



SUNY OLD WESTBURY

Code for Student Conduct

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Effective Date: June 2019

SECTION 1: INTRODUCTION

This is the official Code of Conduct outlining behavioral expectations for SUNY Old Westbury students. The College has developed this Code of standards and expectations, consistent with its purpose as an educational institution and requires that each student accept responsibility for his or her own behavior and sanctions. These regulations and the procedures for their enforcement apply to all student conduct and behavior. Once a student is accepted as a member of the College community, they are responsible for upholding the standards outlined in this document. As such, students should be familiar with this document. These specific regulations should not be viewed as a comprehensive code of desirable conduct; rather they describe the minimum standards. In addition to this Code, there are specific rules and regulations governing campus-operated housing which can be located at the following website:

<https://www.oldwestbury.edu/life/residential/policies>

A copy of this document can be viewed and printed from <https://www.oldwestbury.edu/life/student-conduct> or you may request a hard copy from the Office of Student Conduct in the Student Union, 303. Questions about the contents of the Code for Student Conduct can be directed to the Office of Student Conduct at (516) 876-3067 or at studentconduct@oldwestbury.edu

It should be understood that all rules of the Board of Trustees of SUNY and all local, state, and federal laws apply on the campus. The State of New York laws include, but are not limited to, the New York State Penal Law, the New York State Vehicle and Traffic Law, the New York State Education Law, and the Alcohol Beverage Control Law. Violations of these regulations may result in a referral to the Student Conduct System. In such cases, the College may commence the Student Conduct System procedure independent of criminal or civil court proceedings.

1. Philosophical Approach to Standards of Conduct

Because disciplinary actions must be commensurate with the seriousness of the offense and the total conduct record of the student, each case is determined on its own merits. Student conduct procedures and subsequent disciplinary outcomes are designed to find a balance between the interests of the individual student and the community.

2. Jurisdiction of the College's Code for Conduct

The Code for Student Conduct shall apply to conduct that occurs on College premises at College sponsored activities; and to off-campus conduct that adversely affects the College community, the pursuit of its objectives, or neighboring communities. A student may be charged with violating local, state and federal laws and the campus Code for Student Conduct as the student is subject to double jurisdiction, having obligations to both the State and the College.

3. Inherent Authority for the Student Disciplinary Program

Section 356 of the Education Law empowers the College Council of each State-operated campus of the State University of New York to make regulations governing the conduct of students, subject to the general management, supervision, control, and approval of the Board of Trustees of the State University of New York. All programs for student welfare and conduct are entrusted to and administered by the President of SUNY Old Westbury on behalf of the College Council.

The President has delegated administration of programs for student welfare and conduct to the Vice President for Student Affairs. Enforcement of standards of conduct, College regulations, and recommendations for new policies or modification of policies or regulations affecting student welfare and conduct are initiated through the Office of the Vice President. The Vice President has jurisdiction over the Student Conduct System and will render final decisions on all appeals, except in cases of sexual and interpersonal violence. The Vice President may designate a person or office to administer the Code for Student Conduct; this includes but is not limited to the Dean of Students, the Office of Student Conduct, and the Office of Residential Life.

The Director of Student Conduct or designee has administrative responsibility for the student conduct process. His/her actions may include any or all of the following:

- Conducting an investigation(s) into allegation(s) of student misconduct.
- Processing a charge of student misconduct if warranted.

- Issuing disciplinary sanctions.
- Assigning the case to the College Conduct Board.
- Extending any deadlines and time requirements in the Code for good cause. Both the respondent and the complainant will be notified in writing of the delay, the reason for delay, and the date of the new deadline or event. Extensions requested by one party will not typically be longer than five (5) calendar days.

In addition to the Code for Student Conduct, the rules, regulations, and procedures for the Maintenance of Public Order on campuses of the State University of New York, adopted by the Board of Trustees, are in effect at SUNY Old Westbury. (See Rules for the Maintenance of Public Order: http://www.suny.edu/sunypp/documents.cfm?doc_id=351.)

SECTION 2: DEFINITIONS

1. **“Accused”** shall mean a person, suspected of a violation, who has not yet entered the College’s conduct process.

2. **“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.

- a. Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.
- b. Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- c. Consent may be initially given but withdrawn at any time.
- d. Consent cannot be given when a person is incapacitated, and a reasonable person knows or should have known that such person is incapacitated. Incapacitation occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.
- e. Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
- f. When consent is withdrawn or can no longer be given, sexual activity must stop.

3. **“Bystander”** shall mean a person who observes a crime, impending crime, conflict, violent or potentially violent behavior, or conduct that is in violation of rules or policies of an institution.

4. **“Course of Conduct”** is defined as a pattern of actions composed of two or more acts over a period of time.

5. **“Director of Student Conduct”** means the person designated by the Vice President to administer the Code for Student Conduct.

6. **“Faculty Member”** means any person hired by the College to conduct classroom and/or research activities.

7. **“May”** is used in the permissive sense.

8. **“Member of the College Community”** includes any person who is a student, faculty member, College official or any other person employed by or contracted with the College. A person’s status in a particular situation shall be determined by the Vice President or designee.

9. **“Organization”** means any number of persons who have complied with the formal requirements for College recognition/registration.

10. **“Policy”** is defined as the written regulations of the College as found in, but not limited to, the Code for Student Conduct, Residence Hall License Agreement, and the Graduate and Undergraduate Catalogs.

11. **“Proceedings”** refers to the activities related to an institutional disciplinary complaint, including but not limited to, fact-finding investigations, formal or informal meetings, hearings, and appeals.

12. **“Reasonable Person”** refers to a hypothetical person who exercises average care, skill and judgment in conduct and who serves as a comparative standard.
13. **“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 a violation.
14. **“Respondent”** shall mean a person, accused of a violation, who has entered an Institution's conduct process.
15. **“Results”** means any initial, interim, and final decision by any College official or entity authorized to resolve disciplinary matters within the institution.
16. **“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) contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight; (B) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; (C) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or (D) the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; (3) the term “sexual contact” means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.
17. **“Sexual Misconduct”** is sexual harassment or sexual violence and encompasses a wide range of behavior for sexual purposes that are against another’s will or at the expense of another. Sexual misconduct includes, but is not limited to sexual assault, intimate partner violence, stalking of a sexual nature, or any conduct of a sexual nature that is nonconsensual, or has the effect of threatening or intimidating another.
18. **“Shall”** is used in the imperative sense.
19. **“Student”** is defined as: persons registered for courses, either full time or part time, pursuing undergraduate, graduate, or professional studies, as well as non-degree seeking students; individuals who confirm their intent to enroll in programs; those attending orientation sessions; between academic terms; taking online classes; residing in the residence halls; those that were enrolled on the date of an alleged incident; persons who were previously enrolled but are not currently enrolled at the College.
20. **“Hearing Administrator”** means any College official appointed by the Vice President for Student Affairs to administer Student Conduct hearings.
21. **“College Conduct Board”** refers to the authorized persons who hear student conduct referrals. May also be referred to as ‘Conduct Board’.
22. **“Incident Report”** means the Student Conduct System Report that includes a description of alleged misconduct. These reports may be submitted by Residential Life Staff, University Police, and the Title IX Coordinator.
23. **“Student Conduct System”** means the program established to maintain the integrity of the values of the College community by reviewing alleged violations of the Code for Student Conduct.
24. **“Title IX Coordinator”** shall mean the Title IX Coordinator and/or his or her designee or designees.
25. **“College”** means the State University of New York College at Old Westbury, also referred to as ‘SUNY Old Westbury’.
26. **“College Official”** includes any person employed by the College, performing assigned administrative or professional responsibilities.

27. "**College Premises**" includes all land, buildings, facilities, and other property in the possession of or owned, used, or controlled by the College including adjacent streets and sidewalks.

28. "**Vice President**" means the Vice President for Student Affairs, or designee, who, as the President's designee, is responsible for the administration of the Code for Student Conduct.

SECTION 3: PROHIBITED CONDUCT

The behaviors listed in this section violate the College's Code for Student Conduct. This list is not exhaustive, but is intended to describe general types of behavior that may result in disciplinary action. The Code applies both to student behavior, which occurs on campus or at College-sponsored events as well as those occurring off-campus. Prohibited behavior includes not only completed actions, but also attempted violations of the Code for Student Conduct.

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 shall be followed with the accused student receiving due notice of hearing. Any resulting sanction of suspension or dismissal will be notated on the undergraduate or graduate academic transcript, as well as the student's conduct record.

1. Fire Safety

- A. Causing or creating a fire (including the burning of candles), regardless of intent (except as authorized for use in class, or in connection with College-sponsored research or other approved activities).
- B. Tampering with safety measures or devices, including but not limited to, alarm systems, fire extinguishers, exit signs, emergency phone systems, smoke or heat detectors, fire hoses, security systems, locked exterior doors, etc.
- C. Failing to conform to safety regulations, including but not limited to, falsely reporting an incident, failure to evacuate facilities in a timely fashion in emergency situations or in response to fire alarms, inappropriate use of the fire alarm system.

2. Weapons and 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, 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 includes, but is not limited to, pellet guns, air guns, rifles, shotguns, handguns, multiple firing weapons and any weapon capable of firing a shot.

NOTE: Possession of any rifle, shotgun, or firearm in or upon any building or grounds of the College without written authorization from the President is also a crime under New York state law. Any person doing so without authorization is subject to arrest and incarceration in addition to any penalty that may be assessed through the College's Student Conduct System.

3. Threatening or Abusive Behavior

Intentionally or recklessly causing physical harm to any person or causing reasonable fear of such harm. Students cannot justify such behavior as defensive if:

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

4. Harassment

It is the policy of the College to ensure equal treatment without discrimination or harassment on the basis of race, color, national origin, religion, creed, age, sex, sexual orientation, disability, gender identity or expression, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status or criminal conviction. Harassment is one form of unlawful discrimination on the basis of the above protected categories. Harassing conduct includes actions which would reasonably be construed to annoy, intimidate, and/or alarm another or a knowing course of conduct directed at another person which reasonably and seriously alarms, torments, or terrorizes that person. Harassment also includes the unauthorized recording (including, but not limited to, the use of pictures, video, or audio, whether vis-à-vis mobile device, via forms of social media or otherwise) of others, whether individually or part of a group,

within the College community and the wrongful possession, sharing, or unreasonable use of what would reasonably be considered private information.

Hostile environment harassment is oral, written, graphic, or physical conduct relating to an individual's protected characteristics that is sufficiently severe and/or serious, pervasive, or persistent so as to (1) interfere with or limit the ability of an individual to participate in or benefit from the educational institution's programs or activities; (2) has the purpose or effect of creating an intimidating, hostile or offensive work or study environment; or (3) otherwise adversely affects an individual's employment or learning opportunities. Harassing conduct includes, but is not limited to: epithets, slurs, or negative stereotyping; threatening, intimidating, or hostile acts; denigrating jokes and display or circulation on the campus, including via email, of written or graphic material that denigrates or shows hostility or aversion toward an individual or group.

5. Intimate Partner Violence

Intimate Partner Violence includes Dating Violence and Domestic Violence, both of which are further defined below. Intimate Partner Violence can occur in relationships of the same or different genders.

Dating Violence – Any act of violence, including physical, sexual, psychological, and verbal violence, committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. Dating Violence can occur as a single act, or it can consist of a pattern of violent, abusive, or coercive acts that serve to exercise power and control in the context of a romantic or intimate relationship. 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 the 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 felony, non-violent felony, or misdemeanor crime, as those terms are defined by the laws of the State of New York and of the federal government, committed by a current or former spouse or intimate partner of the victim, a person sharing a child with the victim, or a person cohabitating with the victim as a spouse or intimate partner.

6. Stalking

Intentionally engaging in a course of conduct, directed at a specific person, which is likely to cause a reasonable person to fear for his or her safety or the safety of others or cause that person to suffer substantial emotional damage. Examples include, but are not limited to, repeatedly following such person(s), repeatedly committing acts that alarm, cause fear, or seriously annoy such other person(s) and that serve no legitimate purpose, and repeatedly communicating by any means, including electronic means, with such person(s) in a manner likely to intimate, annoy, or alarm him or her. Stalking does not require direct contact between parties and can be accomplished in many ways, including through the use of electronic media such as internet, pagers, cell phones, or other similar devices.

7. Sexual Harassment

Sexual harassment may include a range of subtle and not so subtle behaviors and may involve individuals of the same or different gender. Depending on the circumstances, these behaviors may include, but are not limited to: unwanted sexual advances or requests for sexual favors; sexual jokes and innuendo; verbal abuse of a sexual nature; commentary about an individual's body, sexual prowess, or sexual deficiencies; leering, catcalls, or touching; insulting or obscene comments or gestures; display or circulation on the campus of sexually suggestive objects or pictures (including through email); and other physical, verbal, or visual conduct of a sexual nature.

8. Rape, Sexual Assault, and Sexual Exploitation

Sexual assault is defined as a physical sexual act or acts committed against a person's will and consent or when a person is incapable of giving active consent, incapable of appraising the nature of the conduct, or incapable of declining participation in, or communicating unwillingness to engage in, a sexual act or acts. Sexual assault is an extreme form of sexual harassment. Sexual assault includes what is commonly known as "rape," "date rape", and "acquaintance rape."

Nothing contained in this definition shall be construed to limit or conflict with the sex offenses enumerated in Article 130 of the New York State Penal Law, which shall be the guiding reference in determining if alleged conduct is consistent with the definition of sexual assault. Examples include:

- a. Engaging or attempting to engage in unwanted sexual behavior toward any individual including but not limited to such sexually specific behaviors as touching, pinching, exposing oneself, and pressing up against.
- b. Engaging or attempting to engage in sexual intercourse or other sexual behavior with any individual if such behavior is against the will or without the affirmative consent of that person.
- c. Engaging or attempting to engage in sexual intercourse or other sexual behavior with someone who is physically helpless (e.g., drunk and/or under the influence of a substance or substances rendering them helpless), unconscious, or otherwise incapacitated or unable to accurately communicate unwillingness or to give affirmative consent to an act.

Sexual Exploitation — Nonconsensual, abusive sexual behavior that does not otherwise constitute Sexual Assault or Sexual Harassment. Examples include but are not limited to: 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; nonconsensual video or audio taping of sexual activity; allowing others to watch consensual or nonconsensual sexual activity without the consent of a sexual partner; observing others engaged in dressing/undressing or in sexual acts without their knowledge or consent; trafficking people to be sold for sex; and inducing incapacitation with the intent to sexually assault another person.

9. Endangerment

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

10. Hazing

Any action which endangers the mental, emotional, or physical health or safety of a student, or which destroys or removes public or private property, for the purpose of initiation, admission into, affiliation with, or as a condition for continued membership in an organization or team whose members are or include students at SUNY Old Westbury. A person commits a hazing offense if the person engages in hazing; solicits, encourages, directs, aids, or attempts to aid another engaging in hazing; or intentionally, knowingly, or recklessly permits hazing to occur.

11. Forgery, Fraud, Dishonesty

Altering or misusing documents, records, stored data, or instruments of identification, or furnishing false information to any College, local, state, or federal official. Aiding, abetting, or procuring another person to violate a College policy.

12. Property Damage

- A. Removing, destroying, or damaging College property, or property under College administration or supervision.
- B. Removing, destroying, or damaging the property of others, on or off-campus.

13. Theft

Stealing of property and/or services; possessing stolen property.

14. Unauthorized Entry or Use

Entering or using facilities or property on or off-campus, belonging to individuals, College-recognized groups and/or entities contracted with the College, without proper authorization.

15. Drugs

Consistent with the Drug-Free Schools and Communities Act Amendments of 1989 (Public Law 101-226), possessing, using, knowingly being in the presence of, or distributing a controlled substance or dangerous drug, or any drug unlawful to possess, e.g., marijuana, except as expressly permitted by law. Drug paraphernalia including, but not limited to: bongos, water pipes, or hypodermic needles that are not specifically required for the administration of prescribed medications are not allowed on campus. Any items possessed which are fashioned for the purpose of drug use will also be considered a violation of this policy. Use of legal medication outside the parameters of the medical authorization is prohibited and prescription drugs on campus must have an authentic medical prescription.

16. Alcohol

Possession of, sale of, consumption of, forcing others to consume, other use of alcoholic beverages, being under the influence of, or knowingly being in the presence of alcohol on College property or at College-sponsored or supervised functions, regardless of age, is prohibited.

Good Samaritan Policy

Abuse of alcohol and other drugs can create life-threatening situations that require an immediate response from emergency services personnel. In all instances, the College is concerned that those in need receive prompt medical attention. The College cannot guarantee absolute immunity from sanctions associated with violations of the Code or state and/or federal law. However, efforts will be made to mitigate sanctions associated with alcohol and other drug offenses for "Good Samaritans." These considerations apply only to the individual(s) who may have contributed or participated in the use and abuse of alcohol or other drugs, but summoned aid.

17. Obstruction or Disruption

Obstructing or disrupting College activities, including but not limited to, teaching, research, administration, disciplinary procedures, or other authorized activities including public service functions. It can include participation in campus demonstrations which disrupt the normal operations of the College and infringes on the rights of other members of the College community by leading or inciting others to disrupt scheduled and/or normal activities within any campus building or area; intentional obstruction which unreasonably interferes with freedom of movement, either pedestrian or vehicular, on campus.

18. Student Group Violations

Students are expected to know and abide by the regulations governing their membership in a student organization (e.g., fraternities and sororities). Prohibited conduct by officers/members of student groups and organizations may result in referral to the Student Conduct System for individual students.

It is a violation of College policy for students to affiliate with organizations that have had their recognition suspended or permanently revoked by the College. The definition of affiliation includes joining, rushing, pledging, or being involved in any activity that would normally be associated with being a member of such organization.

19. Compliance

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

20. Parking and Motor Vehicle Violations

Violating College policies and regulations governing the possession and use of motor vehicles on campus. Violations of this policy include but are not limited to:

- A. Purchasing a decal for the vehicle of another student or the vehicle of a family member of another student unless they have the same permanent address;

- B. Altering any parking decal, temporary parking hang tag, or any other documents relating to obtaining parking privileges in any manner;
- C. Driving under the influence of alcohol or other drugs.

21. Tobacco

Tobacco use is prohibited on all College property except in designated areas. The full policy is available at <https://www.oldwestbury.edu/tobaccofree>.

22. College Policies

Violation of published College policies, rules, and regulations and/or Residential Life policies, rules, and regulations. College policies and procedures are available at <https://www.oldwestbury.edu/policies/>. Policies related specifically to c

23. Disruptive Conduct

Impairing, interfering with, or obstructing the orderly conduct, processes and functions of the College or surrounding community. This behavior includes, but is not limited to, excessive noise, abusive or obscene language in a public place, obstructing vehicular or pedestrian traffic, and boisterous or threatening conduct which is unreasonable in the area, time, or manner in which it occurs.

24. Responsible Use of Electronic Communication

The policy that outlines responsible use of College Information Technology policies is available at <https://www.oldwestbury.edu/policies> under Computing/Telecommunications. Violations of this policy are subject to referral to the Office of Student Conduct.

25. Hate or Bias-Related Crime

Intentionally selecting a person or group against whom a criminal offense is committed or intended to be committed because of a belief or perception regarding the race, color, national origin, ancestry, gender, religion, religious practice, age, disability, or sexual orientation (or perceived sexual orientation), regardless of whether the belief or perception is correct.

26. Gambling

Gambling, including, but not limited to, contests 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 is prohibited.

27. Abuse of the Student Conduct System

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

- A. Failure to comply with the sanction(s) imposed under the Code for Student Conduct.
- B. Falsification, distortion, or misrepresentation of information before a Student Conduct Body.
- C. Disruption or interference with the orderly conduct of a Student Conduct proceeding.
- D. Knowingly instituting a Student Conduct referral without cause.
- E. Attempting to discourage an individual's proper participation in, or use of, the Student Conduct System.
- F. Attempting to influence the impartiality of a member of a student conduct body prior to, and/or during, and/or after a student conduct proceeding.
- G. Harassment (verbal or physical) and/or intimidation of a member of a Student Conduct Body prior to, and/or during, and/or after a proceeding.
- H. Influencing or attempting to influence another person to commit an abuse of the Student Conduct System.

28. Retaliation

- A. Engaging, directly or indirectly, in any action or attempt to harass, intimidate, retaliate against, or improperly influence any individual involved with the Student Conduct System.
- B. An intentional act taken against an individual who initiates **any** discrimination or harassment complaint, including **any** sexual misconduct complaint (including stalking or intimate partner violence), pursues legal recourse for such a complaint, or participants in any manner in the investigation of such a report. Any act of retaliation is prohibited and is subject to a student conduct referral.

29. Failure to Abide by Federal, State, and/or Local Laws

Violation of federal, state, and/or local laws.

30. Solicitation and Posting

All selling and soliciting of merchandise and services without authorization on College property is prohibited. Also prohibited is the advertising of such solicitation or sale, as well as any posted materials in common areas or residence halls that are not specifically approved by the College.

SECTION 4: STUDENT CONDUCT PROCEDURES

1. Introduction

The Student Conduct System addresses charges that are brought against a student that allegedly violates the Code for Student Conduct. **The Student Conduct System utilizes a “preponderance of evidence” standard of proof. A preponderance of evidence standard evaluates whether it is more likely than not that a violation occurred.**

SUNY Old Westbury email is the official means of communication between Student Conduct Administrators and students on all matters pertaining to the Student Conduct System. It is the student’s responsibility to check their campus email. Refusal to open email communication regarding violations and/or charges does not preclude responsibility for the charges.

The respondent student has a right to:

- I. A hearing by an unbiased student conduct body.
- II. Written notice of the charges, which indicate the time and place of the hearing. In the case of Conduct Board hearings, at least five (5) calendar days in advance of the hearing date.
- III. View the pertinent incident report(s).
- IV. Present information on his/her behalf and shall not be compelled to offer testimony against himself/herself. Evidence, including statements of witnesses and documents, relevant to the charges against the respondent, may be presented by the respondent or complainant. The Chair of the College Conduct Board will make the final decision relating to the admissibility of all evidence.
- V. Have an advisor present at a College Conduct Board hearing. The respondent is responsible for presenting evidence on their own behalf. Advisors may speak privately to their advisee during the proceeding. The respondent may request a brief recess to consult with their advisor, which will be granted at the discretion of the Chair of the College Conduct Board. Advisors may not present evidence or question witnesses.
- VI. Written notification of the results of a hearing. In the case of Conduct Board hearings, no later than ten (10) calendar days after the hearing.
- VII. Appeal the outcome of a hearing. The respondent must be informed of his/her right to appeal, and the process by which to do so.

2. Referrals

The College guarantees the right of a fair and impartial hearing to any student charged with a violation. No student shall be subjected arbitrarily to any disciplinary action for any offense without being given a fair hearing. The only exception to this practice may occur in the case of an Interim Suspension (see Section 6) which may be imposed only to ensure the safety and well-being of members of the College community or property or to ensure the respondent’s own physical safety or emotional well-being.

Any person may file charges against any student for misconduct. Depending upon the nature of the allegation(s), complaint(s) shall be made to University Police, the Office of Residential Life, the Affirmative Action Officer, or Title IX Coordinator, at which point an incident report shall be prepared in writing and directed to the Director of Student Conduct as appropriate for the administration of the Student Conduct System.

3. Resolutions

Resolutions are the manner in which student conduct cases are resolved. A description of each type of resolution follows:

A. Administrative

- I. The Hearing Administrator may conduct an investigation to determine if charges have merit. Said investigation may include an administrative hearing whereby the respondent is informed of the charge made against him/her, his/her rights under the student conduct process, and potential sanction(s).
- II. The Hearing Administrator processes a charge of student misconduct if the investigation warrants.

- III. After an administrative hearing, an outcome letter will be sent to the respondent's campus email. This letter will include the findings, sanctions (if applicable), and appeal information.
- IV. In the event that the respondent disagrees with the finding(s) and/or sanction(s) of an administrative hearing, the respondent may appeal this decision and have his/her case heard by the College Conduct Board. It is the responsibility of the respondent to submit an electronic appeal (<http://www.oldwestbury.edu/life/student-conduct/appeals>) by the date listed in the outcome letter. Failure to schedule the appeal will constitute an acceptance of the administrative hearing finding(s) and/or sanction(s). A timely appeal will result in a College Conduct Board hearing.

B. College Conduct Board

When the respondent contests an administrative hearing or is facing a suspension or expulsion from the College, or at the discretion of the Director of Student Conduct, a hearing will be scheduled. Every effort will be made to schedule hearings around students' academic schedules only.

A College Conduct Board shall be comprised of Board members solicited from faculty, staff, and students. Every effort will be made to ensure student, staff, and faculty representation on each College Conduct Board. If however a particular constituency is unavailable to serve, the case will be heard by a College Conduct Board consisting of a reasonable mix of the two available constituencies in order to ensure the respondent's right to a timely hearing.

Conduct Board hearings are conducted as follows:

- I. Persons other than those directly involved in the case are permitted to be present at the hearing as observers, provided they have prior approval from the Hearing Administrator.
- II. In violations involving more than one respondent, the Hearing Administrator, in his/her discretion, may permit the hearing concerning each respondent to be conducted separately.
- III. All hearings are recorded using audio recording equipment. No other recording will be permitted.
- IV. Six Board members will always be scheduled for a College Conduct Board hearing. When six Board members are present at the College Board Hearing, the Chair will act as a non-voting member of the Board. In the event that a Board member is absent, however, the College Conduct Board hearing may proceed with five members. Under this circumstance, the Chair will participate as a voting member of the Board. A College Conduct Board will never proceed with less than five members.
- V. The Chair of the College Conduct Board is responsible for maintaining an orderly hearing process. Only those recognized by the Chair may speak at the hearing. The Chair may also exclude persons from the hearing if they are disruptive. Further, the Chair may postpone a hearing because of disruptive behavior among the participants and/or observers. Disruptive behavior by participants or observers may form the basis of a separate or additional charge (pursuant to Section 3 of the Code for Student Conduct).
- VI. The respondent(s) and the Hearing Administrator shall have the privilege of presenting witnesses. All witnesses are subject to questioning by the respondent(s), the Hearing Administrator, and the members of the College Conduct Board.
- VII. The College Conduct Board, at the discretion of the Chair, may accept pertinent records, exhibits, and/or written statements as evidence for consideration.
- VIII. All procedural questions are subject to the final decision of the Chair.
- IX. After the hearing, the College Conduct Board will move to a closed session to determine, by majority vote, whether the respondent has violated the Code for Student Conduct. The Hearing Administrator may remain present during this session.

- X. The College Conduct Board's deliberation shall consider only the weight and credibility of the statements and evidence presented.
- XI. If the board finds the respondent(s) responsible for violating the Code for Student Conduct, it will then enter the sanctioning phase of the Hearing. In this phase the College Conduct Board determines the sanction(s) it will recommend to be imposed upon the respondent(s). When the College Conduct Board enters the sanctioning phase, the Hearing Administrator will share with the Board any information on prior disciplinary actions and/or sanctions placed upon the respondent that relate(s) to the Board's determination of recommended sanctions.
- XII. Following deliberation by the six members of the Board, its finding regarding the responsibility or non-responsibility of the respondent, and any sanctions recommended in those cases where the respondent is found in violation, are to be submitted by the Chair to the Hearing Administrator.
- XIII. Within ten (10) calendar days of notification, the Hearing Administrator will notify the respondent(s) of the finding and any recommended sanction(s).

The finding and recommended sanction(s) shall stand if no appeal is filed within seven calendar days of notification.

If the respondent fails to attend a scheduled hearing, the hearing will be held in the respondent's absence, and the respondent will be assumed to have entered a claim of 'Not Responsible' to each allegation but forfeited his/her ability to present information on her/his behalf. Findings and recommended sanctions will be based on the information presented and not upon the respondent's failure to appear. If the Hearing Administrator learns that the respondent's failure to appear is for good cause, the Hearing Administrator may grant a new hearing.

C. Alternative Dispute Resolution

I. Mediation

Mediation is a voluntary process that requires the commitment of all parties. It is appropriate when a violation arises out of a dispute between students. It is generally reserved for first-time and less serious violations. The goal is to reach a written agreement to resolve the dispute and to prevent it from recurring. The Hearing Administrator will retain a record of the mediation efforts and the mediation agreement. If the parties fail to live up to the agreed settlement, or if mediation attempts fail to reach an agreement, a referral for a student conduct hearing will be processed.

Complaints of sexual and interpersonal violence will not be resolved by using mediation, but instead must be referred immediately to the Title IX Coordinator. The complainant will not be required to resolve the problem directly with the respondent in cases of sexual discrimination.

SECTION 5: CASES OF SEXUAL MISCONDUCT

1. Introduction

This section outlines the policy and procedures that will be followed for all cases of sexual misconduct. In the event that there is a conflict between any procedures set forth in this section and any procedures described in any other portion of this Code, the procedures set forth in this section will control for cases of sexual misconduct.

Compliance with any of the below listed provisions does not constitute a violation of Section 444 of the General Education Provisions Act (20 U.S.C. 1232g), commonly known as the Family Educational Rights and Privacy Act of 1974 (FERPA).

The burden of proof in all sexual misconduct cases is a preponderance of the evidence - whether it is more likely than not that the sexual misconduct occurred. If the evidence meets this standard, then the respondent **must** be found responsible of a violation of this Code.

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. To view a complete list of all of the rights afforded to students in the Student Bill of Rights, please visit:

<http://www.oldwestbury.edu/policies/sexual-violence-victim-survivor-bill-rights>.

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

The health and safety of every student at the State University of New York and its State-operated and community colleges is of utmost importance. SUNY Old Westbury 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. The College strongly encourages students to report incidents of domestic violence, dating violence, stalking, or sexual assault to College officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to College officials or law enforcement will not be subject to the College's Code for Student Conduct 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.

2. Student Conduct Process in Cases Involving Sexual Misconduct

A. Reporting individuals have the right to request that student conduct charges be filed against the accused. Conduct proceedings are governed by the procedures set forth in Section 5 of this Code as well as federal and New York State law, including the due process provisions of the United States and New York State Constitutions.

B. Throughout conduct proceedings, the respondent and the reporting individual will have:

- I. The same opportunity to be accompanied by an advisor of their choice who may assist and advise the parties throughout the conduct process and any related hearings or meetings. Advisors may not address the College Conduct Board during a disciplinary hearing but may speak privately with the advisee during the proceedings.
- II. The right to a prompt response to any complaint. The College will conduct timely reviews of all complaints of sexual misconduct. Absent extenuating circumstances, review and resolution is expected to take place within

sixty (60) calendar days from receipt of the complaint. All deadlines and time requirements detailed below may be extended for good cause as determined by the Title IX Coordinator or the Dean of Students, or a designee of either of those individuals. Both the respondent and the complainant will be notified in writing of the delay, the reason for delay, and provide the date of the new deadline or event. Extensions requested by one party will not be longer than five (5) school days.

- a. The preliminary review of all complaints, including any necessary interviews to be conducted and any necessary interim measures to be put in place, will usually be completed within seven (7) days of receipt of the complaint.
 - b. The subsequent, comprehensive review and investigation of the complaint, including interviews with all involved parties and gathering of evidence, will usually be completed within thirty (30) days of receipt of the complaint.
 - c. Results of the complaint, via either a formal hearing or waiver of hearing will typically be issued within sixty (60) days of receipt of the complaint.
- III. The right to have their complaint investigated and 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.
 - IV. The right to an investigation and process conducted in a manner that recognizes the legal and policy requirements of due process (including fairness, impartiality, and a meaningful opportunity to be heard) and is not conducted by individuals with a conflict of interest.
 - V. The right to receive advance written or electronic notice of the date, time, and location of any meeting or hearing they are required to or are eligible to attend. Respondents will also be told the factual allegations concerning the violation, a reference to the specific Code for Student Conduct provisions alleged to have been violated, and possible sanctions.
 - VI. The right to have a conduct process run concurrently with a criminal justice investigation and proceeding, except for temporary delays as requested by external municipal entities while law enforcement gathers evidence. Temporary delays should not last more than ten (10) days except when law enforcement specifically requests and justifies a longer delay.
 - VII. The right to offer evidence during an investigation and to review available relevant evidence in the case file held by the College.
 - VIII. The right to present evidence and testimony at a hearing, where appropriate.
 - IX. The right to a range of options for providing testimony via alternative arrangements, including telephone/videoconferencing or testifying with a room partition.
 - X. 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.
 - XI. The right to ask questions of the College Conduct Board, and indirectly request responses from other parties and any other witnesses present, via the Hearing Administrator.
 - XII. The right to make an impact statement during the point of the proceeding where the College Conduct Board is deliberating on appropriate sanctions.

- XIII. The right to simultaneous (among the parties) written or electronic notification of the outcome of a conduct proceeding, including the decision, any sanctions, and the rationale for the decision and any sanctions.
- XIV. The right to written or electronic notice about the sanction(s) that may be imposed on the accused based upon the outcome of the conduct proceeding. For students found responsible for sexual assault, the available sanctions are suspension with additional requirements and expulsion/dismissal.
- XV. Access to at least one level of appeal of a determination before a panel that is fair and impartial and does not include individuals with a conflict of interest (See Section 7.4).
- XVI. The right to have access to a full and fair record of a student conduct hearing, which shall be preserved and maintained for at least five (5) years.
- XVII. The right to choose whether to disclose or discuss the outcome of a conduct hearing.
- XVIII. The right to have all information obtained during the course of the conduct or judicial process be protected from public release until the appeals panel makes a final determination unless otherwise required by law.

XIX. Evidence to be presented by the complainant(s) and respondent(s) during any hearing on the charges must be submitted to the Hearing Administrator at least two (2) business days in advance of the scheduled hearing. This evidence will be shared with the opposing party. The College Conduct Board may exclude evidence that has not been shared or adjourn the hearing to afford all parties the opportunity to review evidence to be presented during the hearing. The Chair of the College Conduct Board will make the final decision related to the admissibility of all evidence.

3. Temporary and Administrative Directives

- A. When the accused or respondent is a student, the College will issue a “No Contact Order” meaning that continuing to contact the protected individual, either directly or through a third party, is a violation of College policy subject to additional conduct charges; 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.
- B. When the accused or respondent is a student and presents a continuing threat to the health and safety of the community, the accused or respondent may be subject to a temporary suspension pending the outcome of the student conduct process (see Section 6.2A regarding “Temporary Suspension”).
- C. Both the accused/respondent and the reporting individual shall, upon request, be afforded a prompt review, reasonable under the circumstances, of the need for and terms of any Administrative Directives and/or Temporary Directives (See Section 6.2). The accused/respondent or victim/reporting individual shall be allowed to submit evidence in support of his or her request.
 - I. The request for review must be submitted in writing to the Director of Student Conduct (by email: studentconduct@oldwestbury.edu or in person: Student Union room 303) within 2 calendar days of the imposition of Temporary and/or Administrative Directives.
 - II. 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 victim/reporting individual.

No member of the College community shall retaliate, intimidate, threaten, coerce, or otherwise discriminate against a person who files a Title IX complaint, serves as a witness, or assists or participates in a Title IX proceeding in any manner. Participants who experience retaliation should contact the Title IX Coordinator:

Mr. William Kimmins
Assistant to the President for Administration & Title IX Coordinator
Campus Center, Room I-211
516-876-3179
kimminsw@oldwestbury.edu

Claudia Marin Andrade
Dean of Students & Deputy Title IX Coordinator
Student Union, Suite 303
516-876-3067
marinandradec@oldwestbury.edu

Kathleen Lieblich
Director of Student Conduct
Student Union, Suite 303
516-876-3067
studentconduct@oldwestbury.edu

SECTION 6: SANCTIONS, TEMPORARY AND ADMINISTRATIVE DIRECTIVES

Failure to comply with sanctions and directives is a violation of College policy subject to additional conduct charges.

1. Sanctions

A sanction is a requirement or status that is imposed as a result of being found responsible for violating the Code for Student Conduct.

Disciplinary sanctions shall be communicated to students in writing via College email, which is the official means of communication between the College and students.

Sanctions are determined by the seriousness of the Code violation and are not necessarily progressive. For example, a student with no prior disciplinary record may be assigned a sanction commensurate with the offense up to and including removal from residence, suspension, or dismissal.

A. Verbal Reprimand

A documented verbal statement by an appropriate College official to the student that he/she has violated the Code for Student Conduct. This statement should include the nature of the violation and the sanctions for repeated infractions of College rules.

B. Written Reprimand

A written statement by an appropriate College official to the student indicating that he/she has violated the Code for Student Conduct. This statement should include the nature of the violation and the sanctions for repeated infractions of College rules.

C. Denial or Restriction of the Use of College Facilities

An official notification by an appropriate College official of denial or restriction of the use of specific College facilities or buildings.

D. Restitution

Reimbursement for damage, destruction, or misappropriation of College property. Restitution for personal property cannot be resolved via the Student Conduct System.

E. Disciplinary Probation

A trial period during which a student who has been found responsible of a violation has the opportunity to demonstrate that he/she can act as a responsible and effective member of the College community.

F. Social Probation

A period of time which a student may not participate in any campus activities, events, organizations, teams, or clubs. The exception will be attendance at and/or participation in educational programs. Generally this is a last step before a student is suspended from the College.

G. Educational/Reflective Assignments

A student is given the opportunity to reflect upon their violation(s) of the Code for Student Conduct by writing a paper on a specified topic and/or answering a series of questions. This also includes community service and anger management education.

H. Substance Education

Assigned to any student found responsible for drugs and/or alcohol. It may be comprised of an online, individual, and/or group component. This is not a substitute for substance abuse counseling. Students demonstrating an addictive personality may be referred to programs outside of the College.

I. Residence Hall Suspension

The student may be suspended from the residence halls for a specific period of time. Arrangements to vacate will be made by the proper College authorities. During this time, the student is restricted from residing in or visiting the residence halls. The student may apply for readmission to the residence halls via the established process following the period of suspension. Any student in violation of these restrictions may be subject to arrest for trespassing.

J. Residence Hall Expulsion

The student will be required to vacate the residence halls completely and permanently. Arrangements to vacate will be made by the proper College authorities. The student is restricted from residing in or visiting the residence halls. The student may not apply for readmission to the residence halls. Any student in violation of these restrictions may be subject to arrest for trespassing.

K. College Suspension

The student will be required to sever connections with the College for a given period, including departure from the residence halls. The student must leave the campus immediately upon receipt of official notice of suspension. The suspended student may not visit the campus unless prior permission by an appropriate College official has been granted and all the proper authorities notified. Any student in violation of these restrictions may be subject to arrest for trespassing.

L. College Expulsion

The student will be required to sever, completely and permanently, all connections with the College. The student must leave the campus immediately upon receipt of official notice of expulsion. The expelled student may not visit the campus unless prior permission by an appropriate College official has been granted and all the proper authorities notified. Any student in violation of these restrictions may be subject to arrest for trespassing.

M. Other Sanctions

Other sanctions deemed appropriate by the Hearing Administrator or College Conduct Board.

SUNY Old Westbury considers all sexual and interpersonal violence, including dating violence, domestic violence, sexual assault, and stalking, to be extremely serious violations and are subject to Suspension and/or Expulsion from the College.

Transcript Notation Policy

Because of the seriousness of College Conduct Board hearings, the College will record the outcome of certain disciplinary actions on a student's academic transcript, in the form of a transcript comment. For students who withdraw from the College prior to a disciplinary hearing, the student's academic transcript shall be noted accordingly. For crimes of violence, including but not limited to sexual violence, the College shall make a notation on the transcript of students found responsible after a conduct process that they were "suspended after a finding of responsibility for a Code for Student Conduct violation" or "expelled after a finding of responsibility for a Code for Student Conduct violation." For the respondent who withdraws from the College while such conduct charges are pending, and declines to complete the disciplinary process, the College shall make a notation on the transcript of such students that they "withdrew with conduct charges pending." The student may petition the Vice President to have the transcript notation removed in the case of a

suspension. It is the student's responsibility to provide substantial evidence which supports the petition and provides documentation of their activities (work, education, etc.) since their exit from the College. Such notation shall not be removed prior to one year after conclusion of the suspension, and notations for expulsion shall not be removed. If a finding of responsibility is vacated for any reason, any such transcript notation shall be removed.

NOTE: *A student who is suspended/expelled from the College or suspended/expelled from the residence halls for disciplinary reasons shall be liable for all tuition, room rents, deposits, and fees due to the College for that semester.*

2. Administrative Directives

A. Interim Suspension

An Interim Suspension may result in the respondent's immediate exclusion from classes and/or the residence halls and/or all other College privileges or activities, pending a hearing. Depending on the nature and/or severity of the violation of the Code for Student Conduct, it may be determined that the respondent receiving an Interim Suspension may be allowed to attend classes pending the completion of the campus student conduct process. If, however, the Interim Suspension includes exclusion from classes, the respondent student's case will be given priority status with respect to scheduling a hearing. Interim Suspensions will only be imposed to ensure the safety and well-being of members of the College community or College property or to ensure the student's own physical or emotional safety and well-being.

B. No Contact Order

A written directive prohibiting contact with a protected individual, either directly or through a third party. If the respondent and complainant observe each other in a public place, it is the responsibility of the respondent to leave the area immediately and without directly contacting the protected person.

SECTION 7: STUDENT CONDUCT APPEALS

1. Appeal Overview

A finding and/or sanction recommended by the College Conduct Board may be appealed by the respondent or the Hearing Administrator to the Vice President. The Hearing Administrator must file his/her appeal within five (5) calendar days after receiving notification of findings and recommended sanctions of the College Conduct Board. The respondent must file his/her appeal within five (5) calendar days of their outcome letter being sent to their campus email address. Such appeals shall be submitted in writing via the following website:

<http://www.oldwestbury.edu/life/student-conduct/appeals>

If the respondent student cannot file his/her appeal within the 5-day filing deadline, the individual may contact the Vice President via email before said deadline expires and request an extension.

2. Appeal Grounds

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

- A. **Procedural Error:** To determine whether the original hearing was conducted fairly and properly in accordance with the guidelines detailed in this document. Deprivation of due process shall be considered procedural error. A procedural error and its impact on the case outcome must be clearly described in the appeal.
- B. **New Evidence:** This refers to new evidence that was unavailable during the investigation or first hearing that could significantly affect 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 Student Conduct Hearing by choice (i.e., opting not to disclose information for any reason).
- C. **Disproportionate Sanction:** A sanction imposed as a result of the original student conduct hearing that is significantly outside of the parameters of the Sanction Guidelines may be appealed. Evidence must show that the sanction is inappropriate based on the infraction, according to the Sanction Guide (available at the following website: <https://www.oldwestbury.edu/life/student-conduct>)

3. Appeal Outcomes

The Vice President may, after reviewing all available information, elect to:

- A. Agree with the finding(s) and recommended sanction(s).
- B. Agree with the finding(s) and either reduce or increase the sanction(s).
- C. Disagree with the finding(s) and revise or impose a sanction(s).
- D. Remand the case back to the College Conduct Board for a new hearing.
- E. Dismiss the case.

The Vice President for Student Affairs will report the result of the appeal to both the respondent and the Hearing Administrator in a timely manner.

4. Appeals of Cases of Sexual Misconduct

A finding and/or sanction recommended by the College Conduct Board may be appealed by the complainant/reporting individual or respondent, and will be reviewed by an appeal panel comprised of students, faculty, and professional staff at the College.

In such cases, both parties will receive written notification of the College Conduct Board's decision and either party can then submit an application for appeal within seven (7) calendar days. 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 his/her own appeal or a written response to the requesting party's appeal within seven (7) calendar days of the notification. If both parties appeal, the appeals will be considered concurrently. The appeal(s) shall be reviewed and considered in accordance with the criteria as described in Section 7.2 of this Code. Both parties will be notified of the appeal decision within fourteen (14) calendar days of the last appeal received and the decision is final.

SECTION 8: DISCIPLINE OF STUDENT ORGANIZATIONS

Organizations that operate on the campus of SUNY Old Westbury shall be prohibited from authorizing the conduct described in Section 3: Prohibited Conduct of the Code for Student Conduct.

If an organization is alleged to be involved in an activity judged by the Vice President or designee to be detrimental to the safety or well-being of members of the College community or property, the Vice President or designee can suspend all activities of the organization immediately pending a hearing which is to be scheduled as soon as possible.

Organizations are afforded the same due process rights as individual students. These rights are detailed in this document. All formal communication will occur via campus email with the student who serves as the organization's principal officer.

In the event the student organization is a fraternity or sorority, the Hearing Administrator may elect to refer the incident to the Director of Student Activities pursuant to the Relationship Statement between SUNY Old Westbury and its affiliated Fraternities and Sororities.

Disciplinary action for an organization does not preclude disciplinary action for an individual student if he/she is specifically charged in the same incident(s). Further disciplinary sanctions by the College can be made in addition to any penalty imposed by the penal law or any other provisions of law.

SECTION 9: ADDENDUM TO THE TITLE IX REGULATIONS (August 4, 2020)

In compliance with federal law, this addendum to the Code for Student Conduct is effective as of August 14, 2020.

I. Definitions:

“Actual knowledge” is a notice of sexual harassment or allegations of sexual harassment to a recipient's Title IX Coordinator or any official of the recipient who has the authority to institute corrective measures on behalf of the recipient. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the recipient with actual knowledge is also the respondent. The mere ability or obligation to report sexual harassment or to inform a student about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the recipient.

“Education Program or Activity” is defined as

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

“Formal Complaint” is defined as a document filed by a complainant with a signature or other indication that the complainant is the person filing the formal complaint, or signed by the Title IX Coordinator, alleging sexual harassment against a respondent about conduct within SUNY Old Westbury's education program or activity and requesting initiation of the procedures consistent with the Title IX Grievance Policy to investigate the allegation of sexual harassment.

And requesting that the recipient investigate the allegation of sexual harassment. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the educational program or activity of the recipient with which the formal process is filed. A formal complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic-mail, by using the contact information required to be listed for the Title IX Coordinator, and by any additional method designated by the recipient. As used in this paragraph, the phrase “document filed by a complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the recipient) that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing a formal complaint. Where the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a complainant or otherwise a party under this part, and must comply with the requirements of this part.

“Notice” includes, but is not limited to, a report of the sexual harassment to the Title IX Coordinator.

“Sexual Harassment” is defined as conduct on the basis of sex that satisfies one or more of the following:

1. An employee conditioning educational benefits on participation in unwelcome sexual conduct (i.e., quid pro quo);
2. 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;
3. 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;
4. 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.

5. 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 New York domestic or family violence laws or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of New York.
6. 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.

“Supportive Measures” are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the recipient’s education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the recipient’s educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between parties, changes in work or housing locations, leaves of absence, increase security and monitoring of certain areas of the campus, or other similar measures. The recipient must maintain as confidential any supportive measures provided to the complainant and or respondent, to the extent that maintaining such confidentiality would not impair the ability of the recipient to provide supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

II. Charges:

The behaviors listed in this section violate the College’s Code for Student Conduct. This list is not exhaustive, but is intended to describe general types of behavior that may result in disciplinary action. The Code applies both to student behavior, which occurs on campus or at College-sponsored events as well as those occurring off-campus. Prohibited behavior includes not only completed actions, but also attempted violations of the Code for Student Conduct.

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 shall be followed with the accused student receiving due notice of hearing. Any resulting sanction of suspension or dismissal will be notated on the undergraduate or graduate academic transcript, as well as the student’s conduct record.

1. Sexual Assault

- a. Nonconsensual sexual penetration.
- b. Nonconsensual sexual touching.
- c. Nonconsensual exposure of intimate body parts.
- d. Intimidation or coercion to engage in sexual activity including but not limited to the use of alcohol or drugs.

2. Sexual Harassment

- a. Nonverbal, verbal or physical harassment
- b. Sex and/or gender based discrimination
- c. Sexual Exploitation including but not limited to nonconsensual verbal, nonverbal or cyber communication of a sexual nature as well as nonconsensual photography, video or audio taping, posting of sexual activity or sexually explicit images.