



Student Code of Conduct

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INTRODUCTION

Westchester Community College looks to students to engage in activities that promote individual growth, demonstrate civility toward others, and builds community through the safe, respectful exchange of diverse thought and opinion. To maintain the trust extended by the College, students are expected to exhibit personal accountability and remember that the decisions they make have an impact on the overall health of our community, and, ultimately, on the quality of their experience.

Students assume an obligation to conduct themselves in a manner compatible with the college's academic standards; general policies; local, state and federal law; and the Student Code of Conduct. Behavior that adversely affects the student's responsible membership in the college community shall result in appropriate disciplinary action. The College will not tolerate any interference with the rights of any member of our college community, any defacement of college property or any disruption of any authorized college function.

The Student Code of Conduct sets standards for behavior, provides a student-centered disciplinary process, maintains compliance with the provisions of Article 129-A and Article 129-B of the education law of the State of New York, and offers sanctions that foster ethical development, personal accountability and civility toward others. In addition, the Student Code of Conduct embraces several core philosophies:

- (1) protecting the rights of community members, including, but not limited to the freedom of speech and the right of peaceable assembly;
- (2) creating an environment that is conducive to learning, including respect for academic freedom and constructive criticism;
- (3) maintaining the safety and well-being of the community and its members and the conviction that honesty and integrity are key values of community; and
- (4) the belief that all members of the institution should be part of an inclusive campus environment that respects differences of culture, gender, gender identity, gender expression, sexual orientation, religion, race, age, and ability.

COLLEGE VALUES STATEMENT

1. To better ourselves and our relationships, we are committed to
 - **Personal Excellence** – Promote life-long learning, academic growth and intellectual development.
 - **Respect** – Support an environment of open, honest and collegial communication.
 - **Integrity** – Expect personal accountability through ethical behavior.
2. To better our community and collective efforts, we are committed to
 - **Collaboration** – Work together on the achievement of a common goal.
 - **Civic Engagement** – Advance active involvement in the life of the community.
 - **Innovation** – Encourage and empower a creative environment.
3. To better our society and our world, we are committed to
 - **Diversity** – Foster an inclusive community through acceptance and understanding.
 - **Environmental Sustainability** – Protect, preserve, and conserve resources for the future.
 - **Empathy** – Respond to each other's views and opinions without judgement.

SECTION I: Responsibility for Implementation

Overall management and administration of the Student Code of Conduct is the responsibility of the Director of Student Support Services. Any question of interpretation regarding the Student Code of Conduct shall be referred to the Director of Student Support Services or their designee for final determination.

SECTION II: Jurisdiction & Scope

The Student Code of Conduct applies for all students through the application for admission through the actual awarding of a degree. This includes conduct that occurs:

- (1) during the academic year, before classes begin or after classes end;
- (2) during time pursuing credit away from campus (internships, study abroad, practical/clinical placements, etc.);
- (3) during periods between terms of actual enrollment; and/or
- (4) while on leave from the College;

A student who withdraws from the College shall not be exempt from disciplinary proceedings for behavioral infractions which took place prior to withdrawal. Campus disciplinary procedures as described in this Student Code of Conduct may proceed with the accused student even if the student has withdrawn from the College. Should suspension or expulsion take place as a result of the disciplinary process, these sanctions supersede a withdrawal from the College.

If a student has completed degree requirements and is charged with a violation prior to graduation or the conferral of the degree, the student will be ineligible to graduate until student conduct action on the case is completed and eligibility to graduate is confirmed. If the student conduct action results in suspension, the student will be ineligible to graduate until the term of the suspension has been served.

In addition, the College will have jurisdiction over student misconduct that occurs on College premises, rented facilities, at College-sponsored activities. The College shall also have jurisdiction over student misconduct that occurs electronically/online or off-campus when the conduct may adversely affect a College interest, which may include, but is not limited to health and safety, protection of rights or property of others, and promoting the College mission.

Off-campus criminal offenses that violate the Student Code of Conduct may be subject to college disciplinary action. This disciplinary action may occur concurrently while a student is facing criminal charges; the charges are pending; have been reduced or have been dismissed. It is the obligation of every student to notify the Director of Student Support Services of any felony or misdemeanor arrests occurring at any time after the student is admitted to the College through graduation or separation from the institution, regardless of geographic location of the arrest or specific crime alleged.

SECTION III: Definitions

The following selected terms are defined in an effort to facilitate a more thorough understanding of the Student Code of Conduct. Certain definitions have been adapted from Section 6439 NYS Education Law Article 129-B.

1. **Accused:** a person accused of a violation who has not yet entered the college's conduct process.
2. **Affirm Consent to Sexual Activity, Active Consent or Affirmative Consent:** is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression. (Section 6441 Education Law Article 129-B)
 - (i) Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.
 - (ii) Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
 - (iii) Consent may be initially given but withdrawn at any time.
 - (iv) Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.
 - (v) Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
 - (vi) When consent is withdrawn or can no longer be given, sexual activity must stop.
3. **Business day:** any day, Monday through Friday, which the college is open.
4. **Bystander:** shall mean a person who observes a crime, impending crime, conflict, potentially violent or violent behavior, or conduct that is in violation of rules or policies of an institution.
5. **Calendar day:** any day, Monday through Sunday.
6. **Campus or College property:** all land, buildings, facilities, and other property in the possession of or owned, used, or controlled by the College, either solely or in conjunction with another entity.
7. **College official:** any person employed by Westchester Community College, the WCC Faculty Student Association, or WCC Foundation to perform administrative, instructional, or professional duties.
8. **College or Institution:** shall mean Westchester Community College.
9. **Complainant:** Any member of the college community who has filed and/or presenting disciplinary charges against a student.
10. **Dean of Student Life:** refers to the Deputy Chief Student Affairs Officer of the College. This individual and/or their designee(s) coordinates the appeal processes and, for students on suspension seeking to return to the college, the readmission request process.

11. **Designee:** an administrator, staff or faculty member who has responsibility for implementing the student conduct process or administering the student conduct system, in part or in whole.
12. **Director of Student Support Services:** refers to the person and/or their designee or designees who is responsible for the overall coordination of the College student conduct system, including the development of policies, procedures, and education/training programs. In addition, this individual may serve as a Hearing Officer, Student Conduct Officer and/or as a Complainant.
13. **Hearing Chair:** an individual employed by the Westchester Community College or the WCC Faculty Student Association who is authorized to lead or facilitate the proceedings of a Hearing. Subject to the provision in this code, a Hearing Officer is vested with the authority to, among other duties, conduct a hearing; remove participants from a Hearing; etc.
14. **Hearing Officer:** an individual or group of individuals employed by the Westchester Community College or the WCC Faculty Student Association, who is authorized to determine the appropriate resolution of an alleged violation of the Student Code of Conduct, and/or to recommend sanctions or affect other remedies as appropriate. Subject to the provision in this code, a Hearing Officer is vested with the authority to, among other duties, conduct and/or participate in a hearing; determine outcomes to charges; recommend sanctions; and/or serve as a Complainant in a Hearing.
15. **Member of the College community:** includes any person who is a student, instructor, or College staff member; any other person working for the College, either directly or indirectly (e.g., private enterprise on campus); or any person who resides on College premises. A person's status in a particular situation shall be determined by the Director of Student Support Services.
16. **Reporting Individual:** shall encompass the terms victim, survivor, complainant, claimant, witness with victim status, and any other term used by the college to reference an individual who brings forth a report of misconduct, including reports of sexual misconduct.
17. **Respondent:** a person accused of a violation who has entered the college's conduct process.
18. **Sanction:** a requirement or status that is imposed as a result of either accepting responsibility or being found responsible for violating the Student Code of Conduct.
19. **Sexual activity:** shall have the same meaning as "sexual act" and "sexual contact" as provided in 18 U.S.C. 2246(2) and 18 U.S.C. 2246(3).
 - a. The term "**sexual act**" means:
 - i. contact between the penis and the vulva or the penis and the anus and contact involving the penis occurs upon penetration, however slight;
 - ii. contact between the mouth & penis, the mouth & vulva, or the mouth & anus;
 - iii. the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or
 - iv. the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;
 - b. The term "**sexual contact**" means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person."

20. **Sexual Misconduct:** means sexual harassment or sexual violence and encompasses a wide range of behavior for sexual purposes that is against another's will or at the expense of another. Sexual misconduct includes, but is not limited to sexual assault, intimate partner violence, stalking, or any conduct of a sexual nature that is nonconsensual or has the effect of threatening or intimidating another.
21. **Sexual Violence:** Includes sexual harassment, sexual assault, and domestic violence, dating violence, intimate partner violence and stalking.
22. **Student:** any person registered for courses, either full time or part time, pursuing undergraduate studies as well as non-degree seeking students; individuals who are term active but are between academic terms or not enrolled at the College; individuals taking online classes; individuals auditing classes; and individuals that were enrolled on the date of an alleged incident.
23. **Student Code of Conduct:** the written policies adopted by the institution governing student behavior, rights, and responsibilities and the process by which violations are adjudicated and sanctioned.
24. **Student Conduct Officer:** an individual employed by the Westchester Community College or the WCC Faculty Student Association who is authorized to determine the appropriate resolution of an alleged violation of the Student Code of Conduct, and/or to impose sanctions or affect other remedies as appropriate. Subject to the provision in this Code, a Student Conduct Officer is vested with the authority to, among other duties, investigate a complaint of an alleged violation of the Student Code of Conduct; decline to pursue a complaint; refer identified disputants to mediation or other appropriate resources; approve an administrative agreement developed with a Respondent; conduct an Administrative Conference; impose sanctions; and serve as a Complainant in a Hearing.
25. **Student organization or student group:** an association or group of persons that has complied with the formal requirements for College recognition by the Department of Student Involvement and/or the Student Government Association per the College's Club & Organization Policies & Procedures.
26. **Support person or Advisor:** any person who accompanies a Respondent or Reporting Individual for the limited purpose of providing support, advisement and guidance. A support person/advisor may not directly address the Hearing Officers, question witnesses, or otherwise actively participate in the student conduct process, but may speak privately with the advisee during the proceedings.
27. **Title IX Coordinator:** shall mean the Title IX Coordinator and/or their designee(s).

SECTION IV: Violations

As members of the College community, students have an obligation to uphold the Student Code of Conduct as well as to obey federal, state, and local laws. The subsequent behaviors are subject to disciplinary action under the Student Code of Conduct, but are not limited to the following infractions.

A student or a group of students may be charged with any of the violations listed below. In cases where a violation is committed by an individual student, any other students not directly involved, but who participated in the activity by encouraging or condoning the act in any manner, will also be subject to disciplinary action.

The College, in its sole discretion, reserves the right to report any possible criminal acts to appropriate law enforcement agencies.

1. Abuse of the Student Conduct System

Abusing the Student Conduct System, including but not limited to:

- i. Failure to obey the summons of a Conduct Body or College official.
- ii. Failure to comply with sanction(s) imposed under the Student Code of Conduct.
- iii. Knowingly alleging a violation of the Student Code of Conduct without cause.
- iv. Attempting to discourage an individual's proper participation in, or use of, the conduct system.
- v. Influencing or attempting to influence another person to commit an abuse of the conduct system.

2. Academic Dishonesty

Conduct that includes, but is not limited to: plagiarism, cheating, multiple submission, forgery, sabotage, unauthorized collaboration, falsification, bribery or use of purchased research service reports without appropriate notation, and theft, damage, or misuse of library or computer resources. Attempts to commit such acts shall also constitute academic dishonesty.

3. Aiding & Abetting in Code Violations

Aiding and abetting another in any violation of College policies, regulations and codes.

4. Compliance

Failing to comply with the directions of an authorized local, state, federal or College official acting in the performance of their duties, or any other person responsible for a facility or registered function acting in accordance with their duties.

5. Destruction of Property

Removing, destroying, or damaging College property, property under College administration/supervision, or the personal property of others. This includes attempted or actual damage to property.

6. Disruptive Conduct

Impairing, interfering with or obstructing the orderly conduct, processes and functions of the College or the community where the conduct occurs. This behavior includes, but is not limited to: excessive noise, abusive or obscene language in a public place, littering, obstructing vehicular or pedestrian traffic, leading or inciting others to disrupt scheduled and/or normal college activities,

and boisterous, or threatening conduct which is unreasonable in the area, time or manner in which it occurs.

7. Drugs & Alcohol

a. *Possession*

The unlawful possession of alcohol, controlled substances or dangerous drugs. This includes possession of any alcohol, controlled substances, or dangerous drugs on college property or at college sponsored activities and events that has not been lawfully prescribed to oneself. This can include the possession of prescribed medication to someone other than oneself.

b. *Use*

The unlawful use of alcohol, substances, or dangerous drugs, including being under the influence of alcohol, controlled substances or dangerous drugs on college property or at college sponsored activities and events.

c. *Distribution, Delivery, or Sale*

The unlawful distribution, delivery or sale of alcohol, controlled substances or dangerous drugs. This includes distribution of any alcohol, controlled substance, or dangerous drug on college property or at college sponsored activities that has not been lawfully prescribed to oneself. This can include the distribution of prescribed medication to someone other than oneself.

d. *Paraphernalia*

The possession, use or distribution of drug paraphernalia including, but not limited to: bongos, water pipes, or hypodermic needles that are not specifically required for the administration of prescribed medications.

NOTE: Please also see the *Good Samaritan Policy* in this document for more information about Drug & Alcohol violations.

8. Endangerment

Acting to create or contribute to dangerous or unsafe environments anywhere on or off-campus, which can include reckless or intentional acts, which endanger, or put at risk, the welfare of oneself or others.

9. Fire and Safety

Engaging in behavior that disrupts any fire and safety systems, procedures and policies. This can include, but is not limited to:

- a. damage to, removal of or tampering with any fire safety system, firefighting equipment or other emergency warning equipment;
- b. intentional or reckless burning or setting fire to any building or piece of property owned or controlled by the College;
- c. failure to conform to safety regulations, failing to evacuate facilities in a timely fashion in an emergency situation or in response to fire alarms.

10. Forgery, Falsification, Fraud, & Dishonesty

Knowingly providing false or incorrect information to any College official or misrepresenting yourself to the institution. This includes altering, possessing, distributing, selling or misusing false documents, records, transcripts, stored data or instrument identification. This also

includes knowingly making false statements or knowingly submitting false information to any College official.

11. Gambling

Any unauthorized gambling on campus, including but not limited to participation in: games of chance, illegal lottery and policy for money or something of value; promoting or advancing gambling; gambling using College computing/network facilities; possessing gambling devices or gambling records.

12. Harassment

Engaging in behavior that is sufficiently severe, pervasive and objectively offensive that it unreasonably interferes with, denies, or limits an individual's ability to participate in or benefit from the College's education program and/or activities, and creates an academic environment that a reasonable person would find intimidating or hostile.

Activity protected by the First Amendment will not constitute harassment.

Harassment may include:

- a) directing unwanted physical or verbal conduct at an individual based on one or more of that person's protected characteristics or status, including age, color, race, disability, marital status, national/ethnic origin, religion, military/veteran's status, sex [including pregnancy], gender expression or gender identity, sexual orientation, domestic violence victim status, criminal or arrest record, political activities or predisposing genetic characteristics; or
- b) subjecting a person or group of persons to unwanted physical contact or threat of such.

13. Hate or Bias-Related Incident

Includes such acts as, but is not limited to:

- a. Bias-related harassment or discrimination believed to be motivated by a consideration (real or perceived) based on race, color, age, religion, national origin, disability, sexual orientation, gender identity or other protected characteristics is oral, written, graphic or physical conduct relating to an individual's race, color, gender identity, national origin (including an individual's ancestry, country of origin, or country of origin of the student's parents, family members, or ancestors) or other protected characteristics that is sufficiently severe, pervasive, or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the educational institution's programs or activities.
- b. Threatening, intimidating or fear provoking behavior directed toward another believed to be motivated by a consideration (real or perceived) on race, color, age, religion, national origin, disability, sexual orientation, gender identity or other protected characteristics is oral, written, graphic or physical conduct relating to an individual's race, color, gender identity, national origin (including an individual's ancestry, country of origin, or country of origin of the student's parents, family members, or ancestors) or other protected characteristics that is sufficiently severe, pervasive, or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the educational institution's programs or activities.

14. Hazing

Any reckless or intentional conduct in connection with the initiation into, or affiliation with, any organization which degrades, humiliates or endangers the mental or physical health of any person, regardless of the person's willingness to participate. It can also include activities that damage, destroy or remove any public or private property.

15. Misuse of College Property

Unauthorized possession, duplication, or misuse of College property or other personal or public property, including, but not limited to, records, electronic files, telecommunications systems, forms of identification, or any unauthorized use of the College's hardware, software or network systems.

This includes the public posting, selling of, or in any other way, distribution of notes of class lectures, course handouts and outlines, and/or any other College-supplied materials without the express written permission of the instructor.

16. Parking and Motor Vehicle Violations

Violating college policies and regulations and/or local, state, or federal law governing the possession or use of motor vehicles. Violations can include, but are not limited to:

- i. Use of an unauthorized vehicle on campus
- ii. Failure to adhere to traffic regulations;
- iii. Driving under the influence of alcohol or other drugs.
- iv. Causing damage to College property or personal property while operating a motor vehicle.

17. Physical Harm or Violence

Intentionally or recklessly causing physical harm to any person or causing reasonable fear of such harm.

Students cannot justify such behavior as defensive if:

- i. The behavior is a physical response to a verbal provocation.
- ii. The student has the ability to leave the situation, but instead chooses to respond physically
- iii. In circumstances where such actions are punitive or retaliatory.

18. Prohibited Recreational Activities

The use or operation of rollerblades, skates, skateboards, hover boards, bicycles, and similar items inside College facilities.

19. Retaliation

Engaging, directly or indirectly, in any action or attempting to harass, intimidate, retaliate against, or improperly influence any individual involved with the Student Conduct System.

An intentional act taken against an individual who initiates any sexual misconduct complaint, including stalking of intimate partner violence, pursues legal recourse for such a complaint, or participants in any manner in the investigation of such a report.

20. Solicitation

The disbursement of promotional/informational material on College property or on items or personal property on campus (i.e. motor vehicles), taking requests for donations, or the selling or vending of any merchandise or services without prior written consent from the appropriate College official.

21. Student Computer & Communications Technology

Violating the College's Student Computer & Communications Technology Use Policy which can be found <http://www.sunywcc.edu/cms/wp-content/uploads/2012/02/Westchester-Community-College-Technology-Use-Policy-Student.pdf>.

22. Student Group Violations

Students are expected to know and abide by the policies and procedures governing their membership in a student club or organization. Prohibited conduct by officers/members of recognized student clubs and organizations may result in referral to the conduct process for individual students. Full policies governing student groups can be found at www.sunywcc.edu/clubs.

23. Theft

Stealing property and/or services; possessing stolen property.

24. Tobacco Use

The use of tobacco products, vaping devices, electronic cigarettes, and other nicotine delivery devices in any College facility or outdoor area.

25. Unauthorized Entry or Use

Entering or using College facilities or property on or off college premises, belonging to individuals, College recognized groups, and/or corporate entities without proper authorization.

26. Violations committed by guests, friends, or family members

Any violations to the code committed by guests, friends, or family members invited to the campus, on a college sponsored trip, or on behalf of a student. Students are responsible for informing their guests, friends or family members about campus regulations and conduct policies. Therefore, any behavior can be sanctioned if that third party violates the Student Code of Conduct.

27. Weapons, Firearms, Explosives & Other Dangerous Objects

Possessing or using any object or substance designed to inflict a wound, cause injury, or incapacitate, including, but not limited to, all firearms, switchblade knives, knives with blades five or more inches in length, explosives, fireworks or dangerous chemicals (except as authorized for use in class, or in connection with College-sponsored research or other approved activities). The term firearms include pellet guns, air guns, rifles, shotguns, handguns, multiple firing weapons and any weapon capable of firing a shot.

28. Other Violations

Violation of any other College policy or violation of any local, state, or federal law.

Sex Based Offenses: The following violations represent sex-based offenses that are not covered under the Title IX Final Rule. More information about how these charges are adjudicated can be found in Section VIII: Conduct Process for Non-Title IX Covered Sexual Misconduct.

29. Intimate Partner Violence

Intimate partner violence includes dating violence and domestic violence, both are defined below. Intimate partner violence can occur in relationships of the same or different genders.

Dating Violence

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 victim. The existence of such a relationship shall be determined based on the victim's statement and with consideration of the type and length of the relationship and the frequency of interaction between the persons involved in the relationship.

Two people may be in a romantic or intimate relationship, regardless of whether the relationship is sexual in nature; however, neither a casual acquaintance nor ordinary fraternization between two individuals in a business or social context shall constitute a romantic or intimate relationship.

Domestic Violence

Any violent action committed by a current or former spouse or intimate partner of the victim, a person sharing a child with the victim, or a person cohabiting with the victim as a spouse or intimate partner. Includes asserted violent misdemeanor and felony offenses committed by the victim's current or former spouse, current or former cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.

30. Sexual Assault & Sexual Exploitation

Any sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent. Sexual assault can include, but is not limited to:

- a. *Sexual Assault I: Rape*
Sexual intercourse or any sexual penetration, no matter how slight, of another person's oral, anal, or genital opening with any object (an object includes but is not limited to parts of a person's body) without the active consent of the victim.
- b. *Sexual Assault II: Fondling*
Touching a person's intimate parts (defined as genitalia, groin, breast, or buttocks) for the purpose of sexual gratification, whether directly or through clothing, without the active consent of the victim. Sexual Assault II also includes forcing an unwilling person to touch another's intimate parts.
- c. *Sexual Assault III: Statutory Rape*
Sexual intercourse with a person who is under the age of consent.
- d. *Sexual Assault IV: Incest*
Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- e. *Sexual Exploitation*
Intentionally engaging in or attempting to engage in abusive sexual behavior without affirmative consent that does not otherwise constitute Sexual Assault I or Sexual Assault II. Examples include, but are not limited to:
 - a. intentional, nonconsensual tampering with or removal of condoms or other methods of birth control and STI prevention prior to or during sexual contact

- in a manner that significantly increases the likelihood of STI contraction and/or pregnancy by the non-consenting party;
- b. nonconsensual video or audio taping of sexual activity;
 - c. sharing or allowing others to watch consensual or nonconsensual sexual activity without the consent of a sexual partner;
 - d. observing others engaged in dressing/undressing or in sexual acts without their knowledge or consent;
 - e. trafficking people to be sold for sex;
 - f. inducing incapacitation with the intent to sexually assault another person.
 - g. creating, possessing or distributing the sexual performance of a child
 - h. aiding, abetting, or otherwise facilitating sexual activity between persons without the affirmative consent of one or more party

31. Sexual Harassment

Sexual Harassment is unwelcome sexual advances, requests for sexual favors, or other unwanted conduct of a sexual nature, whether verbal, nonverbal, graphic, physical, or otherwise, when the conditions outlined in (1) or (2), below, are present.

(1) Submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of a person's employment, academic standing, or participation in any college programs or activities or is used as the basis for College decisions affecting the individual (often referred to as "quid pro quo" harassment);

(2) Such conduct creates a hostile environment. A hostile environment exists when the conduct is sufficiently severe, persistent, and pervasive that it unreasonably interferes with, limits, or deprives an individual ability to participate in or benefit from, the College's education or employment programs or activities.

32. Stalking

Engaging in a course of conduct, directed at a specific person, which is likely to causes a reasonable person to fear for their safety or the safety of others or cause that person to suffer substantial emotional distress.

Stalking does not require direct contact between parties and can be accomplished in many ways, including through the use of electronic media such as the internet, pagers, cell phones, or other similar devices.

Good Samaritan Policy:

WCC students are expected to be aware of their health and safety and encouraged to help fellow students when their health and safety is in danger. Good Samaritans are individuals who summon aid in instances in which abuse of alcohol, other drugs or for other reasons has created a potentially life-threatening situation requiring an immediate response from emergency services personnel. In all instances, the primary concern of the College is that those in need receive prompt medical attention.

If someone needs immediate medical attention, anyone who calls for help and anyone who receives emergency medical care is not subject to College disciplinary sanctions for any violation related to alcohol and drugs.

This policy applies to students and student organizations, and to emergencies on and off campus.

Safe Harbor Policy:

WCC believes that students who have a drug and/or addiction problem deserve help. If any WCC student brings their own use, addiction, or dependency to the attention of WCC officials prior to any disciplinary charges being made and seeks assistance, a conduct complaint will not be pursued. A written action plan may be used to track cooperation with the Safe Harbor program by the student. Failure to follow the action plan will nullify the Safe Harbor protection and campus conduct processes will be initiated.

**SECTION V:
Interim Administrative Action & Administrative Directives**

Interim administrative actions are not a sanction, but are temporary measures, if reasonable under the circumstances, that may be taken against a student pending resolution of a college investigation and/or the student conduct process, up to and including the finalization of the appeal process, with the exception of a Cease and Desist Directive. A Cease and Desist Directive may be issued as a non-disciplinary directive for a temporary duration of time, such as, until one party is no longer a student at the College.

The Director of Student Support Services or designee may impose an Interim Administrative Action.

- a. Interim Administrative Actions include, but are not limited to:
 - a. **Interim Suspension:** When it is reasonably believed that the continued presence of a student would constitute a threat to the health and safety of the community, the student may be placed on an Interim Suspension. Students placed on interim suspension will be denied access to college premises (including classes) and all other activities or privileges for which the student might otherwise be eligible.
 - b. **No Contact Order:** an official notification to the accused/Respondent that they must no longer contact another person(s), referred to as the protected individual/person. Continuing to contact the protected individual/person is a violation of college policy subject to conduct charges. If the accused/Respondent and the protected individual/person observe each other in a public place, it is the responsibility of the accused/Respondent to leave the area immediately and without directly contacting the protected person. The College may establish an appropriate schedule for the accused/Respondent to access applicable institution buildings and property at a time when such buildings and property are not being accessed by the Reporting Individual.
 - c. **Class Relocation:** A student may be relocated to another section of the same course. Students who are relocated to new class sections may not be reassigned to their original course section even if charges are not filed following an investigation and/or if a finding of “not responsible” is made.
 - d. **Campus Restriction:** A student may be restricted from appearing in any or all of the buildings or grounds on campus if it is reasonably believed that the student poses a threat to the health or safety of the campus community. Other interim restrictions may be imposed such as denial of access to specified campus services or programs.
 - e. **Interim Account Hold:** An administrative or registration hold on a student’s account may be placed when a College investigation or student conduct case is pending, or when a student’s full compliance with disciplinary sanctions are pending.
 - f. **Cease and Desist Directive:** a written directive to multiple parties prohibiting contact with each other, either directly or through a third party for a temporary duration of time, such as, until one party is no longer a student at the College.

Students who have Interim Administrative Actions imposed onto them shall be able to appeal or request a modification to the parameters of the imposed actions. Students must submit, in writing, to studentlifedean@sunybcc.edu, their specific request and provide any information, documentation or further evidence to support their request within three (3) calendar days from the date they are notified of the imposed actions. The request will be reviewed by the Dean of Student Life or designee; their decision will be final.

**Section VI:
Student Conduct Process**

A. Standard of Proof

- a. The student conduct process utilizes a “preponderance of evidence” standard of proof, which evaluates whether it is more likely than not that a violation occurred.

B. Accommodations in the Conduct Process

- a. Students with disabilities who are involved in the student conduct process may seek reasonable accommodations for any stage of the student conduct process. Any student requesting accommodations will be referred to the Accessibility Services Office to request and obtain an accommodation letter. The student must then submit the accommodation letter and their written accommodation request to the Student Conduct Officer at least 72 hours before the stage of the conduct process that the request is for. The Student Conduct Officer, in consultation with the Accessibility Services Office, will make a determination, based on appropriate legal standards and College policy, regarding what accommodation, if any, is appropriate.

C. Reports of Misconduct

- a. Any person may file an incident report regarding any student or registered student organization alleging misconduct. Incident reports shall be prepared in writing and directed to the Director of Student Support Services or designee. An individual filing an incident report may elect to meet with a Student Conduct Officer for a consultation prior to submitting a complaint. Individuals are encouraged to visit www.sunywcc.edu/incidentreport to file an incident report with the College.
- b. While timeliness for submitting an incident report is preferable, there is no deadline to file a report of alleged misconduct while the accused is a SUNY WCC student.
- c. Details in the incident report should include but is not limited to a description of the incident, names of accused individuals, and any relevant evidence and witness names.
- d. Once the incident report is received, the Director of Student Support Services and/or an assigned Student Conduct Officer will review the report and determine whether or not it has merit to move forward and officially enter the student conduct process. To make this determination, the Director of Student Support Services and/or and assigned Student Conduct Officer may meet with other individuals involved and/or review evidence. An incident report must set forth allegations of misconduct in writing with sufficient detail to support it being officially entered into the conduct process.
- e. When an incident report officially enters the conduct process, the Accused student becomes a Respondent and will either be invited to attend an Administrative Conference or a Hearing, this determination is made at the discretion of the Director of Student Support Services or designee.

D. Administrative Conference

- a. An Administrative Conference is a conduct meeting between a Respondent and a Student Conduct Officer to discuss the incident(s) and the subsequent alleged violations. At this meeting, the Student Conduct Officer and Respondent will attempt to resolve the charges made against a Respondent. Typically, the Respondent will meet with the Student Conduct Officer to:

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- i. Review the Incident Report and the alleged code violations;
 - ii. Learn about the student conduct process and have their questions answered;
 - iii. Speak on their behalf about the incident and provide relevant evidence;
 - iv. Provide witness information, if applicable;
- b. At the end of an Administrative Conference the Respondent will be asked if they accept responsibility for the charge(s) presented. Based on the Respondent's response, the following outcomes can be reached:
 - i. Respondent Accepts Responsibility For The Charges: A Respondent who acknowledges responsibility shall have the opportunity to resolve the case with the Student Conduct Officer by agreeing to an appropriate sanction. Respondents who agree to resolve the case in this manner will sign an *Administrative Agreement* to resolve the issue and shall have no right to appeal.

If the Respondent does not accept an appropriate sanction from the Student Conduct Officer after accepting responsibility, but the Student Conduct Officer has determined that the preponderance standard has been met, the Student Conduct Officer can find the student responsible for the Code violation and a sanction may be imposed.
 - ii. Respondent Does Not Accept Responsibility for the Charges, But the Student Conduct Officer Determines that the Preponderance Standard Has Been Met: The Respondent will be found Responsible and the Student Conduct Officer may impose sanction(s).
 - iii. The Respondent States They are Not Responsible for All The Charges and the Student Conduct Officer Agrees: The Respondent is Found Not Responsible and Student Conduct Officer and the Respondent will sign an *Administrative Agreement*.
 - iv. Respondent Does Not Attend Administrative Conference or Fails to Communicate in a Timely Manner with the Student Conduct Officer: The Student Conduct Officer, using the information available, will make a determination on the charges. If the Student Conduct Officer finds the Respondent Responsible for any or all of the charges, the Student Conduct Officer may impose sanction(s).
- e. Imposed sanctions may only be imposed in cases where sanctions will not result in suspension or expulsion. When the Student Conduct Officer believes the appropriate sanction should be suspension or expulsion, the case must be referred to a Hearing.
- d. A Student Conduct Officer may review the student's academic record, student conduct history, and relevant mitigating and aggravating factors to make their determination on appropriate sanctions.
- e. Administrative Conferences will be scheduled around a Respondent's academic schedule.
- f. During the Administrative Conference and throughout the student conduct process, the student may have one advisor of their choice. The advisor shall not represent or speak for the student and shall not participate directly in the student conduct process. The advisor may be present and speak privately with the student during any meeting. It is responsibility of the student to find their own support person/advisor.

- g. Excluding the Student Conduct Officer, participants are prohibited from making their own recording (including, but not limited to audio, photographic, video, and/or written recording). It is up to the discretion of the Student Conduct Officer to record the meeting. The College will maintain any recordings created as required by New York state law. Recordings are the property of the College. Upon written request, a Respondent may review the audio recording and make appropriate arrangements for it to be transcribed on College premises. Arrangements for a transcriber and all associated costs involved in the transcription will be the sole responsibility of the requesting individual.

- h. The Respondent shall have the right to:

- i. Receive advance notice of at least five (5) calendar days of the date, time and location of the Administrative Conference they are required or are eligible to attend. This notification will also include a written statement of the violations to the Student Code of Conduct that the Respondent is being charged with.

Proper written notification shall be defined as hand-delivery by campus staff, delivery of information via electronic message to a student's assigned campus e-mail account, or delivery by the U.S. Post Office to a student's local off-campus address. Students shall be held responsible for the contents of mail for which they have refused receipt.

- i. An opportunity to present evidence, including truthful and accurate information about the incident. Evidence can include, but is not limited to: written documents, photographs, videos, witness testimony, witness statements, and digital media.

1. The Student Conduct Officer will make the final decision related to the admissibility and relevancy of all evidence.
2. Evidence presented that indicates a potential violation of the Student Code of Conduct may be adjudicated at a future time.
3. Character and expert witnesses are not permitted as evidence.

- ii. Request a delay or continuance of the administrative conference reasonable under the circumstances. The Student Conduct Officer will determine the validity of the request and if the delay will be granted. Delays of this nature can be made for up to five (5) calendar days from the date of the Administrative Conference.
- iii. A written notification of the outcome of the Administrative Conference and a description of the appeal procedure (if applicable) no later than ten (10) calendar days after the conclusion of the Administrative Conference.
- iv. Appeal the decision if sanctions are imposed (see Section VIII).

E. Hearing

- a. A Hearing is a conduct meeting between a Respondent, a Complainant, a Hearing Chair, and a panel of Hearing Officers that will adjudicate alleged violations of the Student Code of Conduct made against a Respondent.

- b. **Hearing Officers, Hearing Chairs & Hearing Participants**

- i. The Director of Student Support Services or designee will assign three Hearing Officers.

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- ii. A Hearing Chair will be appointed by the Director of Student Support Services for each Hearing. The Hearing Chair leads the Hearing and ensures all proper procedures are followed. The Hearing Chair does not participate in certain aspects of the Hearing including the private deliberations of the Hearing Officers where a determination is made about the outcome of the charges and sanctions are recommended. The Director of Student Support Services may serve as a Hearing Chair.
- iii. The Director of Student Support Services will assign an individual to serve as the Complainant. A Student Conduct Officer who facilitated an Administrative Conference with the Respondent may serve as the Complainant or Hearing Chair at the Hearing.
- iv. All participants are expected to be respectful of each other's purpose in the hearing and conduct themselves according to the direction of the hearing chair.

c. Evidence

- i. Evidence (e.g., written documents, photographs, videos, witness names coming to the Hearing to offer statements and answer questions, witness statements, and digital media) to be presented by the Respondent and Complainant during a Hearing must be submitted to the Director of Student Support Services or designee at least two (2) calendar days in advance of the scheduled hearing. In extraordinary circumstances, the Hearing Officers may accept the submission of evidence within the two (2) calendar days before the hearing.
 1. Character and expert witnesses are not permitted as evidence
- ii. Both parties will be notified that evidence is available for their review. Parties will need to make a request in writing to the Director of Student Support Services or designee with at least one (1) calendar days' notice prior to the Hearing to review evidence. Parties will be able to review evidence and take notes on their observations but will not be able to take evidence with them and/or make copies of the evidence (inclusive of taking photographs/video recordings of the evidence).
- iii. The Hearing Officers will make the final decision related to the admissibility and relevancy of all evidence.
- iv. Evidence presented during a hearing that indicates a potential violation of the Student Code of Conduct may be adjudicated at a future time.
- v. New Evidence: As a general rule, no new evidence or witnesses may be submitted during the hearing.

If the Complainant or Respondent (the parties) 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 Hearing Officers 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 Hearing Officers 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.

d. Respondent Rights in a Hearing

The Respondent shall have the right to:

- i. Receive advance notice of at least five (5) calendar days of the date, time and location of any hearing they are required to or are eligible to attend. This notification will also include a written statement of the violations to the Student Code of Conduct that the Respondent is being charged with.

Proper written notification shall be defined as hand-delivery by campus staff, delivery of information via electronic message to a student's assigned campus e-mail account, or delivery by the U.S. Post Office to a student's local off-campus address. Students shall be held responsible for the contents of mail for which they have refused receipt.

- ii. A prompt and impartial hearing.
- iii. An investigation and adjudication process conducted in a manner that recognizes the legal and policy requirements of due process (including fairness, impartiality, and a meaningful opportunity to be heard) and is not conducted by individuals with a conflict of interest.
- iv. Request a delay of a hearing date of up to five (5) calendar days reasonable under the circumstance(s). The Director of Student Support Services or designee will determine the validity of the request and if the delay will be granted.
- v. Be notified of the proposed evidence and information to be presented and to know the identity of witnesses who have been called to speak at the hearing or provide written testimony for the hearing when such information is known by the Director of Student Support Services or designee prior to the hearing.
- vi. Present evidence, testimony, witnesses, and witness statements when deemed appropriate and relevant by the Hearing Officers.
- vii. Ask questions of the Hearing Officers and via the Hearing Officers indirectly request responses from other parties and any other witnesses present. This method is used to preserve the educational tone of the hearing and to avoid creation of an adversarial environment. It will be left to the discretion of the Hearing Officers whether or not to ask requested questions of other parties.
- viii. One support person/advisor of their choosing. The advisor shall not represent or speak for the student and shall not participate directly in the student conduct process. The advisor may be present and speak privately with the student during any meeting. It is responsibility of the student to find their own support person/advisor.
- ix. Be present at the pertinent stages of the hearing process. The deliberations of the Hearing Officers are private.
- x. Be truthful & accurate when presenting statements and other information.

- xi. Present a written impact statement to the Hearing Officers to review if a finding of “responsible” is made. Impact statements are only reviewed by the Hearing Officers when deliberating sanctions. Impact statements outline the student’s reasoning for what may constitute an appropriate sanction. The Hearing Officers are not bound by these statements when recommending sanctions.
- xii. Have access to a full and fair record of a student conduct hearing, which shall be preserved and maintained for at least five years.
- xiii. A written notification of the outcome of the hearing and a description of the appeal procedure no later than ten (10) calendar days after the hearing.
- xiv. Appeal the decision (see Section VIII).

e. **Hearing Procedures**

A hearing is conducted differently from legal proceedings and shall generally be conducted in accordance with the procedures listed below:

- i. A hearing shall be closed and not open to the public. Admission of any person into the hearing room shall be at the discretion of the Hearing Chair. The Hearing Chair shall have the authority to remove any person whose presence is deemed unnecessary or obstructive to the proceedings.
- ii. When a hearing involves more than one Respondent, the Director of Student Support Services or designee may, at their discretion, permit the hearings to be conducted either separately or jointly.
- iii. If a Respondent, after receiving proper written notification, does not appear for a hearing, the hearing will proceed without the Respondent and a finding will be made, including sanctions (if appropriate), based on the information available.
- iv. The Complainant and Respondent shall each have the opportunity to present opening statements, present evidence and ask relevant questions of the opposite party in a manner prescribed by the Hearing Chair.
- v. The Respondent and Complainant will answer questions from the Hearing Officers in a manner prescribed by the Hearing Chair.
- vi. The Complainant & Respondent may arrange for witnesses to present pertinent information. Hearing Officers, the Respondent, and Complainant reserve the right to question witnesses in a manner prescribed by the Hearing Chair.
- vii. After the portion of the hearing concludes in which all pertinent information has been received, the Hearing Officers shall deliberate in private whether the Respondent has violated each section of the Student Code of Conduct for which they have been charged. The Hearing Chair will not participate in these deliberations. Hearing Officers will make their decision by majority vote.
- viii. When a student Respondent is found “responsible” for a violation(s), the Hearing Officers shall continue private deliberations to recommend appropriate sanction(s). The Hearing Officers may review the Respondent’s impact statement. Hearing Officers may also consider additional relevant mitigating and aggravating factors to help make their recommendation on appropriate sanctions. Hearing Officers will make their decision about recommended

sanctions by majority vote. The Hearing Chair will not participate in these deliberations.

- ix. The Hearing Officers will send their findings and recommendations to the Director of Student Support Services. The Director of Student Support Services may confirm, amend, add, or remove sanctions from those recommended by the Hearing Officers, but may not alter other outcomes made by the Hearing Officers. The Director of Student Support Services may review the Respondent's impact statement, academic record, prior conduct history, and other relevant mitigating and aggravating factors to make their determination on appropriate sanctions.
- x. The Director of Student Support Services will create the Hearing Outcome letter and mail it to the student within ten (10) calendar days of the Hearing's conclusion. Proper written notification shall be defined as hand-delivery by campus staff, delivery of information via electronic message to a student's assigned campus e-mail account, or delivery by the U.S. Post Office to a student's local off-campus address. Students shall be held responsible for the contents of mail for which they have refused receipt.

NOTE: All procedural questions are subject to the final decision of the Hearing Chair. Procedural questions may be asked at any point while the hearing by any participant, with the exception of the support person/advisor. Student conduct procedures may be modified by the Hearing Chair.

f. **Recordings**

Hearings will be recorded by the College and, if recorded, the College will maintain the audio recordings as required by New York state law. Recordings are the property of the College. Participants are prohibited from making their own recording (including, but not limited to audio, photographic, video, and/or written recording). Upon written request, a Respondent or Complainant may review the audio recording and make appropriate arrangements for it to be transcribed on College premises. Arrangements for a transcriber and all associated costs involved in the transcription will be the sole responsibility of the requesting individual

**SECTION VII:
Sanctions**

The following are sanctions that may be imposed on individuals and/or groups found in violation of the Student Code of Conduct:

- a. **Official Warning**: is an official written statement of the College's disapproval of a student's actions and a warning that any future violation(s) could result in more severe sanctions which could include probation, suspension, or expulsion. This is not a referral, but rather a written instruction from the College to the student with the expectation that the student modifies future behavior in accordance with the Warning.
- b. **College Probation**: is a higher-level sanction issued for serious violations or a pattern of violations of the Student Code of Conduct. Probation is for a designated period of time and includes the probability of more severe disciplinary sanctions if the student commits another violation during the probationary period. During the probation period, a student may be excluded from some programs and curricular or extra-curricular activities.
- c. **Course Removal**: is when a student is no longer eligible to attend or otherwise participate in one or more courses they are currently enrolled in. The student forfeits tuition and fees and does not receive academic credit for the semester in which the course removal occurred.
- d. **Suspension**: is an involuntary separation of the student from the College for a definite period of time and/or until certain conditions for readmission are met. A student who is suspended is unable to register for and attend classes, participate in any College activities, or be present on College property. Suspension is a severe sanction and the student forfeits tuition and fees and does not receive academic credit for the semester in which the suspension occurred. A student may be assigned conditions for reinstatement. These conditions may include actions that must be completed, in full, before a student is eligible for reinstatement.

The student is not guaranteed reinstatement at the end of the designated period, but a review regarding eligibility for reinstatement is guaranteed if a student submits the necessary information. The student must apply in writing for reinstatement to the Dean of Student Life. The student must provide evidence that all conditions for reinstatement are complete at the time of the request for reinstatement. The Dean may also request additional information they believe will aid them in assessing the student's readiness for reinstatement. The Dean shall determine if the student is ready for reinstatement. If reinstatement is granted, the student may reenroll for courses beginning the next academic term. The Dean may also impose conditions on the student that must be adhered to if they are granted reinstatement to the college following the period of suspension. If reinstatement is denied, the student will remain suspended for another definite period, determined by the Dean, at which time they may reapply for reinstatement again at the close of that next period of time. The decision of the Dean is final.

Students can submit requests for reinstatement by visiting www.sunywcc.edu/disciplinaryreinstatement and clicking on the link to complete the form.

- e. **Expulsion**: is an involuntary and permanent separation from the College and will be invoked where extreme violations of the Student Code of Conduct occur. A student who is expelled is permanently prohibited from being on any property of the College, attend any events/activities of the College, and shall not be readmitted to the institution. The student forfeits tuition and fees and does not receive academic credit for the semester in which they were expelled.

- f. **Secondary Sanctions:** promote principles of restorative justice and may encourage restitution, reflection, or other aspects of student development. Secondary sanctions can include, but are not limited to:
- i. **Restitution:** may be assigned when College property is damaged. An assessment of the damage will be made by the appropriate College department and/or personnel. The responsible student(s) may be billed as appropriate. Restitution for personal property cannot be resolved via the conduct process.
 - ii. **Educational/ Restorative Activities:** Work assignments, community services and other related sanctions, which can include, but are not limited to:
 - a. Reflection or research paper on assigned topic
 - b. letter of apology
 - c. program presentations
 - d. substance abuse education
 - e. attendance at educational or other community programs, including participation in the Viking Navigator Program
 - f. Virtual trainings, modules or workshops (i.e. Therapy Assistant Online modules)
 - iii. **Restrictions/Loss of Privileges:** denial of a specified privilege for a designated period of time. These restrictions can include, but are not limited to:
 - a. A restriction from possessing particular items on-campus
 - b. A restriction from being in a particular college building(s) or specific rooms/locations on-campus
 - c. Restriction from attending a specific event or event(s)
 - d. Restriction from participating in specific co- or extra-curricular programs/activities/groups
 - e. Other restrictions as deemed appropriate
 - iv. **Mandated Counseling Assessments:** a student must attend an assessment and/or session with the Office of Mental Health and Counseling Services or other college or community group by a specified date. Unless otherwise stated, the student is required to complete the recommendations of the assessment.
 - v. **No Contact Order:** is a written directive prohibiting contact with a protected individual, either directly or through a third party. If the accused or Respondent and a protected person observe each other in a public place, it is the responsibility of the accused or Respondent to leave the area immediately and without directly contacting the protected person.
 - vi. **Parental Notification:** occurs when, in accordance with the Federal Educational Rights and Privacy Act (FERPA), students are under the age of 21 and found responsible for violations of the College's alcohol or drug policies. This notification will typically be in writing.
- g. **Sanctions for Hate or Bias-Related Crimes:** If a student is responsible for a violation that is directed toward an individual or group due to race, color, national origin, ancestry, ethnicity, gender, gender identity or expression, sexual orientation, religion, religious practice, age, physical or mental disabilities, including learning disabilities, and past/present history of a mental disorder, sanctions may be enhanced.

- h. Student Club/Organization Violations:** If a student club/organization is found responsible for a violation, they may receive any sanction listed above and:
 - i. Loss of Recognition:** will result in loss of all College privileges for a student club/organization for a designated period and will require the group to reapply for College recognition. Conditions for future recognition may be specified.

The Director of Student Support Services or designee will place an administrative hold on a student's college account when the student fails to complete any sanctions by the assigned deadline. The hold will remain in effect until the assigned sanction(s) are completed. The Director of Student Support Services or designee also reserves the right to charge a student with (1) Abuse of the Student Conduct System for failing to complete sanctions by their assigned deadlines.

SECTION VIII:
Conduct Process for Non-Title IX Covered Sexual Misconduct

A. Sexual Misconduct Covered Under Title IX

On May 19, 2020, the U.S. Department of Education issued a Final Rule under Title IX of the Education Amendments of 1972 that:

- Defines the meaning of “sexual harassment” (including forms of sex-based violence)
- Addresses how this institution **must** respond to reports of misconduct falling within that definition of sexual harassment, and
- Mandates a grievance process that this institution **must** follow to comply with the law in these specific covered cases before issuing a disciplinary sanction against a person accused of sexual harassment.

See, 85 Fed. Reg. 30026 (May 19, 2020). The full text of the Final Rule and its extensive Preamble are available here: <http://bit.ly/TitleIXReg>

Based on the Final Rule, Westchester Community College has implemented a Title IX Grievance Policy, effective August 14, 2020, which can be found www.sunywcc.edu/titleix.

Under the Final Rule, Westchester Community College must narrow both the geographic scope of its authority to act under Title IX and the types of “sexual harassment” that it must subject to its Title IX investigation and adjudication process. **Only** incidents falling within the Final Rule’s definition of sexual harassment will be investigated and, if appropriate, brought to a live hearing through the Title IX Grievance Policy.

a. “Covered Sexual Harassment”

Under the Title IX Grievance Policy, “covered sexual harassment” includes any conduct on the basis of sex that satisfies one or more of the following:

- i. An employee conditioning educational benefits on participation in unwelcome sexual conduct (i.e., quid pro quo);
- ii. Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the educational institution’s education program or activity;
- iii. Sexual assault (as defined in the Clery Act), which includes any sexual act directed against another person, without the consent of the victim including instances where the victim is incapable of giving consent;
- iv. Dating violence (as defined in the Violence Against Women Act (VAWA) amendments to the Clery Act), which includes any violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship; (ii) The type of relationship; (iii) The frequency of interaction between the persons involved in the relationship.
- v. Domestic violence (as defined in the VAWA amendments to the Clery Act), which includes any felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a

person similarly situated to a spouse of the victim under {your state(s)} domestic or family violence laws or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of {state}.

- vi. Stalking (as defined in the VAWA amendments to the Clery Act), meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to-- (A) fear for their safety or the safety of others; or (B) suffer substantial emotional distress.

b. Geographic Scope

The Title IX Grievance Policy states that Westchester Community College's "education program or activity" includes:

- i. Any on-campus premises
- ii. Any off-campus premises that Westchester Community College has substantial control over. This includes buildings or property owned or controlled by a recognized student organization.
- iii. Activity occurring within computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in the operations of Westchester Community College's programs and activities over which Westchester Community College has substantial control.

B. Sexual Misconduct Not Covered Under Title IX

Westchester Community College remains committed to addressing any violations of its policies, even those not meeting the narrow standards defined under the Title IX Final Rule. Westchester Community College utilizes this Student Code of Conduct that defines certain behavior as a violation of campus policy, identified as sex-based offenses that are not covered specifically under the Title IX final rule. These sex-based offenses include the following violations of the Student Code of Conduct: (29) Intimate Partner Violence (dating violence and domestic violence) (30) Sexual Assault; (31) Sexual Harassment; and (33) Stalking. Westchester Community College also maintains a separate **Sexual Misconduct Policy** that addresses these types of sex-based offenses constituting a violation of campus policy, and the procedures for investigating these sex-based offenses.

The College's complete policies for reporting and investigating these non-Title IX covered allegations of sexual misconduct, as well as resources for support, can be found at www.sunywcc.edu/titleix.

In the event that there is a conflict between any procedures set forth in this section (Section VIII) with any procedures described in any other portion of this Code, the procedures set forth in this section (Section VIII) will control for cases of non-Title IX covered sexual misconduct.

a. Students' Bill of Rights

The College is committed to providing options, support, and assistance to members of our community that are affected by sexual assault, sexual harassment, intimate partner violence and stalking, regardless of whether the crime occurred on campus, off campus, or while studying abroad. The rights enumerated in the Student's Bill of Rights are afforded to all students reporting sexual violence, as well as all students accused of sexual violence, regardless of race, color, national origin, religion, creed, age, disability,

sex, gender identity or expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, or criminal conviction.

All students have the right to:

- i. Make a report to local law enforcement and/or state police;
- ii. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
- iii. Make a decision about whether or not to disclose a crime or violation and participate in the judicial or conduct process and/or criminal justice process free from pressure by the College;
- iv. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
- v. Be treated with dignity and to receive from the College courteous, fair, and respectful health care and counseling services, where available;
- vi. Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
- vii. Describe the incident to as few College representatives as practicable and not be required to unnecessarily repeat a description of the incident;
- viii. Be protected from retaliation by the College, any student, the accused and/or the respondent, and/or their friends, family and acquaintances within the jurisdiction of the College;
- ix. Access to at least one level of appeal of a determination;
- x. Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or respondent throughout the judicial or conduct process including during all meetings and hearings related to such process; and
- xi. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the College.

b. Policy for Alcohol and/or Drug Use Amnesty in Sexual Misconduct Cases

The health and safety of every student at Westchester Community College is of utmost importance. Westchester Community College recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. Westchester Community College strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to institution officials.

A bystander acting in good faith or a Reporting Individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to Westchester Community College's officials or law enforcement will not be subject to

Westchester Community College's Code of Conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault. (Section 6442 Education Law Article 129-B).

- c. **Reporting, Resources, Interim Measures, Accommodations & Investigation Process**
 - i. Reporting, resources, interim measures, accommodations, and the investigation process for non-Title IX covered sexual misconduct will be governed by the College's Sexual Violence Response Policy, which can be found at www.sunywcc.edu/titleix.
- d. **Adjudication Process For Cases Of Non-Title IX Covered Sexual Misconduct**
 - i. Reporting Individuals have the right to request that student conduct charges be filed against the accused.
 - ii. Hearing procedures for cases of non-Title IX covered sexual misconduct will generally follow the same procedures outlined in Section VI.E. *Hearings*.
 - iii. Both the Reporting Individual and Respondent are afforded the same rights in a Hearing for non-Title IX covered sexual misconduct cases. Generally, these rights are found in Section VI.E.d. However, to ensure compliance and given the unique nature of these Hearings, there may be differences in rights afforded to parties from general hearings. Below are the rights of the Respondent and Reporting Individual in a Hearing for non-Title IX covered sexual misconduct cases. If there is a discrepancy between the rights found in VI.E.d. and those listed below (VIII.B.d.iii.) those listed below will control.
 - i. Have their complaint adjudicated in an impartial and thorough manner by individuals who receive annual training in conducting investigations of sexual violence, the effects of trauma, impartiality, the rights of the Respondent, including the right to a presumption that the Respondent is, "not responsible" until a finding of responsibility is made and other issues related to sexual assault, domestic violence, dating violence, and stalking.
 - ii. Be accompanied by an advisor of their choice who may assist and advise the parties throughout the conduct process and any related hearings or meetings. Advisors may not address the Hearing Officers during a disciplinary hearing, but may speak privately with the advisee during the proceedings.
 - iii. Receive advance written or electronic notice of the date, time, and location of any meeting or hearing they are required to or are eligible to attend. Respondents will be told the factual allegations concerning the violation, a reference to the specific code of conduct provisions alleged to have been violated, and possible sanctions.
 - iv. Have a conduct process run concurrently with a criminal justice investigation and proceeding, except for temporary delays as requested by external municipal entities while law enforcement gathers evidence. Temporary delays should not last more than 10 days except when law enforcement specifically requests and justifies a longer delay.
 - v. Offer evidence during an investigation and review available relevant evidence in the case file (or otherwise held by the College), including the

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investigator's findings report, consistent with institution policies and procedures. See *Evidence* (VII.B.c.)

- vi. A range of options for providing testimony via alternative arrangements, including telephone/videoconferencing or testifying with a room partition, if available.
 - vii. The right to exclude prior sexual history with persons other than the other party in the conduct process or their own mental health diagnosis or treatment from admittance in college disciplinary stage that determines responsibility. Past findings of domestic violence, dating violence, stalking, or sexual assault may be admissible in the disciplinary stage that determines sanction.
 - viii. To simultaneous (among the parties) written or electronic notification of the outcome of a conduct proceeding, including the decision, any sanctions, and the rationale for the decision and any sanctions.
 - ix. Written or electronic notice about the sanction(s) that may be imposed on the accused/Respondent based upon the outcome of the conduct proceeding.
 - x. Access to one level of appeal before a panel that is fair and impartial and does not include individuals with a conflict of interest.
 - xi. Choose whether to disclose or discuss the outcome of a conduct hearing.
 - xii. Present a written impact statement to the Hearing Officers to review if a finding of "responsible" is made. Impact statements are only reviewed by the Hearing Officers when deliberating sanctions. Impact statements outline a student's reasoning for what may constitute an appropriate sanction. The Hearing Officers are not bound by these statements in determining sanctions.
 - xiii. Have all information obtained during the course of the conduct or judicial process be protected from public release until the appeals panel makes a final determination, unless otherwise required by law.
- iv. During a Hearing involving cases of non-Title IX covered sexual misconduct, generally only the following individuals will be permitted to attend: the Reporting Individual, Respondent(s), a Complainant, two to three Hearing Officers, a Hearing Chair, any support persons/advisors, any witnesses, and the Title IX Coordinator and/or the Director of Student Support Services who may each serve in an Advisory position to the Hearing Officers. The Reporting Individual may serve as a witness or the Complainant during the Hearing.
 - v. Students who are found responsible for violations of sexual misconduct, including: (32) Sexual Harassment; and/or (33) Stalking; must at minimum receive a sanction of probation. Students who are found responsible for violations of sexual misconduct, including: (29) Intimate Partner Violence (dating violence and domestic violence); and/or (30) Sexual Assault; and (31) Sexual Exploitation; must at minimum receive a sanction of suspension.

Refer to the Sanctioning Guide available at www.sunywcc.edu/codeofconduct for more information about specific sanctions that can be imposed for violations of sexual misconduct.

e. Interim Administrative Action Process Involving Sexual Misconduct

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- i. Interim Administrative Action may be taken and/or Administrative Directives may be issued by either the Director of Student Support Services or designee or the Title IX Coordinator or designee.
- ii. For cases involving sexual misconduct, both the accused/Respondent and the Reporting Individual shall, upon request, and consistent with college policies and procedures, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of interim administrative action(s), including potential modification and discontinuance, and shall be allowed to submit evidence in support of their request.
 - i. The request for review must be submitted in writing to the Dean of Student Life or designee within three (3) calendar days of the receipt of the interim administrative action letter. The decision of the Dean or their designee is final.

SECTION IX: Appeals

An appeal is a process to request the review of the original student conduct outcome. An appeal does not rehear a student conduct case, but rather, determines if the conclusion reached in the original case is valid based on substantiation of a procedural error, new evidence, or the severity of the sanction.

In an Administrative Conference, only resolutions wherein a sanction was imposed by the Student Conduct Officer are eligible for appeal. Resolutions to an Administrative Conference made by an Administrative Agreement are not eligible for appeal.

In a Hearing, the Respondent has the right to submit one application for appeal. In Hearings involving cases of Sexual Misconduct, both the Reporting Individual and Respondent have the right to appeal and are the procedures are governed by different appeal procedures per Section IX.C.

A. Grounds for Appeal

The application for an appeal may only be filed on the grounds below and must meet at least one of the three standards to be considered for an appeal:

- a. **Procedural Error**: is when the hearing was not conducted in conformity with the policies and procedures detailed in the Student Code of Conduct, and as a result, the outcome of the case was significantly impacted. A procedural error and its impact on the case must be clearly described in the appeal.
- b. **Sanction Severity**: is when a sanction(s) was not appropriate for the violation(s) of the Student Code of Conduct. Evidence must show that the sanction is inappropriate based on the infraction.
- c. **New Evidence**: refers to new evidence that was unavailable during the original hearing or investigation that could significantly impact the original finding or sanction. A summary of the new evidence and its potential impact must be included. This does not include information available but not disclosed at the Hearing/Administrative Conference by choice (i.e. opting not to disclose or a Respondent not attending a Hearing/Administrative Conference).

B. Appeal Procedure for Cases Not Involving Sexual Misconduct

- a. Appeals must be submitted, in writing, via the [Student Conduct Appeals Form](#) found on the SUNY WCC website, within five (5) calendar days of the decision. An appeal may not be submitted by a third party.
- b. The Dean of Student Life, using the preponderance of evidence standard, shall determine if the appeal is timely and meets the grounds for appeal. The review of the appeal shall be limited to a review of the student conduct file and supporting information provided in the appeal application. The audio recording of the hearing shall be available to the Dean for review as necessary.
 - i. If the appeal is not timely and/or does not meet the grounds for appeal, the original decision and sanction will stand and be final.
 - ii. If the appeal is timely and meets the grounds for an appeal (see Section IX.A.), the Dean may: (a) uphold the original decision; (b) reverse the decision; (c) add,

remove or amend sanctions; (d) remand the matter back to the original Hearing Officers or Student Conduct Officer who heard the case for a specific reconsideration or for the case to be reheard, in part or in entirety; and/or (e) Remand the matter to a new Hearing Officers or Student Conduct Officer for the case to be reheard.

If the original decision is upheld, reversed or if sanctions are added or removed, this decision will be final and binding upon all parties.

- c. Written notification will be sent to the Respondent.

C. Appeals for Cases of Non-Title IX covered Sexual Misconduct

- a. In such cases, the Reporting Individual and Respondent will receive written notification of the Hearing Officer's decision and either party can then submit an application for appeal within five (5) calendar days according to the procedures in X.B.a.
- b. If one party submits an application for an appeal, the non-requesting party will receive notice that an appeal was submitted and may then submit either their own appeal or a written response to the requesting party's appeal within five (5) calendar days of the notification. If both parties appeal, the appeals will be considered concurrently.
 - a. Appeals will be reviewed by a three-member appeal panel consisting of Dean of Student Life or designee and two other designated College officials of the Dean's choice who were not involved with the original case. The review of the appeal shall be limited to a review of the student conduct file and supporting information provided in the appeal application. The audio recording of the hearing shall be available to the Dean for review as necessary.
 - c. The panel shall determine if the appeal is timely and meets the grounds for appeal.
 - i. If the appeal is not timely and/or does not meet the grounds for appeal (see Section IX.A.), the original decision and sanction will stand and be final.
 - ii. If the appeal is timely and meets the grounds for an appeal (see Section IX.A.), the appeal panel, by majority vote, may: (a) uphold the original decision; (b) reverse the decision; (c) add, remove or amend sanctions; (d) remand the matter back to the original Hearing Board who heard the case for a specific reconsideration or for the case to be reheard, in part or in entirety; and/or (e) Remand the matter to a new Hearing Board for the case to be reheard.

If the original decision is upheld, reversed or if sanctions are added or removed, this decision will be final and binding upon all parties.
- d. The results of any appeal will be communicated in writing to the Reporting Individual and the Respondent by the Dean of Student Life or designee. This letter will include the underlying decision, sanction, and rationales for decision and sanction.

**SECTION X:
Special Provisions Governing Acts of Academic Dishonesty**

Academic dishonesty is both an academic matter between a student and their faculty member and a violation under the Student Code of Conduct. The [Academic Honesty Policy](#) details action that can be taken by a faculty member. Actions taken by a faculty member are considered academic in nature and not a college disciplinary sanction. Faculty members are encouraged to report all incidents of academic dishonesty to the Office of Student Life. The Director of Student Support Services will maintain a record of the reported incident and may elect to pursue college disciplinary action per this Code.

**SECTION XI:
Special Provisions Governing Acts of Classroom Disruption**

The college recognizes that faculty members are responsible for effective management of the classroom environment that promote conditions that will enhance student learning. Fortunately, student disruptions in WCC classrooms are rare and seldom lead to disciplinary actions. However, when student behavior is disruptive, a faculty member has the right to respond in a manner as detailed in the [Classroom Conduct Policy](#) which also details the process for review of these incidents under the Student Code of Conduct.

**SECTION XII:
Special Provisions Governing Incidents of Bias, Discrimination or Hate Crimes**

The Hate Crime or Bias Incident Response Policy provides a mechanism through which the College may identify, respond to, and prevent incidents of unlawful discrimination. This policy details the College's grievance procedures, inclusive of intake, investigation, and adjudication for all incidents of discrimination based on protected classes, traits, or other characteristics protected by local, state, and federal law for which the College has received a complaint.

**SECTION XIII:
Student Disciplinary Files and Student Records**

The Director of Student Support Services will establish a student disciplinary file whenever a case is reported for a possible violation. The file of a student found to have violated the Student Code of Conduct will be retained for at least five years from the date of the sanction. Student conduct records may be retained longer or permanently if the student was suspended or expelled or if there is reason to believe the case could result in future litigation. The release of student disciplinary records will be governed by applicable federal and state laws. A student's academic transcript shall be noted as follows for cases involving withdrawal with charges pending, suspension or expulsion:

- *Withdrawal with Conduct Charges Pending:* For alleged policy violations, the Director of Student Support Services can direct that a hold be placed on a student's account who withdrew or leaves the college prior to the disposition of the alleged violation. Transcript comment reads: "Withdrew with conduct charges pending on (date)." The notation will remain on the transcript until appropriate disposition of the violation has been made.
- *Suspension:* Student receives W grade according to established guidelines. Transcript comment reads: "Suspended after a finding of responsibility for a Code of Conduct violation from (date) to (date)." For suspensions related to crimes of violence, hazing or other serious violations, the notation will permanently remain on the transcript. For others, the notation will remain on the

academic transcript at least for the period of suspension plus one year. At that time, the student may petition to have the notation removed.

- *Expulsion*: Student receives W grades according to established guidelines. Transcript comment reads: “Expelled after a finding of responsibility for a Code of Conduct violation on (date).” Comment shall not be removed.

NOTE: If a finding of responsibility is vacated for any reason, any transcript notation shall be removed from a student’s record.