

Code of Student Conduct 2022-2023

Section 9: Student Conduct Procedures

The College's Student Conduct system manages all charges brought against any student or student organization for alleged violation of the Code of Student Conduct and maintains the exclusive authority to impose disciplinary sanctions. It is the responsibility of the hearing body to determine whether the alleged behavior constitutes a violation of the Code of Student Conduct. The hearing bodies are not courts of law; therefore, the formal rules of civil or criminal procedure and the rules of evidence do not apply. For a better understanding of the difference between the student conduct and criminal process, see <http://system.suny.edu/sexual-violence-prevention-workgroup/College-and-Criminal-Resource/> [<http://system.suny.edu/sexual-violence-prevention-workgroup/College-and-Criminal-Resource/>].

Student Conduct system procedures are divided into two distinct parts: Category I and Category II. Category I procedures provide guidance related to general student conduct cases. Category II provides guidance for Sexual/Gender Based Discrimination and Interpersonal Violence Misconduct cases. Category II policies and procedures comply with the Campus SaVE Act and New York State law, including New York Education Law, Article 129-B.

CATEGORY I: GENERAL STUDENT CONDUCT CASE POLICIES & PROCEDURES

1. Conduct Charges/Complaint:

- a. Any member of the College community may make a report against any student or student organization (collectively, "student") for misconduct.
- b. Allegations of misconduct may be submitted online at <https://cm.maxient.com/reportingform.php?SUNYBrockport> [<https://cm.maxient.com/reportingform.php?SUNYBrockport>]; for bias related incidents, https://www.brockport.edu/about/diversity/bias_reporting_system.html [[/about/diversity/bias_reporting_system.html](https://www.brockport.edu/about/diversity/bias_reporting_system.html)]; report a crime directly to any of the following offices, as applicable:
 - Student Conduct;
 - University Police or law enforcement agencies; and/or
 - Residential Life/Learning Communities.
- c. The director of student conduct may assign the matter to a student conduct officer.
- d. The director of student conduct or student conduct officer (collectively, "student conduct officer") may utilize a co-investigation model with two student conduct officers investigating violations of the Code of Student Conduct.

2. Investigation.

A preliminary investigation of the incident(s) may precede a full investigation. The student conduct officer assigned to the case may complete a further investigation of the incident. Following the preliminary or further investigation, the student conduct officer may bring charges against the respondent if reasonable information supports the charge(s).

- o Notice of Potential Conflict. Within 24 hours of notice of the identity of the student conduct officer assigned to the case, the respondent may request in writing that the student conduct officer be removed on the basis of bias or conflict of interest, and set forth the specific basis for the request. The vice president of enrollment management and student affairs or designee will determine whether the challenge has merit and may designate a different student conduct officer, if appropriate.

3. Notice of Student Conduct Charges.

- a. The student conduct officer will contact the respondent in writing to notify them of the charges being brought by the College, and schedule a time and place to meet. The respondent is sufficiently notified if informed in person, electronically at the student's College at Brockport e-mail address, or if the notice is personally delivered to them or mailed to their local and/or home address that appears in official College records.
- b. If the respondent fails to respond within three (3) business days from personal notification or the date of the notification letter, they will be deemed to have waived their right to choose between a conduct board hearing or an administrative hearing. The student conduct officer will then determine the type of hearing and the date and time it will be held. The student will be notified in writing of the charges against them for a second time, and the date, time and location of the hearing.

4. Advisors.

Students must provide the name of their advisor to the student conduct officer twenty-four hours in advance of the hearing. The student conduct officer will make a College-trained advisor available to each student; in the alternative, students may select an advisor of their choice.

- a. Students may choose an attorney for their advisor. Outside legal counsel, like other advisors, may privately consult with and advise the student throughout the conduct process, but may not examine witnesses or otherwise directly participate in any conduct procedures.

- b. An advisor may not directly question the conduct board or witnesses at the hearing, but may suggest questions in writing to the student conduct officer/board chair and consult with the student they are assisting. The student conduct officer/board chair may request suggested questions in advance of the hearing.
 - c. Students may request a brief recess to consult with their advisor, which will be granted at the discretion of the student conduct officer/board chair.
 - d. The student conduct officer/board chair will not allow an advisor's presence or behavior to inhibit the student conduct hearing.
5. **Preliminary Review/Process.** The student conduct officer will meet with the student to review the complaint, charges against the student, and the student conduct process, including the rights of the student, and will offer the student three (3) business days within which to select an administrative or conduct board hearing. Students may choose to have their hearing immediately following their preliminary meeting in cases where possible sanctions do not include suspension or dismissal.
6. **Notice of Hearing.**
- a. The student's hearing will be held within ten (10) business days from the date of the preliminary review, unless the student conduct officer/board chair determines that legitimate grounds exist for delay.
 - b. No fewer than three (3) business days before the date of the hearing, the student will be sent the following, in electronic form, at their official College at Brockport e-mail address: i) written notice of charges; ii) the date, time and place of hearing; iii) the names of the board members selected, if applicable; iv) possible consequences of being found responsible for the charge(s); and v) a copy of or link to the Code of Student Conduct. The Notice of Hearing will be considered received on the same date as The College e-mails it.
 - c. After Notice of Hearing is sent, the parties are expected to cooperate in scheduling a hearing promptly. If a student fails to appear at the scheduled hearing, the student conduct officer/board chair may either postpone the proceedings, or proceed with the hearing.
7. **Pre-Hearing Procedures.**
- a. **Pre-Hearing Meeting and Determination of Charges and Witnesses.** The student conduct officer/board chair will schedule a pre-hearing meeting with the student(s) to review hearing procedures. The student conduct officer/board chair will also review the charges and the proposed witness list to eliminate redundant testimony and/or testimony deemed not relevant. The College reserves the right, through the student conduct officer/board chair to: (i) add to or modify at the pre-hearing meeting, the charges specified by the student conduct officer/board chair with notice; (ii) add witnesses to the witness lists at the pre-hearing meeting and/or at the hearing with notice; and (iii) make changes to the board composition at any time, with notice.
 - b. **Notice of Potential Conflict.** A student wishing to challenge the participation of any board member (if a board hearing is chosen) must notify the board chair in writing within 24 hours of receipt of the Notice of Hearing, stating the specific reason(s) for the concern. The board chair will determine whether the challenge has merit. If the challenge relates to the participation of the student conduct officer or board chair, the vice president of enrollment management and student affairs or designee will determine whether the challenge has merit.
 - c. **Informal Resolution.** When a case involves conflict among students, groups, or organizations, the student conduct officer will assess whether mediation or restorative conferencing would be an appropriate means for resolution. The director of student conduct or student conduct coordinator must approve the request.
 - d. **Submissions.** The student conduct officer/board chair will provide the student(s) with a copy of the list of witnesses, and an opportunity to review documents or other information submitted by the College. In the absence of good cause, as determined by the student conduct officer/board chair, the student(s) may not introduce witnesses, documents, or other evidence at the hearing that were not provided to the student conduct officer/board chair by the designated deadline.
 - e. **Witnesses.** The student(s) are responsible for the attendance of their witnesses at the hearing. Students are responsible for providing a list of their witnesses to the student conduct officer/board chair no fewer than three business days before the date of the hearing.
 - f. **Board Members' Responsibilities.** Once a board member has been appointed to the case, they may not discuss the case with anyone not involved in the proceedings, with the student(s) themselves, or with anyone acting on the behalf of the student(s). The chair will provide the board members with a copy of the Notice of Hearing, the list of witnesses, and materials submitted for the hearing with an instruction to avoid private discussion of the case. The board will review, in advance of the hearing, all of the written materials provided to them by the board chair.
 - g. **SUNY Counsel.** The student conduct officer/board chair may seek advice from the State University of New York, Office of the General Counsel throughout the hearing process.

h. **Admission of responsibility.** If, at any time prior to the hearing, the respondent elects to acknowledge their actions and take responsibility for the alleged misconduct, they may request that the student conduct officer/board chair propose a resolution to the charges, and, resolve the violation without a hearing.

8. **Hearing Process** The hearing will not follow a courtroom model, and formal rules of evidence will not be observed.

a. **Privacy of the Hearing Process.** In order to comply with FERPA and to provide an orderly process for the presentation and consideration of relevant information without undue intimidation or pressure, the hearing process is not open to the general public. FERPA is not applicable to cases in which student organizations are charged as a group.

b. **Procedure for Hearing.** The student conduct officer/board chair will determine the order of the student(s) and witnesses and will resolve any questions of procedure that arise during the hearing.

i. Each party will be given the opportunity to provide a statement at the beginning of the hearing.

ii. Only the student conduct officer/board chair and board members may directly question the student(s) and any witnesses. The student(s) or their advisors may ask the student conduct officer/board chair to pose questions or inquire further into specific matters, by submitting these requests in writing. (If necessary, a brief recess may be granted to allow the student an opportunity to prepare and submit such requests.) The student conduct officer/board chair is empowered to disallow any questions that are deemed irrelevant or redundant.

iii. After the student and all witnesses have been questioned, the student may make a closing statement and request a short recess to prepare it.

iv. As a general rule, no new evidence or witnesses may be submitted during the hearing.

i. If a party identifies new evidence or witnesses that were not reasonably available prior to the hearing and could affect the outcome of the matter, the party may request that such evidence or witnesses be considered at the hearing.

ii. The student conduct officer/board chair will consider this request and make a determination regarding (1) whether such evidence or witness testimony was actually unavailable by reasonable effort prior to the hearing, and (2) whether such evidence or witness testimony could affect the outcome of the matter. The party offering the newly-discovered evidence or witness has the burden of establishing these questions by a preponderance of the evidence.

iii. If the student conduct officer/board chair answers in the affirmative to both questions, then the parties will be granted a reasonable pause in the hearing to review the evidence or prepare for questioning of the witness.

c. **Statement/Participation.** The student has the option of not providing a statement; however, the exercise of that option will not preclude the student conduct officer/board from proceeding and determining the case on the basis of the information presented.

i. If the student fails to appear at the hearing, after being duly notified of its place and time, the student conduct officer/board chair may postpone the proceedings or proceed.

ii. The student conduct officer/board may not draw an inference of any kind if the student chooses not to participate. However, the choice not to participate may affect the hearing outcome.

d. **Recording.** The recording or transcript of the hearing, at SUNY Brockport's discretion, will be available for review by the parties within five business days following the hearing, unless there are extenuating circumstances. The recording or/transcript of the hearing will not be given to parties or advisors. Individuals requesting a copy of the hearing transcript may be charged a reasonable fee.

e. **Decision.** The student conduct officer/board will make their decision by using the preponderance of evidence standard. If a board hearing, the board must make its decision by majority vote. If an administrative hearing, the student conduct officer alone will make the determination. The student conduct officer/board chair will provide their decision in writing to the student and to the vice president for enrollment management and student affairs within fifteen (15) business days after the conclusion of the hearing.

f. **Sanction.** If an administrative hearing was held, the student conduct officer will determine sanctions. If a board, the board will determine the appropriate sanction(s) by majority vote. In determining an appropriate sanction for a student who is found responsible, the student conduct officer/board may consider any record of past violations of the Code of Student Conduct, as well as the nature and severity of such past violation(s). The student conduct officer/board will also consider as part of its deliberations whether the student poses a continuing risk to the College community.

g. **Effective Date of Sanction.** Sanctions are effective once the student conduct officer/board chair issues notice of the outcome and sanctions to the student. The vice president of enrollment management and student affairs

or designee may suspend the student conduct officer's/board's determination while the appeal is pending, or allow the respondent to attend classes or participate in other activities on a supervised or monitored basis, or make such other interim modifications to the determination as may be advisable. The vice president of enrollment management and student affairs or designee's interim decision may not be appealed.

h. **Transcript Notation in Cases of Conduct Suspension or Conduct Dismissal.** If the student conduct officer/board imposes a sanction of conduct suspension or conduct dismissal, then, following exhaustion of an appeal, the student conduct officer/board chair will notify the College Registrar to place a notation on the student's transcript, which will read "Suspended after a finding of responsibility for a code of conduct violation" or "Dismissal after a finding of responsibility for a code of conduct violation," as applicable. Students may appeal to the vice president of enrollment management and student affairs, in writing, for removal of a notation that they were suspended, no earlier than one year after the suspension is completed. Notations indicating a student was dismissed from the College shall not be subject to removal, and therefore, cannot be appealed.

i. **Appeals Process.** Any student/student organization found responsible for a violation of the Code of Student Conduct shall have the right to appeal by submitting a letter, not more than five pages, in opposition to the hearing outcome and/or sanction(s).

i. Appeals are made to the vice president for enrollment management and student affairs or designee. The student/student organization must make an appeal in writing within five (5) business days after notice of the written decision.

ii. An appeal may be heard on the following grounds only:

- Due Process. The conduct board or student conduct officer failed to observe the procedural or substantive requirements established by the Code of Student Conduct;
- Severity of Sanction. The sanction is "too severe" or "not severe enough" based on the proven violation; and
- New Evidence. New evidence has appeared that: a) was not known at the time of the original hearing; b) could not have reasonably been discovered at the time of the original hearing; and c) is material, so may have had an impact on the outcome of the original conduct decision.

iii. Students and members of student organizations do not have the opportunity to meet with the appeal officer, unless, in the appeal officer's discretion, a meeting would serve to clarify an issue on appeal.

iv. The appeal officer may take any of the following actions:

- Affirm the findings and sanctions of the original conduct official or conduct board;
- Modify the findings and/or sanctions;
- Determine the student/student organization is not responsible for the charge(s); or
- Remand for a new hearing.

Note: Appeals may either be submitted electronically or delivered in hard copy to: Appeals Officer, Vice President for Enrollment Management and Student Affairs, 7th Floor, Allen Administration Building, or designee.

CATEGORY II: SEXUAL/GENDER BASED DISCRIMINATION AND INTERPERSONAL VIOLENCE MISCONDUCT: PROHIBITED BEHAVIOR AND POLICY & PROCEDURE

PART A: Sexual/Gender Based Discrimination And Interpersonal Violence Misconduct

This section covers behavior that does not constitute "sexual harassment," as defined by Title IX of the Education Amendments of 1972 regulations. That behavior is covered in the Title IX Grievance Policy, found at https://www.brockport.edu/support/policies/adopted/emsa_title_ix_grievance.html [[/support/policies/adopted/emsa_title_ix_grievance.html](https://www.brockport.edu/support/policies/adopted/emsa_title_ix_grievance.html)]. This section covers behavior that includes, but is not limited to, sexual misconduct that is prohibited by New York State Education law 129-B, also known as "Enough is Enough." Sexual/Gender Based Discrimination and Interpersonal Violence Misconduct is a broad range of prohibited behaviors, and for the purposes of this Code, is defined as eight distinct types of misconduct:

- Dating violence;
- Domestic violence;
- Stalking;
- Sex and/or Gender Based discrimination;

- Sexual harassment;
- Non-consensual sexual contact;
- Non-consensual sexual intercourse; and
- Sexual exploitation.

16a.⁶ [\[/support/policies/student/code_of_conduct/sections_nine_ten.html#sixth_footnote\]](/support/policies/student/code_of_conduct/sections_nine_ten.html#sixth_footnote) **Dating Violence** is any act of violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. It is controlling, abusive, and aggressive behavior in a romantic or intimate relationship and can include verbal, emotional, physical, or sexual abuse, or a combination. The existence of such a relationship shall be determined based on the complainant statement, and with consideration of the type and length of the relationship and the frequency of interaction between the persons involved in the relationship. Two people may be in a romantic or intimate relationship, regardless of whether the relationship is sexual in nature; however, neither a casual acquaintance nor ordinary fraternization between two individuals in a business or social context shall constitute a romantic or intimate relationship. This definition does not include acts covered under domestic violence.

16b. **Domestic Violence** is a felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner; a person sharing a child with the complainant/victim or a person living with or who has lived with the complainant/victim as spouse or intimate partner.

16c. **Stalking** is when a person engages in a course of conduct (two or more acts by which the stalker directly, indirectly, or through third parties, follows, monitors, observes, surveils, threatens, or communicates about a person, or interferes with their property); directed at a specific person; and causes a reasonable person to fear for their safety or the safety of others, or causes that person to suffer substantial emotional damage. Examples include, but are not limited to: Repeatedly following such person(s); repeatedly committing acts toward such person(s) that serve no legitimate purpose; and repeatedly communicating by any means, including electronic means, with such persons; in a manner likely to intimidate, cause fear, or alarm them.

16d. **Sex and/or Gender Based Discrimination** occurs when actions deprive members of the community of educational or employment access, benefits, or opportunities on the basis of sex or gender, and includes discrimination on the basis of sex, pregnancy, gender expression, gender identity, and sexual orientation.

16e. **Sexual Harassment (Two Types):**

a. **Hostile Environment Sexual Harassment** is conduct, including physical contact, advances, and comments in person and/or via phone, text message, email, or other electronic medium, that is (a) unwelcome; (b) is based on sex or gender, gender identity, gender expression, or sexual orientation, is based on gender stereotyping, or is sexual in nature; and (c) is so severe or pervasive that a reasonable person (and the alleged victim) would find that the conduct unreasonably interferes with a student's ability to participate in or receive benefits, services, or opportunities in the College's programs.

In analyzing whether a hostile environment was created, the following may be considered:

- the frequency of the conduct (pattern or practice of harassment);
- the nature and severity of the conduct (single or isolated incident if sufficiently severe);
- the identity of and relationship between the alleged harasser and alleged victim;
- whether the conduct was physically threatening;
- whether the conduct was humiliating;
- the effect of the conduct on the alleged victim's mental or emotional state;
- whether the conduct was directed at more than one person;
- whether the conduct arose in the context of other discriminatory conduct;
- whether the conduct unreasonably interfered with the alleged victim's educational or work performance; and
- whether the speech or conduct deserves the protections of academic freedom.

b. **Quid Pro Quo Sexual Harassment** exists when a person having power or authority over the alleged victim makes unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature; when submission to such sexual conduct is made either explicitly or implicitly a term or condition of rating or evaluating the alleged victim's educational (or employment) progress, development or performance; and when submission to or rejection of such conduct would or does result in adverse educational or employment action.

16f. **Non-Consensual Sexual Contact**
Non-Consensual Sexual Contact is

- any sexual touching,
- however slight,
- with any object,
- by a person upon a person,
- without affirmative consent.*

Sexual contact with the breasts, buttocks, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth or other orifice.

16g. Non-Consensual Sexual Intercourse

Non-Consensual Sexual Intercourse is

- any sexual intercourse (anal, oral, or vaginal),
- however slight,
- with any object,
- by a person upon a person,
- without affirmative consent.*

Intercourse however slight, meaning vaginal penetration by a penis, object, tongue or finger, anal penetration by a penis, object, tongue, or finger, and oral copulation (mouth to genital contact or genital to mouth contact).

***Affirmative Consent Definition**

- Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity.
- Consent may be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity.
- Consent is active, not passive.
- Silence or lack of resistance, in and of itself, does not demonstrate consent.
- Consent is required and is the responsibility of the person(s) initiating each specific sexual act regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- Consent to any sexual act or prior consensual sexual activity between the parties or with any party does not constitute consent to any other sexual act.
- Consent may be initially given but withdrawn at any time.
- When consent is withdrawn or cannot be given, sexual activity must stop.
- Consent cannot be given when a person is incapacitated.
- Incapacitation occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent.
- Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.
- It is not an excuse that the student respondent of sexual misconduct was intoxicated and/or under the influence of other drugs, and therefore, did not realize the incapacity of the other.
- Consent cannot be given if any of the parties are under the age of 17, or if an individual otherwise cannot consent.
- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity or gender expression

16h. Sexual Exploitation

Sexual exploitation occurs when a student takes non-consensual or abusive sexual advantage of another for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute

one of other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to: taking pictures or video or audio recording of another in a sexual act, or in any other private activity without their consent or engaging in sexual activity with another person while knowingly infected with a sexually transmitted infection (STI) or sexually transmitted disease (STD) and without informing the other person of the infection.

PART B: Retaliation

Retaliation is any adverse action taken against a person because they i) participated in a report of Sex Discrimination or Sexual/Gender Based and Interpersonal Violence Prohibited Behaviors, investigation, or proceeding; ii) publicly opposed sex discrimination (including sexual and gender based misconduct and interpersonal violence as defined in this Code); or iii) were friends or acquaintances of the person who made the report; and iv) the adverse action interferes with the person's educational or employment rights or privileges. Retaliation is prohibited; participants who experience retaliation should report it to the Title IX coordinator or the student conduct officer.

PART C: Sexual /Gender Based Discrimination And Interpersonal Violence Misconduct Disciplinary Action

Sexual/Gender Based Discrimination and Interpersonal Violence Misconduct Prohibited Behaviors are serious violations of the Code of Student Conduct. A student found responsible for violating this policy may be assigned disciplinary action/sanctions that include, but are not limited to: Official Warning; Conduct Probation for one semester, two semesters, three semesters or four semesters; Conduct Suspension for one semester, two semesters, three semesters or four semesters; or Conduct Dismissal. Section 8 of the Code of Student Conduct Interim Measures/Loss of Privileges/Disciplinary Actions/Sanctions will be used to guide sanctioning in Sexual/Gender Based Discrimination and Interpersonal Violence Misconduct cases. Please note that the College recognizes that not all forms of violations of these Sexual/Gender Based Discrimination and Interpersonal Violence Misconduct Policies are the same, and the College reserves the right to impose differing sanctions. The College will consider the concerns and rights of both the complainant and the respondent. For students found responsible for non-consensual sexual intercourse, available sanctions are limited to conduct suspension with additional requirements or conduct dismissal.

PART D: Students' Bill Of Rights

SUNY Brockport is committed to providing options, support, and assistance to complainants/victims/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 complainant/victims/survivors of these crimes and violations, regardless of race, color, national origin, religion, 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;

The right to:

- Make a report to local law enforcement (University Police and/or Brockport Police) and/or New York State police.
- Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously.
- Make a decision about whether or not to disclose a crime or violation and participate in the conduct or criminal justice process free from outside pressures from the College.
- Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard.
- Be treated with dignity and to receive from the College courteous, fair, and respectful health care and counseling services.
- Be free from any suggestion that the complainant/victim/survivor is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations.
- Be free from retaliation by the College, the respondent, and/or the friends, family, and acquaintances of the respondent, within the jurisdiction of the College.
- Describe the incident to as few College representatives as practicable and not to be required to unnecessarily repeat a description of the incident.
- Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or conduct process of the College.
- Be accompanied by an advisor of choice who may assist and advise a complainant or respondent throughout the conduct process, including during all meetings and hearings.
- Access to an appeal following a determination.

Options in Brief:

Complainants have many options that may be pursued simultaneously, including one or more of the following:

- Receiving assistance from confidential resources, such as counseling and medical attention;

- Reporting to:
 1. A College official who will not maintain your confidentiality, but will limit who they share information with, including: The Title IX coordinator, a Student Conduct employee, or a Human Resources employee and/or University Police;
 2. Local law enforcement and/or State police; and/or
 3. Family Court (in some cases of intimate partner violence);
- Filing a civil complaint.

[Refer to Part E, below, Reporting Options and Procedures.]

- International students who are survivors of sexual or interpersonal violence may find information about how their visa status may be impacted at <https://www.suny.edu/violence-response/Visa-and-Immigration-Resource/> [<https://www.suny.edu/violence-response/Visa-and-Immigration-Resource/>].

Copies of this Bill of Rights are distributed annually to students, made available on the College's website (https://www.brockport.edu/about/title_ix/ [[/about/title_ix/](https://www.brockport.edu/about/title_ix/)]), include links or information to access the Code of Student Conduct and the Options for Confidentially Disclosing Sexual Violence, and are posted in each campus residence hall, dining hall, and student union.

The difference in the College's student conduct process and criminal proceedings are explained in <http://system.suny.edu/sexual-violence-prevention-workgroup/College-and-Criminal-Resource/> [<http://system.suny.edu/sexual-violence-prevention-workgroup/College-and-Criminal-Resource/>].

PART E: Reporting Options And Procedures

Complainants have the right to pursue more than one of the options below at the same time, or to choose not to participate in any of the following reporting options. A complainant has the right to confidentially disclose the incident to certain college officials, who by law, may maintain confidentiality, and can assist in obtaining services. The complainant may also choose to make an anonymous report (see below).

Confidential Disclosing Options for Sexual/Gender Based Discrimination and Interpersonal Violence Misconduct:

SUNY Brockport wants to provide information and support to students who may have been subjected to Sexual/Gender Based Discrimination and Interpersonal Violence, regardless of their desire to move forward with a report of sexual violence to campus officials or law enforcement. If students want to talk with someone about something they observed or experienced, even if they're unsure whether the behavior constitutes sexual violence, they have options. Not all of the College's resources are confidential, and this section is aimed at helping students understand who is confidential.

In this Section:

- Confidential Resources.
- Privacy versus Confidentiality.
- Requesting Confidentiality: After Disclosure to Non-Confidential College officials, the College Will Weigh the Request and Respond.
- Public Awareness/Advocacy Events.
- Anonymous Disclosure.
- Institutional Crime Reporting.
- Filing Criminal Charges.

A. Confidential Resources: Individuals who are confidential resources will not report crimes to law enforcement or College officials without your permission, except in extreme circumstances, such as 1) when a person is a threat to themselves or others, and 2) the mandatory reporting of child abuse. Otherwise, New York State Public Health Law §18 regulations prohibit medical and mental health professionals from releasing any information about you, unless you give your written permission.

The following resources are confidential (people who by law may not share your disclosure with others) and charge no fee for their services:

- Counseling Center, Hazen Center for Integrated Care, Hazen Hall, (585) 395-2414, https://www.brockport.edu/life/counseling_center/ [[/life/counseling_center/](https://www.brockport.edu/life/counseling_center/)].
- Student Health Center, Hazen Center for Integrated Care, Hazen Hall, (585) 395-2414, https://www.brockport.edu/life/health_center/ [[/life/health_center/](https://www.brockport.edu/life/health_center/)].

- RESTORE 24-hour hotline: (800) 527-2777, <https://restoresas.org/> [<https://restoresas.org/>].
- Willow Domestic Violence Center, 24-hour hotline: (585) 222-7233, <https://willowcenterny.org> [<https://willowcenterny.org>].

The following confidential resources are hospitals and may charge a fee for their services:

- **Strong West Emergency, 156 West Avenue, Brockport, (585) 758-1010.**
- **Strong Memorial Hospital, 601 Elmwood Ave, Rochester, (585) 275-2100.**
- **Unity Hospital, 1555 Long Pond Road, Rochester, NY 14626, (585) 723-7100.**

Getting medical care as soon as possible enables student to be evaluated for injuries and tested for STD's and pregnancy; having a medical exam is also a way to preserve physical evidence of a physical assault.

To best preserve evidence, avoid showering, washing, changing clothes, combing hair, drinking, eating, or doing anything to alter physical appearance until after a physical exam has been completed.

You can get a Sexual Assault Forensic Examination (commonly referred to as a rape kit) at a hospital within 72 hours of an assault.

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 these services. You are encouraged to let hospital personnel know if you do not want your insurance policyholder to be notified about your access to off-campus medical and/or counseling services.

Students who want to see a health care provider, but don't want their medical insurance to cover it for fear that their parents/guardians may find out about the visit, should contact New York State Office of Victim Services, who will assist by compensating victims for health care and counseling services, including emergency compensation. Information may be found at: <https://ovs.ny.gov/help-crime-victims> [<https://ovs.ny.gov/help-crime-victims>].

More information may be found here: <https://ovs.ny.gov/rights-crime-victims-booklet> [<https://ovs.ny.gov/rights-crime-victims-booklet>], or by calling 1-800-247-8035.

To disclose an incident confidentially and obtain services from New York State, New York City or county hotlines, see: <http://www.opdv.ny.gov/help/dvhotlines.html> [<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> [<http://www.opdv.ny.gov/help/index.html>], (or call 1-800-942-6906). Assistance may also be obtained through:

- <https://www.suny.edu/violence-response/> [<https://www.suny.edu/violence-response/>] - provides resources in the geographic area of each SUNY school and translates students' rights in more than 100 languages;
- Legal Momentum: <https://www.legalmomentum.org/> [<https://www.legalmomentum.org/>];
- NYSCASA: <http://nyscasa.org/responding> [<http://nyscasa.org/responding>];
- NYSCADV: <http://www.nyscadv.org/> [<http://www.nyscadv.org/>];
- Pandora's Project: <https://pandys.org> [<https://pandys.org>];
- RAINN: <https://www.rainn.org/get-help> [<https://www.rainn.org/get-help>].
- Safe Horizons: <http://www.safehorizon.org/> [<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. Complainants are encouraged to also contact a campus resource so that the campus may take appropriate action.

B. Privacy versus Confidentiality:

Even employees who cannot guarantee confidentiality will maintain the complainant's privacy to the greatest extent possible, and may provide information about remedies, accommodations, evidence preservation, and how to obtain resources. Those officials will also provide information contained in the Students' Bill of Rights, including the right to choose when and where to report, to be protected by the College from retaliation, and to receive assistance and resources from the College. These college officials will disclose that they are private, and not confidential resources, and 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 or designee. Information the complainant provides to a non-confidential resource will be relayed only as necessary to 1) investigate and/or seek a resolution; and 2) to notify the Title IX coordinator or designee, who is responsible under the law for tracking patterns and

spotting systemic issues. The College will limit the disclosure as much as possible, even if the Title IX coordinator determines that the request for confidentiality cannot be honored. College officials to whom incidents are reported will notify the complainants that the criminal justice process uses different standards of proof and evidence than the College's student conduct process, and that questions about penal law or the criminal process should be directed to law enforcement or the district attorney. The College will ensure that, at a minimum, at the first instance of disclosure by a complainant to a college representative, the following information is presented to the complainant:

"You have the right to make a report to University Police, local law enforcement, and/or State Police; to choose not to report; to report the incident to the College; to be protected by the College from retaliation for reporting an incident; and to receive assistance and resources from the College."

C. Requesting Confidentiality: After Disclosure to Non-Confidential College Officials, the College Will Weigh the Request and Respond:

Complainants have the right to withdraw a complaint/report or their involvement from the College conduct process at any time. However, if a complainant discloses an incident to a College employee who is responsible for responding to or reporting sexual violence or sexual harassment, but wishes to maintain confidentiality or does not consent to the College's request to initiate an investigation, then the Title IX coordinator or designee will weigh the complainant's request against the College's obligation to provide a safe, non-discriminatory environment for all members of the College community, including the complainant. When a complainant discloses an incident to someone who is responsible for responding to or reporting sexual violence or sexual harassment, but wishes to maintain confidentiality, the College will consider many factors to determine whether to proceed despite that request. These factors include, but are not limited to:

- Whether the respondent 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 respondent will commit additional acts of violence;
- Whether the respondent used a weapon or force;
- Whether the complainant is a minor;
- Whether the College possesses other means to obtain evidence; and
- Whether the report reveals a pattern of perpetration at a given location or by a particular group.

Honoring your request may limit the College's ability to meaningfully investigate and pursue conduct action against a respondent. If the College determines that an investigation is required, it will notify the complainant and take immediate action as necessary to protect and assist them.

The College will assist complainants with academic support, housing, transportation, employment, and other reasonable and available supportive measures, regardless of whether they choose to request any type of investigation. While complainants may request accommodations through several College offices, the following serve as a primary point of contact to assist with these measures: Title IX coordinator, student conduct officer, and/or University Police. The College may also take proactive steps, such as training or awareness efforts, to combat sexual violence in a way that does not identify either the complainant or the situation that was disclosed.

D. Public Awareness/Advocacy Events:

If students disclose a situation through a public awareness event such as "Take Back the Night", candlelight vigils, protests, or other public event, the College is not obligated to begin an investigation. The College may use the information provided to inform the need for additional education and prevention efforts.

E. Anonymous Disclosure:

Anonymous reports may be made the following ways:

1. By completing an anonymous report at the following webpage: https://publicdocs.maxient.com/reportingform.php?SUNYBrockport&layout_id=4; [https://publicdocs.maxient.com/reportingform.php?SUNYBrockport&layout_id=4];
2. By contacting RESTORE (Rape Crisis Services) 24-hour hotline at 1-800-527-2777; <https://restoresas.org> [<https://restoresas.org.html>]
3. By contacting Willow Domestic Violence at 585-222-SAFE (7233) (see its website: <https://willowcenterny.org>); [<https://willowcenterny.org>];
4. By contacting New York State Hotline for Sexual Assault and Domestic Violence: [1-800-942-6906](https://www.nysdvh.org).

Note: Willow and the New York State Hotline are for crisis intervention, resources, and referrals, and are not reporting mechanisms.

F. Institutional Crime Reporting

Reports of certain crimes occurring in certain geographic locations will be included in the College's Clery Act Annual Security Report (Campus Safety Report) in an anonymous manner that neither identifies the specifics of the crime or the identity of the complainant/victim/survivor. The College 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 complainant.) A complainant will never be identified in a timely warning.

G. Non-Confidential Disclosing Options for Sexual/Gender Based Discrimination and Interpersonal Violence

- a. File Report with the Title IX coordinator or Student Conduct office: Students may make a report of sexual/gender based discrimination and interpersonal violence (including sexual harassment, sexual assault, relationship violence and stalking) directly with the Title IX coordinator or student conduct office or by completing either of the following forms online: https://publicdocs.maxient.com/reportingform.php?SUNYBrockport&layout_id=4, [https://publicdocs.maxient.com/reportingform.php?SUNYBrockport&layout_id=4], or https://www.brockport.edu/about/diversity/bias_reporting_system.html [[/about/diversity/bias_reporting_system.html](https://www.brockport.edu/about/diversity/bias_reporting_system.html)]. Reports will be investigated in accordance with College policy.
 - i. Complainants who decide to report the incident to the Title IX coordinator or student conduct office have a right to: 1) a prompt response to any report; and 2) have their reports investigated and/or adjudicated in an impartial, timely and thorough manner by College officials 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" unless the preponderance of evidence standard is met, and other issues related to sexual assault, domestic violence, dating violence, and stalking.
 - ii. Students may withdraw their report (subject to exceptions above) or involvement from the College process at any time.
 - iii. If the respondent is an employee, a complainant may also report the incident to the College's Affirmative Action Officer or may request that a College employee assist in reporting to the Affirmative Action Officer. Disciplinary proceedings, if applicable, will be conducted in accordance with the applicable collective bargaining agreement. When the respondent is an employee of an affiliated entity or vendor of the College, College officials will, at the complainant's request, assist in reporting to the appropriate office of the vendor or affiliated entity and, if the response is not sufficient, assist in obtaining a persona non grata letter, subject to legal requirements and College policy.

Title IX Coordinator Contact Information:

Denine K. Carr, JD

Division of Enrollment Management and Student Affairs

Location: 6th Floor, Allen Administration Building

Phone Number: (585) 395-5066

Email: dcarr@brockport.edu [<mailto:dcarr@brockport.edu>].

Web page: https://www.brockport.edu/about/title_ix/ [[/about/title_ix/](https://www.brockport.edu/about/title_ix/)]

The Title IX coordinator is responsible for monitoring and oversight of implementation of Title IX, Violence Against Women Act, Campus SaVE Act, and New York State Education Law Article 129-B compliance at the College, including coordination of training, education, communications, and administration of reporting procedures for faculty, staff, students, visitors and other members of the College community.

Student Conduct Contact Information:

Location: Residential Life/Learning Communities and Student Conduct, Thompson Hall, West Wing

Phone Number: (585) 395-2122

Email: studentconduct@brockport.edu [<mailto:studentconduct@brockport.edu>].

Webpage: www.brockport.edu/life/student_conduct/ [http://www.brockport.edu/life/student_conduct/] to file a complaint on the confidential online reporting form.

Affirmative Action Officer Contact Information:

Tamara Gouger, t Director, Human Resources

Office of Human Resources

Location: 4th Floor, Allen Administration Building

Phone Number: (585) 395-2126

Email: tgouger@brockport.edu [<mailto:tgouger@brockport.edu>].

Web page: https://www.brockport.edu/about/affirmative_action/ [[/about/affirmative_action/](https://www.brockport.edu/about/affirmative_action/)]

b. **File Criminal Charges:** Complainants who are interested in filing criminal charges will be referred to University Police, located in Lathrop Hall, phone no. (585) 395-2226. This department will assist complainants with filing criminal charges and will refer them to the appropriate law enforcement agency, if necessary. If the incident occurred off-campus, the complainant should call 9-1-1 to report the crime. In the alternative, complainants may call the New York State police 24-hour hotline to report sexual assault at 1-844-845-7269. The College will also work closely with the appropriate law enforcement agency to avoid compromising the criminal investigation. The College will provide immediate supportive measures to protect the complainant in the educational setting, when necessary.

- i. The complainant has the right to have a conduct process run concurrently with a criminal justice investigation, except for temporary delays as requested by the external municipal entities while law enforcement gathers evidence. Temporary delays should not last more than ten business days, except when law enforcement specifically requests and justifies a longer delay. In consultation with the Title IX coordinator or designee, the College will provide rationale to explain the reason(s) for waiting until the completion of the criminal investigation and will communicate this rationale to both the complainant and the respondent.
- ii. The College will assist complainants in initiating legal proceedings in family court or civil court, including, but not limited to, obtaining an Order of Protection against the respondent, or, if outside New York State, an equivalent protective or restraining order.
- iii. The College will provide the opportunity to meet with or speak to the complainant and the respondent to explain: i) the Order of Protection and answer questions, including that it is the responsibility of the respondent to stay away from the protected person(s) and that the burden does not rest with the protected person; and ii) the consequences of violating an order, including, but not limited to arrest, additional conduct charges, and interim suspension. University Police will assist the protected person by effecting an arrest if the respondent violates an Order of Protection, or, if outside New York State or the University Police jurisdiction, will call on and assist local law enforcement in effecting an arrest for violation of an order.

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

PART F: Respondents' Rights

See section 5, above, Students' Rights When Charged With A Violation.

PART G: Procedures For Sexual/Gender Based Discrimination And Interpersonal Violence Misconduct

A. Meeting with the Parties/Interim Measures

1. **The Complaint/Report.** A complaint or report ("report") of Sexual/Gender Based Discrimination and Interpersonal Violence Misconduct may be filed with the Title IX coordinator, the Student Conduct Office, University Police, or appropriate law enforcement agency. The College official may request the complainant provide the report in writing. A student may make a report against another student, an employee, a student organization, or a third party. In some circumstances, the College may proceed without a complainant. The procedure the College uses to address these reports may vary, depending on who the report is against.
2. **Initial Meeting with Complainant.** The College official will schedule a meeting with the complainant and their advisor to:
 - a. Identify immediate support services, interim measures, and resources.
 - i. Immediate services/resources may include, but are not limited to, medical and counseling services by referral to the Student Health Center and the Counseling Center at Hazen Center for Integrated Care, local hospitals (referenced above); RESTORE (sexual assault crisis services); Willow Domestic Violence Center (support for victims of intimate partner violence and stalking); no-contact order with the respondent; referral to University Police; and offering of safe rides. (Students can call (585) 395-SAFE (7233) or pick up any blue-light phone and a University Police Officer or members of the student patrol will respond quickly to escort students to their cars or residence halls, any time.)
 - ii. Other supportive measures that may be offered include academic support, change in housing and/or employment, room lock change, and measures to ensure the complainant's overall health and safety.
 - b. Inform the complainant of their rights and the College's process for addressing their report of Sexual/Gender Based Discrimination and Interpersonal Violence;
 - c. Inform the complainant of the Policy for Alcohol and/or Drug Use Amnesty in Sexual Violence Cases;
 - d. Inform the complainant that retaliation is prohibited and encourage the complainant to report any and all forms of retaliation by the respondent(s) and/or their associates to the Title IX coordinator or designee;

- e. Complete the Complainant Acknowledgement form with the complainant; and
 - f. Discuss the Sexual/Gender Based Discrimination and Interpersonal Violence Misconduct resolution procedures with the complainant, which include: i) Informal resolution (mediation or restorative conferencing) through the student conduct system; and ii) Formal resolution which may include an administrative or board hearing through the student conduct system. [Note: Mediation will not be used to resolve reports of sexual violence, and administrative hearings will not be used to resolve reports of non-consensual sexual intercourse.] The Title IX coordinator will seek input from the complainant to determine if they want to proceed with either formal or informal resolution.
3. **Initial Meeting with Respondent.** The College official will schedule a meeting with the respondent and their advisor to: a) review the student conduct procedures; b) review the respondent's rights; and c) identify immediate interim measures or support that may be needed, including a) medical and counseling services by referral to the Student Health Center and the Counseling Center at Hazen Center for Integrated Care; b) medical services at local hospitals (referenced above); c) no-contact order with the complainant; and d) academic support. This meeting may also involve a discussion of any interim measures that may be appropriate, concerning the respondent's overall health and safety, housing, and/or employment. The respondent will also be informed that any threat of retaliation by the respondent or third parties, including, friends, witnesses, family members, or associates, toward the complainant or third parties associated with complainant, including, friends, witnesses, family members, or associates, will not be tolerated, and may subject the respondent and their associates to being charged with retaliation.
4. **Interim Measures.** In all cases of reported Sexual/Gender Based Discrimination and Interpersonal Violence Misconduct, the College will undertake an appropriate inquiry and take prompt and effective action, where necessary, to support and protect the complainant, including taking appropriate interim steps before the final outcome of the investigation and hearing. The College will also take action to support the respondent.
- a. The student conduct official may impose a "no-contact" order, consistent with College policy, which generally includes a directive that the parties refrain from having contact with one another, directly or through proxies, whether in person or via electronic means, pending the investigation and outcome of the case. It is the responsibility of the person against whom the no contact order is issued to stay away from the other party, if observed in a public place, without direct contact. If a mutual no contact order is issued, it is the responsibility of both of the students, if they observe each other in a public place, to stay away from one another without directly contacting the other. If the College finds it appropriate, it may make a schedule for both of the students to use the same facilities, while maintaining the terms of the no contact order.
 - b. The Title IX coordinator or designee may take further protective action, if deemed appropriate, to separate the two students.
 - c. Students have a right to challenge the terms of the interim measure(s) or request a modification, by submitting a letter, as well as other supporting documents, to the vice president of enrollment management & student affairs or designee within three business days of notice of the interim measure(s). A decision will be made within five business days of the request.
 - d. Violation(s) of the College official's directives and/or protective actions may lead to disciplinary action.
 - e. When the respondent is an employee of the College and presents a continuing threat to the health and safety of the community, the College may subject the respondent to interim measures in accordance with the applicable collective bargaining agreements, employee handbooks, and College policies and rules.
 - f. When the respondent is not a member of the College community and presents a continuing threat to the health and safety of the community, University Police or other College officials may provide assistance to the complainant in obtaining a persona non grata letter, subject to legal requirements and College policy, restricting the respondent from campus

B. Investigation.

1. **Investigation Process.** A preliminary investigation of the report may precede a full investigation. The Title IX coordinator or designee will review the information gathered in the preliminary investigation to determine if a full investigation of the report should be pursued.
- a. If a determination is made to pursue a full investigation, it will be conducted in a manner that recognizes the legal and policy requirements of due process, including fairness, impartiality, and a meaningful opportunity to be heard. The Title IX coordinator or designee will appoint a two-member investigation team (investigators) to conduct an investigation.
 - b. Within 24 hours of receiving notice of the assigned investigators, the complainant or the respondent may, in writing, raise bias or conflict of interest, stating the specific reasons(s) for their concern. The Title IX coordinator or designee will determine whether the challenge has merit, and may assign a

different investigator, if appropriate. If the Title IX coordinator is the subject of a student's concern, then the vice president for enrollment management and student affairs or designee will make the determination.

- c. The investigators will meet with both the complainant and the respondent separately to obtain their statements, other evidence, including text messages, videos, etc., and request a list of witnesses from each. The College strives to complete investigations within sixty (60) days.
- d. The parties and their advisors are required to sign an agreement not to disseminate any of the evidence they gained access to as a result of the investigation and/or hearing process or use such evidence for any purpose unrelated to the investigative and/or hearing process.
- e. The purpose of the investigation is to determine whether the allegations, if true, may constitute a violation of the Sexual/Gender Based Discrimination and Interpersonal Violence Misconduct Policy. When a determination is made that the alleged misconduct, if true, may constitute a violation, then the investigators will recommend that a hearing be held.

2. **Notice to Parties of Investigators' Referral.** The investigators will prepare and distribute to the Title IX coordinator or designee a written report, which will include the information gathered during the investigation related to the allegations, and will set forth recommended charges, if any, as well as whether a hearing is recommended. The Title IX coordinator or designee, in consultation with the investigators, will determine whether a hearing will be granted, after reviewing the information gathered in the investigative report. The Title IX coordinator or designee will provide written notice to both parties simultaneously regarding whether a conduct hearing will be Granted or Denied, along with a copy of the investigative report.

a. **Hearing Granted:** If a hearing is Granted, no fewer than three (3) business days before the hearing, the Title IX coordinator or designee will also notify both parties in writing of 1) The identity of the student conduct officer assigned to hear the case; 2) The specific charge(s) of Sexual/Gender Based Discrimination and Interpersonal Violence Misconduct being brought against the respondent; 3) The potential disciplinary action or sanctions the respondent may face if found "responsible"; and 4) a link to the Code of Student Conduct.

b. **Hearing Denied:**

i. **Basis for Appeal:** A complainant whose request for a hearing is denied may appeal that decision to the vice president for enrollment management and student affairs or designee, whose decision will be final. An appeal may be brought on the following bases: 1) the investigation was incomplete, and the failure to interview or consider specific witness(es) or other information had a material impact on the investigators' recommendation; or 2) new evidence has appeared that: a) was not known at the time of the investigation; b) could not have reasonably been discovered during the investigation; and c) is material, so may have had an impact on the outcome of the decision not to refer the matter to a hearing.

ii. **Procedure for Appeal:** An appeal must be submitted to the vice president for enrollment management and student affairs or designee in writing within five (5) business days of receipt of notice that a hearing was denied. The appeal letter in opposition to the decision to deny a hearing must be no more than five pages. If an appeal is submitted, notice of the appeal will be provided to the other party.

Note: Appeals may be submitted electronically or delivered to: Appeals Officer, Vice President for Enrollment Management and Student Affairs or designee, 7th Floor, Allen Administration Building.

C. Resolution of Sexual/Gender Based Discrimination and Interpersonal Violence Misconduct

1. **Informal Resolution. The College recognizes that in some limited situations, a voluntary informal resolution option may be appropriate.** The Title IX coordinator may seek input from the complainant to determine whether they are interested in engaging in an informal resolution of the report. The "Informal resolution" may include restorative conferencing or mediation. Mediation will not be an option for reports involving sexual violence, however. (See Section 7, Informal Resolution.) The Title IX coordinator or designee must approve a request for Informal Resolution. If so approved and both parties agree to the Informal Resolution, then a student conduct officer or contracted third party will facilitate this structured interaction, and may intervene or terminate the process at any time.

a. **Purpose of Restorative Conferencing.** Restorative Conferencing provides an opportunity for the complainant to confront the respondent, in the presence of, and facilitated by, a student conduct officer or contracted third party, and the ability to communicate the impact of the incident, and their wishes and expectations for the future. The respondent will have the opportunity to understand the impact of their behavior and respond.

- b. **Purpose of Mediation.** Mediation provides the opportunity for both the complainant and the respondent to resolve their conflict in writing in the presence of, and facilitated by a student conduct officer or contracted third party informally.
 - c. **Advisors for Complainant and Respondent.** Both the complainant and the respondent may have advisors of their choice present to support and assist them during the informal resolution process. The facilitator will offer each student an advisor who has been formally trained by the College, or the complainant and respondent may select an advisor of their choice. Advisors will have a limited role (see 2(g) below).
 - d. **Outcome of Informal Resolution.** Informal resolution will not result in a formal disciplinary sanction, but may result in the student conduct officer's imposition of protective/interim actions either agreed upon by the parties, or (with or without such agreement), based upon information derived from the proceeding, along with any other relevant information known to the College at the time of the Informal Resolution.
 - e. **Election to End Informal Resolution.** The College or either party may, at any time prior to the conclusion of the informal resolution, elect to end such proceeding. If the College or the complainant elects to end the informal resolution process, then either may initiate a formal resolution instead.
2. **Formal Process.** Based upon careful review of the investigative report and all information brought forward in the conduct case, the student conduct officer/board determines whether a violation of the *Code of Student Conduct* occurred, using a preponderance of the evidence standard. If a student conduct officer/board determines that the respondent is responsible for violating any of the charges, then the student conduct officer/board determines what disciplinary action may be imposed. Written or electronic notice of the outcome is provided to the respondent and complainant simultaneously and will state whether the respondent is responsible for having violated the charge(s), and if so, what discipline will be imposed, as well as the rationale for the decision and any sanctions.
- a. **Preliminary Review and Pre-Hearing Meeting.** The student conduct officer/board chair will meet with both parties separately to review the charges against the respondent and to review the student conduct process, including the rights of both students. If the respondent disputes the charge(s), then a hearing will be scheduled. The College reserves the right, through the student conduct officer/board chair, to i) add to or modify the charges specified by the Title IX coordinator or designee, with notice to the parties; ii) if a board hearing, the right to change the composition of the board at any time, with notice to the parties. If the respondent accepts responsibility, the student conduct officer/board chair may determine an appropriate sanction at that time, if no further information is required.
 - b. **Notice of Hearing.** When a hearing is granted, the student conduct officer/board chair will commence the formal conduct process by providing advance written or electronic notice simultaneously to the complainant and the respondent in a Notice of Hearing letter, which specifies: (1) the alleged violation(s) and a specific reference to the applicable provision in The Code of Student Conduct; (2) possible sanctions; (3) the date, time, and place of the hearing, subject to change; and (4) the names of the board members selected, if applicable. This notice may be provided at the Pre-Hearing Meeting the student conduct officer holds with each party.
 - c. **Administrative Hearing:** This will consist of a trained student conduct officer or designee, who will adjudicate the student conduct case alone (as opposed to a board). A respondent may choose to proceed with an administrative hearing only in cases that do not include a charge of Non-Consensual Sexual Intercourse. If the respondent has this option, they will have three (3) business days from receipt of the written notice that informs them of this option to determine whether to proceed with an Administrative or Board Hearing.
 - d. **Board Hearing:** The vice president for enrollment management and student affairs or designee, appoints the board chair and board members. The board is a formal group composed of faculty and staff. The board chair will i) confirm that all board members have received the required annual training; ii) select the board members; iii) serve as the presiding chair or appoint the presiding chair; and iv) send notice of the identity of the board members to the parties.
Note: Faculty and staff who serve as advisors, may at times, also serve as board members for other cases. A board member who acts as an advisor in a matter will not also preside on the board at the hearing.
 - e. **Notice of Potential Conflict.** Within 24 hours of receiving notice of the identity of the student conduct officer, and/or board hearing members assigned to the case, either the complainant or the respondent may raise, in writing, bias, or conflict of interest, stating the specific reasons(s) for their concern regarding the assigned person(s). The Title IX coordinator, designee or board chair will determine whether the challenge has merit, and a different student conduct officer, board chair or board member(s) may be assigned, if appropriate.

- f. **Time of Hearing:** The respondent's hearing will be held within ten (10) business days from the date of the preliminary review/pre-hearing meeting, unless the student conduct officer/board chair determines that legitimate grounds exist for delay. The parties, if participating, are expected to cooperate in the scheduling of the hearing. If either the complainant or the respondent fails to appear at the scheduled hearing, the student conduct officer/board chair may postpone the proceedings or proceed, at their discretion.
- g. **Advisors.** Both the complainant and the respondent may be accompanied by advisors of their choice, who may assist and advise them throughout the student conduct process and any related hearings or meetings. Participation of the advisor in any proceeding is governed by state law and the *Code of Student Conduct*.
- i. The student conduct officer/board chair will offer each student an advisor who has been formally trained on the College's Sexual/Gender Discrimination and Interpersonal Violence Misconduct Policy; in the alternative, the student may select someone else, but a witness may not serve as an advisor.
 - ii. Outside legal counsel, who may serve as an advisor, may privately consult with and advise the student through the conduct process, but may not otherwise directly participate in the student conduct process on behalf of the student.
 - iii. An advisor may not directly question the parties or witnesses at the hearing, but may suggest questions, in writing, to the student conduct officer/board chair and consult with the student that they are assisting.
 - iv. Students may request a brief recess to consult with their advisor, which will be granted at the discretion of the student conduct officer/board chair.
 - v. The student conduct officer/board chair will not allow an advisor's presence to inhibit the conduct hearing.
- h. **Submissions.** The student conduct officer/board chair will provide each party with a copy of the list of witnesses, and identification of or copies of documents or other relevant information submitted by the other party, if any, that were not attached to the investigative report. In the absence of good cause, as determined by the student conduct officer/board chair, the parties may not introduce witnesses, documents, or other evidence at the hearing that were not identified and/or provided to the student conduct officer/board chair by the designated deadline. The student conduct officer/board chair has the discretion to determine relevancy of all proposed submissions.
- i. **Board Pre-Hearing Procedures.** The board chair will schedule a pre-hearing meeting with the board panel prior to the hearing date. Once a board member has been assigned to the case, they may not discuss the merits of the report or charges with anyone not involved in the proceedings, including the complainant or the respondent; witnesses; or anyone acting on the behalf of the parties. The board chair will provide board members with 1) a copy of the Notice of Hearing; 2) the investigation report, including appendices, if applicable; 3) the list of witnesses submitted by the parties; and 4) party submissions.
- j. **Witnesses.** The student conduct officer/board chair will review each party's proposed witness list to assist in eliminating redundant testimony, and may, at their discretion, add witnesses to the witness lists at the pre-hearing meeting and/or at the hearing, upon written notice to both parties. The board chair will also provide each party written notice of the other party's witness list. The student conduct officer/board chair has the discretion to determine relevancy of the witnesses and determine the need for attendance of witnesses at the hearing. The parties are responsible for the attendance of their witnesses at the hearing.
- k. **Resolution before Hearing:** If, at any time prior to the hearing, after reviewing the investigation report and the complainant's list of witnesses and other evidence, the respondent elects to acknowledge their actions and take responsibility for the alleged Sexual/Gender Based Discrimination and Interpersonal Violence Misconduct charge(s), then the respondent may request that the student conduct officer/board chair resolve the matter without a hearing.
- l. **SUNY Counsel.** The student conduct officer/board chair may seek advice from the State University of New York, Office of the General Counsel throughout the hearing process.
- m. **Privacy of the Conduct Process.** In order to comply with FERPA and to provide an orderly process for the presentation and consideration of relevant information without undue intimidation or pressure, the hearing process is not open to the general public.

- n. **Hearing Process.** The hearing will not follow a courtroom model, and formal rules of evidence will not be observed. The student conduct officer/board chair will determine the order of the witnesses and resolve any questions of procedure arising during the hearing.
- i. Review of submissions. The student conduct officer/board and chair will review, in advance of the hearing, all the written materials provided to them, including the investigative report and appendices, if applicable, and party and witness submissions.
 - ii. Recording. The recording or transcript of the hearing, at SUNY Brockport's discretion, will be available for review by the parties within five business days following the hearing, unless there are any extenuating circumstances. A copy of the recording or/transcript of the hearing will not be provided to parties or advisors.
 - iii. Statement/Participation. Neither the respondent nor the complainant is required to provide a statement at the hearing or to participate; the exercise of that option will not preclude the board from proceeding and determining the charges against the respondent on the basis of the information presented.
 - a. If either the respondent or complainant fails to appear at the hearing after being duly notified of its place and time, the student conduct officer/board chair may postpone the proceedings or make the determination to proceed.
 - b. If the complainant and/or the respondent decides not to participate, the hearing may proceed, with the student conduct officer/board relying upon the information presented during the hearing, the information contained in investigative report, including any appendices, and party submissions, to make a determination.
 - c. The student conduct officer/board may not draw an inference of any kind if either the complainant or respondent chooses not to participate. However, the choice not to participate may affect the hearing outcome.
 - d. The student conduct officer/board will make a determination of "responsible" or "not responsible," on the basis of the evidence presented, provided the absent individual was duly notified of the scheduled hearing date, as outlined above.
 - iv. Options for Alternate Location. The College generally holds hearings via Zoom videoconferencing. If the hearing officer/board chair decides to hold the hearing in person, then the College will provide the complainant and the respondent the option to appear and participate outside the physical presence of the other party during the hearing, in appropriate circumstances, by the use of a room partition or technology, such as Zoom videoconferencing, at the sole discretion of the student conduct officer/board chair.
 - v. Excluded Information. The student conduct officer/board will exclude 1) the complainant's and the respondent's prior sexual histories, unless offered to prove someone other than the respondent committed the alleged misconduct or the information relates to the sexual history between the parties themselves for the purpose of demonstrating consent; and 2) mental health diagnosis or treatment of the parties, unless a party gives voluntary written consent that their mental health history may be considered. Accordingly, when determining responsibility, the student conduct officer/board will not consider 1) either of the parties' sexual histories other than for the two exceptions set forth above; or 2) the parties' mental health diagnosis or treatment, unless the party provides written consent.
 - vi. Newly-Discovered Evidence. As a general rule, no new evidence or witnesses may be submitted during the hearing.
 - If a party identifies new evidence or witnesses that were not reasonably available prior to the hearing and could affect the outcome of the matter, the party may request that such evidence or witnesses be considered at the hearing.
 - The student conduct officer/board chair will consider this request and make a determination regarding (1) whether such evidence or witness testimony was actually unavailable by reasonable effort prior to the hearing, and (2) whether such evidence or witness testimony could affect the outcome of the matter. The party offering the newly-discovered evidence or witness has the burden of establishing these questions by the preponderance of the evidence.
 - If the student conduct officer/board chair answers in the affirmative to both questions, then the parties will be granted a reasonable pause in the hearing to review the evidence or prepare for questioning of the witness.
 - vii. Right to reconvene. If the student conduct officer/board determines that unresolved issues exist that would be clarified by the presentation of additional evidence or further

investigation, the student conduct officer/board chair may recess the hearing and reconvene it in a timely manner to receive such information. (A recess may not be based on the failure of witnesses to appear without good cause or on the proposed introduction of documents or other evidence that were not timely submitted in advance of the hearing).

- viii. **Evidentiary Standard.** The standard by which the College will evaluate evidence of reported Sexual/Gender Based Discrimination and Interpersonal Violence Misconduct is “preponderance of the evidence.” Preponderance of the evidence means “more likely than not.” Accordingly, a respondent will be found responsible for the reported misconduct only if the student conduct officer/board concludes that such misconduct more likely than not occurred, based upon careful review of all information presented.
- o. **Decision.** If a board hearing, the board must make its decision by majority vote. If an administrative hearing, the student conduct officer alone will make the determination. Following the hearing, the student conduct officer/board will issue its decision to both parties in writing. The student conduct officer/board chair will provide the written decision of the student conduct officer/board in person or electronically, to i) both the complainant and respondent simultaneously; ii) the vice president for enrollment management and student affairs; iii) the Title IX coordinator or designee; and iv) the investigators; within fifteen (15) business days from the conclusion of the hearing.
- The written decision will contain the following information: The name of the parties; whether the respondent has been found responsible or not responsible for charge(s) of Sexual/Gender Based Discrimination and Interpersonal Violence Misconduct, and the basis therefor; and the sanction imposed, if any. By law, both the respondent and the complainant have a right to this information. College policy neither encourages nor discourages further disclosure of the decision by either student.
- p. **Sanction(s).** If a finding of responsibility is made, then the student conduct officer/board must determine sanctions. In determining an appropriate sanction for the respondent, the student conduct officer/board may consider any record of past violations of the Code of Student Conduct, as well as the nature and severity of such past violation(s). The student conduct officer/board will consider as part of their deliberations, whether the respondent poses a continuing risk to the complainant and/or the College community. The student conduct officer/board may consult with the Title IX coordinator or designee concerning the measure of discipline it determines to impose. The board will make its sanction determination by majority vote.
- i. **Sanction for Non-Consensual Sexual Intercourse Finding of Responsibility. For students found responsible for Non-Consensual Sexual Intercourse, the only disciplinary action available is: 1) conduct suspension for one semester, two semesters, three semesters, or four semesters with additional requirements; or 2) conduct dismissal.**
 - ii. **Effective Date of Sanction.** Sanctions are effective once the student conduct officer issues its written decision to the parties. However, the vice president of enrollment management and student affairs or designee may “pause” the student conduct officer’s/board’s determination while an appeal is pending, or allow the respondent to attend classes or other activities on a supervised or monitored basis, or make such other interim modifications to the determination as may be advisable. The decision of the vice president of enrollment management and student affairs or designee regarding when sanctions will become effective may not be appealed.
- q. **Appeal Process.**
- i. **Right to Appeal.** Both the respondent who is found responsible, and the complainant, have the right to appeal the decision and/or sanctions to the vice president for enrollment management and student affairs or designee in writing by submitting a letter in opposition to the hearing outcome and/or sanction(s), within five (5) business days of notice having been issued.
 - ii. **Basis for Appeal.** An appeal may be heard on the following grounds only:
 - **Due Process.** The student conduct officer or board failed to observe the procedural or substantive requirements established by the Code of Student Conduct;
 - **Severity of Sanction.** The sanction is “too severe” or “not severe enough” based on the proven violation.
 - **New Evidence.** New evidence has appeared that: a) was not known at the time of the original hearing; b) could not have reasonably been discovered at the time of the original hearing; and c) is material, so may have had an impact on the outcome of the original conduct decision.
- Note:** Appeals may be submitted electronically or delivered to: Appeals Officer, vice

president for enrollment management and student affairs or designee, 7th Floor, Allen Administration Building. Notice that an appeal has been made will be provided to the other student after the deadline to appeal has passed.

- iii. Appeal Record. The appealing student whose hearing was recorded will have access to a full and fair record of the hearing, which will be preserved and maintained for a period of seven (7) years from the date of the last entry or until the student graduates, except in a matter of suspension or dismissal, in which case the record is maintained indefinitely. The appealing student may access the record by emailing the student conduct director at Thompson Hall, West Wing, at dgreer@brockport.edu [<mailto:dgreer@brockport.edu>] or calling (585) 395-2122.
- iv. Appeal Panel. The appeal panel, which will consist of a minimum of two College officials, will rely upon the audio or video recording and/or written record of the student conduct officer/board, and may consult with the student conduct officer/board chair/board members. Neither the student found responsible nor the complainant will have the opportunity to meet with the appeal panel, unless, in the panel's discretion, a meeting would serve to clarify an issue on appeal. The appeal panel will generally not conduct a new factual investigation. The appeal panel may take any of the following actions:
 - Affirm the findings and sanctions of the original conduct official or conduct board;
 - Modify the findings and/or sanctions;
 - Overturn the findings of "responsible" or "not responsible"; or
 - Remand for a new hearing.
- v. Notice of Appeal Outcome. Both the complainant and the respondent will be notified simultaneously in writing of the outcome of the appeal. Members of the board, the Title IX coordinator, and the investigators will also be notified in writing of the appeal outcome.

r. Transcript Notation in Cases of Conduct Suspension or Conduct Dismissal. If the student conduct officer/board imposes a sanction of conduct suspension or conduct dismissal, then, following exhaustion of any appeals as set forth above, the student conduct officer/board chair will notify the College Registrar to place a notation on the transcript of the student found responsible, that states, "Suspended after a finding of responsibility for a code of conduct violation," with the period of suspension specified, or "Dismissed after a finding of responsibility for a code of conduct violation." Students may appeal to the vice president of enrollment management and student affairs, in writing, for removal of a notation that they were suspended, no earlier than one year after the suspension is completed. Notations indicating a student was dismissed from the College shall not be subject to removal, and therefore, cannot be appealed.

PART H: Campus Resources

SUNY Brockport provides trauma-informed services through a multidisciplinary approach. A small team of professionals work collaboratively to offer sexual assault response services including: a) The Student Health Center at Hazen Center for Integrated Care, which assists victims of sexual assault and rape by providing immediate medical attention to the victim, referral to a local emergency room for a Sexual Assault Nurse Examiner (SANE) exam, and manages the necessary follow up care. For after-hours care, students are referred to a local emergency room and to RESTORE (Rape Crisis Services) for immediate medical care and support; b) The Counseling Center at Hazen Center for Integrated Care, which assists students who have been impacted by sexual harassment, sexual assault, dating violence, domestic violence, or stalking, through crisis intervention, individual and group counseling services; c) RESTORE sexual assault services, which provides support, counseling, and advocacy for students who have been impacted by sexual harassment, sexual assault, dating violence, domestic violence, or stalking; d) University Police, which assists students with filing a criminal report and/or e) The Title IX coordinator, who is not confidential, and will discuss the student's options, SUNY Brockport's student conduct process, and supportive measures.

For campus and community resources, refer to the SUNY Violence Response Resources webpage at <http://www.suny.edu/violence-response/> [<http://www.suny.edu/violence-response/>]

Important contact information:

- Student Health Center, Hazen Hall, (585) 395-2414, https://www.brockport.edu/life/health_center/ [[/life/health_center/](https://www.brockport.edu/life/health_center/)].
- Counseling Center, Hazen Hall, (585) 395-2414, https://www.brockport.edu/life/counseling_center/ [[/life/counseling_center/](https://www.brockport.edu/life/counseling_center/)].

- Title IX coordinator, 620 Allen Administration Building, (585) 395-5066, https://www.brockport.edu/about/title_ix/ [[about/title_ix/](https://www.brockport.edu/about/title_ix/)].
- Office of Student Conduct, Thompson Hall, (585) 395-2122 or 2108, www.brockport.edu/life/student_conduct.html [[http://www.brockport.edu/life/student_conduct](http://www.brockport.edu/life/student_conduct.html)].
- University Police, Lathrop Hall, (585) 395-2226, https://www.brockport.edu/support/university_police/ [[support/university_police/](https://www.brockport.edu/support/university_police/)].
- RESTORE (Rape Crisis) 24-hour hotline at (585) 546-2777, <https://restoresas.org/> [<https://restoresas.org/>].

The College's Campus Safety Report [/support/university_police/safety_report/index.html]

PART I: Compliance and Training

Section 9, Category II: Sexual/Gender Based Discrimination and Interpersonal Violence Misconduct Policy of the Code of Student Conduct complies with the New York State Education Law Article 129-B and the Campus Sexual Violence Act (SaVE Act). SUNY Brockport conducts biennial campus climate surveys that analyze the prevalence of and attitudes regarding sex discrimination, including sexual harassment, sexual assault, dating violence, stalking, and other related misconduct. The College employs a collaborative approach to prevention and education on sexual violence. The College's education on these topics includes programs implemented by Prevention and Outreach Services; a mandatory online program for new undergraduate and transfer students; a summer orientation program for students; and Welcome Week educational programs, in addition to ongoing efforts throughout the year.

Section 10: Code Interpretation and Revision

1. Any question of interpretation regarding the Code of Student Conduct will be referred to the vice president for enrollment management and student affairs or designee for final determination.
2. The Code of Student Conduct is reviewed every two years under the direction of the vice president for enrollment management and student affairs.
3. The Code of Student Conduct, including substantive revisions, must be approved by SUNY Brockport's College Council, and is governed by federal, state, and local laws, rules, regulations, and the College policies.

Students with documented disabilities may request an accommodation, if needed; for example, students may request an interpreter when meeting with the Office of Student Conduct, etc., from the Office of Student Accessibility Services, by contacting that office at (585) 395-5409 or sasoffic@brockport.edu [<mailto:sasoffic@brockport.edu>].

Student Conduct Contact Information:

Location: Residential Life/Living Learning Communities and Student Conduct, Thompson Hall, West Wing

Phone Number: 585-395-2122 or 585-395-2108. Fax Number: 585-395-2732

Email: studentconduct@brockport.edu Webpage https://www.brockport.edu/life/student_conduct/ [[/life/student_conduct/](https://www.brockport.edu/life/student_conduct/)]

⁶/support/policies/student/code_of_conduct/sections_nine_ten.html#sup6]. The numbering of these Code behaviors is referenced in Section 1: Rules of Student Conduct: Prohibited Behavior.