspension, while notations for expulsion shall not be removed. If a finding of responsibility is vacated for any reason, any such transcript notation shall be removed.

Plain language:

Campuses must make a notation on the transcripts of students found responsible for crimes of violence. This is in line with the 2004 memo from Chancellor King saying the same thing. The notations are for suspension, expulsion, or withdrawal with charges pending.

Reporting aggregate data to NYSED

1. Institutions shall annually report to the 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.*

2. The department shall create a reporting mechanism for institutions to efficiently and uniformly provide the information outlined in subdivision one of this section.

Plain language:

The NYS Education Department will create a reporting mechanism for campuses to annually submit the following information:

- a. How many domestic violence, dating violence, stalking, and sexual assault incidents were reported to the Title IX Coordinator this year?
- b. From those incidents in paragraph (a), how many reporting individuals wanted to use the student conduct process for adjudication?
- c. How many of these cases were actually processed through the student conduct process?
- d. How many of the respondents in these cases were found responsible?
- e. How many of the respondents in these cases in paragraph (c) were found not responsible?

- f. What sanctions were imposed for each instance where a respondent was found responsible (paragraph [d])?
- g. How many cases closed before adjudication or before finding because the accused/respondent withdrew from the institution?
- h. How many cases closed before adjudication or before finding because the reporting individual withdrew the complaint?

Policy/instructions on how parties can review the case file/evidence

Every Institution shall ensure that every student be afforded the following rights: . . . Throughout proceedings involving such an accusation of sexual assault, domestic violence, dating violence, stalking, or sexual activity that may otherwise violate the institution's code of conduct, the right: . . . To review and present available evidence in the case file, or otherwise in the possession or control of the institution, and relevant to the conduct case, consistent with institution policies and procedures.

Plain language:

In student disciplinary proceedings involving domestic violence, dating violence, stalking, or sexual violence, the campus will allow parties to review available evidence held by the campus in accordance with college/university policy. Parties can also present available evidence as appropriate under campus policies.

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 his or her 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 an Institution 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. Institutions may substitute another relevant term having the same meaning, as appropriate to the policies of the Institution.
7. “Accused” shall mean a person accused of a violation who has not yet entered an Institution's judicial or conduct process.
8. “Respondent” shall mean a person accused of a violation who has entered an Institution'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 an institution 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).¹⁵
11. “Domestic violence”, “dating violence”, “stalking” and “sexual assault” shall be defined by each Institution in its Code of Conduct in a manner consistent with applicable federal definitions.

¹⁵ Per 18 U.S.C. 2246 (2) and (3), “The term “sexual act” means—

(A) contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight;

(B) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;

(C) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or

(D) the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;

(3) the term “sexual contact” means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.”