

# 2021 Annual Security and Fire Safety Report

Statistics for 2018, 2019, 2020



STATE UNIVERSITY OF NEW YORK  
**PLATTSBURGH**

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# ANNUAL SECURITY REPORT

The State University of New York College at Plattsburgh ("SUNY Plattsburgh" or "College") publishes this report to inform the community about campus security policies, programs to prevent and respond to crime and emergencies, and the occurrence of crime on campus. This report complies with the *Jeanne Clery Disclosure of Campus Security and Crime Statistics Act* and provides statistics for the previous three years concerning reported crimes that occurred on campus, in certain off-campus buildings or property owned, leased, or controlled by the College. This report also includes institutional policies concerning campus security, such as policies regarding sexual assault, alcohol, and other drugs.

## About SUNY Plattsburgh

SUNY Plattsburgh was founded in 1889 as a normal school for teacher training. Today, roughly 5,500 students pursue their education in a variety of academic programs spanning the arts and sciences; business and economics; and education, health, and human services.

The College's main campus is located on a picturesque 300-acre campus along the Saranac River in the heart of the City of Plattsburgh. Greater Plattsburgh is a community of 32,000 located in the northeast corner of the state along the western shore of Lake Champlain, near the Adirondack Mountains and about 20 miles from the U.S.-Canada Border in Clinton County.

Clinton County is a mostly rural community with a violent crime rate that is one of the lowest in New York State. However, with over 5000 students, faculty, and staff, and cultural, athletic, and educational activities that draw members of the community to our campus, crimes do occur on campus despite our efforts to foster a safe and secure environment.

## History of the Clery Act

In 1990, Congress enacted the *Crime Awareness and Campus Security Act of 1990* (Title II of Public Law 101-542), which amended the *Higher Education Act of 1965* ("HEA"). This act required all postsecondary institutions participating in HEA's Title IV student financial assistance programs to disclose campus crime statistics and security information. The 1998 amendments renamed the law the *Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act* in memory of Jeanne Clery, a student who was slain in her dorm room at Lehigh University in 1986. It is generally referred to as the *Clery Act* and is in section 485(f) of the *HEA*.

The Clery Act requires higher education institutions to make public campus security policies, additionally; specific data must be collected into report format, disseminated to the campus community, and submitted annually to the U.S. Department of Education. To reference Clery Act guidance issued by the US Department of Education for the creation of this report, visit:

<https://www2.ed.gov/admins/lead/safety/campus.html>.

## ABOUT THE ANNUAL SECURITY REPORT

### Purpose

The safety and well-being of students, faculty, staff and visitors to the College is a high priority at SUNY Plattsburgh. A safe and secure environment can be achieved only through the

cooperation of all members of the campus community.

This publication is a part of an effort to ensure that you are informed about campus security, personal safety, and fire safety. It includes information on the role of University Police, emergencies/crimes, sexual assault, campus escort service, residence hall security, residence life, personal responsibility, drug/alcohol policies, fire safety policies, fire statistics, and how to access registered sex offender information at SUNY Plattsburgh.

We hope that you read it carefully, retain it as an informational resource, and keep in mind that its purpose is to help foster a safe environment for you and others.

### **Preparation and Collection of Crime Statistics**

University Police prepares this Annual Security Report to comply with the Clery Act. It is prepared in cooperation with local law enforcement agencies, and other campus offices including: Environmental Health and Safety, Housing and Residence Life, Institutional Advancement, Student Conduct, Enrollment and Student Success and Title IX offices. Campus crime, arrests, and referral statistics include those reported to University Police, those reported to Campus Security Authorities, and those reported to other law enforcement agencies which are tallied and included in this report. The report preparation team requests and shares information over the summer months and reviews policies, employee agreements and US Dept. of Education requirements before compiling this report.

### **Distribution**

This report is posted online at <https://www.plattsburgh.edu/documents/university-police/annual-security-and-fire-report.pdf>. Each year an e-mail notification is sent to all students, faculty, and staff that provides the web address to directly access this report. In addition, printed copies of the report are distributed to campus departments where employees do not have individual access to campus e-mail. A notification is also included in the College Catalog, prospective and accepted student information materials, and on the campus jobs website for prospective employees.

Hard copies are available upon request at University Police.

### **Branch Campus Annual Security Report**

The SUNY Plattsburgh Branch Campus located on the campus of SUNY Adirondack in Queensbury, New York, publishes a separate report, as required by the Clery Act. The report can be accessed by navigating to: <https://www.plattsburgh.edu/documents/queensbury/annual-security-fire-report-queensbury-2020.pdf>

Each year an e-mail notification is sent to all students, faculty, and staff that provides the web address to directly access this report.

In addition, printed copies of the notification are distributed to campus departments where employees do not have individual access to campus e-mail. A notification is also included in the College Catalog, prospective and accepted student information materials, and on the jobs website for prospective employees.



## SECURITY AND ACCESS

The College's facilities serve a variety of purposes and the level of access to its buildings, classrooms and interior spaces is tailored to the function of the space. Table I provides information on when access is restricted by building classification.

### Academic, Administrative, and Community Buildings



Except for residence halls, most campus facilities are open to the public during normal hours of operation while classes are in session. Individuals from the greater Plattsburgh community routinely attend educational, cultural, and recreational events on campus, however, their access is limited to open areas only. At night and during periods when the campus is officially closed, college buildings are locked by janitorial staff or University Police personnel. Only faculty, staff, students, and other authorized personnel with the proper identification and authority can be admitted. Trespassers should be reported to University Police.

College employees who are granted access to these locked facilities are issued keys or Cardinal Proximity Cards and are responsible for reporting missing and/or stolen keys/cards to University Police as soon as possible. This helps to ensure that locked facilities are only being accessed by the appropriate individuals.

The College utilizes a private vendor to provide system maintenance and reporting for burglar and hold up alarms installed in administrative and academic buildings. In addition, University Police monitors over 50 employee duress alarms installed in non- residential buildings.

<b>Table I: Schedule of Restricted Access to Campus Facilities</b>	
<b>Building Classification*</b>	<b>Day / Time Restricted Access</b>
Academic	Monday-Friday 10 PM – 7 am, Saturdays & Sundays, certain holidays
Administrative	Monday-Friday 5 PM – 7 am, Saturdays & Sundays, certain holidays
Community	Each building's access is restricted on an individual schedule
Residential	Access is always restricted

## Residential Buildings



Residential buildings (“Residence halls”) are locked 24-hours a day. Locked hours are adjusted for special programs or events when school is not in session. Access to all twelve campus residence halls is controlled by a computerized keyless entry system, which uses proximity card readers at exterior doors. This system, monitored by University Police, gives an instantaneous electronic alarm if a residence hall door is ajar or kept open too long. Personnel may be dispatched to check and secure the alarm zone. Students are provided 24/7 access to their own residence hall and are allowed to access other residence halls during daytime hours.

Each residence hall student room has combination locks. A resident student can have their room combination code changed at any time, 24-hours a day, if they feel the code has been compromised. This is accomplished by calling the Campus Housing & Community Living Office at (518) 564-3824 during normal business hours, or University Police at (518) 564-2022 after hours and on weekends. In addition, a viewer has been installed in each student’s dorm room door, providing additional safety and security.

Each residence hall has a Community Advocate (CA) on duty from 8 PM to 7 AM while College is in session. CAs conduct sets of rounds where they walk through the dorm looking for any suspicious or problematic behavior, property damage, or other issues in common areas. Incidents are recorded in a duty log and an incident report.

In addition to the building CAs on duty, there is a Community Director (CD) on duty weeknights from 9 PM to 7 AM and weekends for 24-hours. CDs call all building CAs on duty each night during the weekend, the results of which are recorded in a log.

## Other Security Measures

University Police monitors the College through regular patrols of campus. The College has also installed more than 240 closed circuit television cameras in campus buildings and outdoor locations.

University Police provides a year-round, 24- hour a day, on-campus escort service. This service is available to any student, employee, or visitor, by calling University Police at (518) 564-2022. Any vestibule phone or emergency Blue Light phone may also be used to request a campus escort.

## Security Considerations in Building Maintenance

Maintenance and Operations staff maintain buildings and grounds with a primary concern for safety and security. Its personnel inspect campus facilities and make repairs on safety or security hazards, such as broken windows, doors, and lighting fixtures. Annually, fire doors are inspected for defects and functioning locking mechanisms.

Additionally, University Police personnel conduct regular site light surveys, documenting non-functioning exterior lights needing repair. University Police personnel also conduct regular checks of campus Emergency Blue Light phones and document any non-working Blue Lights or phones. Copies of these reports are provided to Maintenance and Operations and Telecommunications.

Finally, Library and Information Technology electronic access system devices to ensure operability. Any repairs necessary as a result of this check are addressed.

#### ABOUT UNIVERSITY POLICE



University Police is committed to providing a safe campus community in which all members may live, work, and learn. University Police strive to partner with campus community members to enhance the safety of our shared community. This is accomplished by fully engaging in community policing to develop strong relationships with the various constituents that make up the College's diverse community. University Police emphasize and model fairness, ethical behaviors, understanding, and procedural justice in its interactions and procedures, recognizing that it is part of an educational institution.

#### SUNY PLATTSBURGH UNIVERSITY POLICE MISSION STATEMENT

*The mission of University Police is to create a safe environment for the campus community in which to live, work and learn through community policing initiatives, education and the judicious enforcement of laws and regulations.*

#### LAW ENFORCEMENT AUTHORITY AND JURISDICTION

University Police is the primary law enforcement agency for the campus. It consists of a staff of well-trained and highly motivated individuals who are committed to creating and sustaining a safe environment. Services are available 24 hours a day, 365 days a year.

New York State University Police Officers are appointed by the State University of New York pursuant to 1.20 subdivision 34-S of the New York State Criminal Procedure Law, as defined in paragraph 1 of subdivision two of section three hundred fifty-five of the education law.



University Police consists of sworn police personnel who are vested with full law enforcement powers identical to the local police in your community. Officers have graduated from local police academies and regularly receive specialized training and in-service training concerning first-aid, defensive tactics, legal updates, ethics, Fair and Impartial Policing and other law enforcement topics to name a few.

Professional Communications and Security Specialists—licensed New York State security guards— staff the University Police dispatch center and answer the phone lines 24/7.

University Police Officers have statewide jurisdiction. Their primary jurisdiction is State University-owned property and roadways that cross or about the campus.

#### **AUTHORITY TO ARREST AND RELATIONSHIPS WITH OTHER LEAS**

##### **Authority to Arrest**

University Police Officers carry firearms and have the authority to make arrests, conduct criminal investigations, execute both search and arrest warrants, issue uniform traffic tickets, appearance tickets, and issue summonses for parking as well as enforce any general, special or local law, ordinance, rule, regulation, judgment, or order.

##### **Relationships with Other Law Enforcement Agencies**

University Police has a close working relationship with the Plattsburgh Police Department, the Clinton County Sheriff's Office, and the New York State Police. This relationship includes University Police having regular radio communications with other local law enforcement and emergency services.

In addition, University Police has a Memorandum of Understanding (MOU) with the Plattsburgh Police Department regarding the sharing of criminal information and the coordination of law enforcement efforts between the College and the City. It is stipulated in the MOU that information regarding violent crimes and reports of missing students will be shared between departments. The two police departments will carry out appropriate investigative procedures, determine the most efficient manner of continuing the investigation, and provide mutual assistance when requested.

#### **MONITORING AND REPORTING OF CRIMINAL ACTIVITY**

The City of Plattsburgh Police Department and University Police have concurrent police jurisdiction over the SUNY Plattsburgh campus geography with University Police having an additional responsibility of also enforcing campus rules and regulations. Under the MOU referenced in the last section, the Plattsburgh Police Department will promptly notify University Police upon the determination of certain crimes or dangerous situations occurring on campus or in the immediate vicinity of campus. University Police members also have radio frequency interoperability with the Plattsburgh Police Department and constantly monitor their radio traffic for real time awareness of calls that could affect the life and safety of the campus community.

A University Police supervisor attends a daily briefing at the Plattsburgh Police Department headquarters and receives updates about crime trends and other information that may assist in promoting campus safety.



## REPORTING

Although it is not mandatory for a crime victim ("victim") to report, the College encourages students and employees to promptly and thoroughly report all crimes occurring on campus to University Police for the purpose of making a police report. Third persons may report for a victim who is unable to report. When crimes are reported, police have the opportunity to investigate those reports and possibly apprehend the perpetrator preventing future crimes. Reporting allows University Police to assist victims of those crimes to access medical assistance, support services, and in some instances apply for financial assistance. These reports will be included in the University Police Daily Crime Log and the annual disclosure of crime statistics in the following year's Annual Security Report when required. Victim identity information will not be revealed in either report.

### How to Report a Crime

Campus crimes or serious incidents can be reported in person at University Police located in the east end of the Health Center Building, 45 Rugar Street. If a victim is unable to report in person, reports can also be made by calling the University Police dispatch center at (518) 564-2022, or dialing 911. Calls to 911 will be answered by the Clinton County Emergency Operations Center who will direct the call locally to the appropriate police agency.



Tips about Hazing or Vandalism may be left by calling the Hazing Hotline at (518) 564- 5555 or the Vandalism Hotline at (518) 564- 2677. Callers can leave their name or report anonymously as mentioned below.

The Emergency Blue Light phones (pictured above), are located throughout the campus, and emergency phones in the vestibules of the academic buildings and throughout the residence halls are all linked to the campus communications system.

When a call is made from a "Blue Light" phone, police and other emergency service personnel as needed, are dispatched immediately to the location where the call originated.

Crimes can also be reported to University Police anonymously using its Silent Witness Website. For more information, see the Anonymous Reporting section.

### Campus Security Authorities

Crimes should be reported to University Police. However, the College recognizes that some members of our community may feel more comfortable reporting a crime to other campus officials. The officials listed in Table II are some Campus Security Authorities ("CSAs") to whom crimes may also be reported under the Clery Act.

*Please note: This list is not meant to be a comprehensive list of all CSAs but instead a preferred list to whom crimes can be reported.*

Table II: Campus Security Authorities

Title	Phone Number
Vice President for Enrollment & Student Success	(518) 564-2280
Assistant VP for Student Life	(518) 564-4830
Title IX Coordinator	(518) 564-3281
Violence Prevention Education and Outreach Coordinator	(518) 564-3281
Director of Campus Housing & Community Living	(518) 564-3824
Director of Student Conduct	(518) 564-3282
Assistant Director of Community Living	(518) 564-3824
Campus Housing Director	(518) 564-3824
Director of the Center for Student Involvement	(518) 564-4830
Associate Director of the Educational Opportunity Program	(518) 564-2263
Director of Athletics	(518) 564-3140
All Athletic Team Coaches (Head Coach, Assistant Coach)	*
All Residence Hall Directors	*

\* Phone numbers for these individuals can be found at

<https://www.plattsburgh.edu/directory/>.

### CSA RESPONSIBILITIES

CSAs are responsible for reporting allegations of Clery Act crimes to University Police for the purpose of inclusion in this Annual Security Report and for the purpose of determining whether a Timely Warning (see below) should be issued to the campus. CSAs are not responsible for investigating crimes or apprehending an alleged perpetrator – that is the responsibility of University Police.

Annually, University Police notifies CSAs of their responsibilities under the Clery Act to make crime reports and provides resources to assist CSAs in carrying out these duties. The College also provides an online training module for CSAs to better understand the purpose of the Clery Act and their role in crime reporting.

### Anonymous Reporting

Anonymous reports can be made to University Police by calling the Hazing Hotline at (518) 564-5555 or Vandalism Hotline at (518) 564-2677 or online

through the department's Silent Witness Website (available at <https://www.plattsburgh.edu/plattslife/health-safety/university-police/silent-witness.html>). Click on "Silent Witness". Complete the form, providing as much information and specificity as possible as doing so will assist us in addressing the matter. Once you have completed the form click "Submit information to University Police" to forward your report.

Alternatively, anonymous reports can be made online to the Title IX office through the "Title IX Anonymous Reporting" form (available at <https://www.plattsburgh.edu/plattslife/health-safety/title-ix/report.html>). Complete the form, providing as little or as much information as you are comfortable sharing. The more information provided, the more that the campus can do to enhance your safety and the safety of others.

### **Confidential Reporting of Crime Statistics**

Professional counselors and health care providers at the Student Health & Counseling Center, as well as campus- affiliated pastoral counselors, who are informed of reportable crimes by persons they are counseling or giving care to, are exempt from mandatory crime reporting under the Clery Act. These individuals are encouraged to inform victims about options to report crimes to appropriate authorities on a voluntary and confidential basis for inclusion into the annual crime statistics disclosure.

### **Daily Crime Logs**

A daily crime log listing all alleged crimes and other offenses reported to University Police is maintained according to the date and time, along with the nature of the crime or incident, general location, and disposition of complaint (if known). The crime log is available to the public during normal business hours (8AM to 5PM), Monday through Friday, excluding holidays, at the University Police Office located in the Health Center Building, 45 Rugar Street, Plattsburgh, NY. Certain information may be withheld to protect a victim or maintain the integrity of a criminal investigation in progress.

### **TIMELY WARNINGS, EMERGENCY NOTIFICATIONS,**

It is the policy of the College and University Police to immediately respond to all emergencies, evacuate as necessary, and to alert the campus community of certain crimes occurring on campus, or situations that pose a threat to students or employees.

### **Timely Warnings**

Timely warnings are issued to the campus community when a criminal incident occurs on-campus, on public property on campus and non-campus property and is considered by the College to represent a serious or continuing threat to students and employees.

The University Police Chief or designee will make the decision to issue a timely warning after reviewing with campus leadership the pertinent facts of the incident on a case-by- case basis, considering the nature of the crime, the existence of continuing danger to the campus community, and whether issuing the timely warning could impede law enforcement efforts.

Once the decision has been made to issue a timely warning, the issuing official will determine its content. The timely warning will include enough pertinent information to promote safety and aid in the prevention of similar crimes. Timely warnings will not contain the names of victims or other information that could identify them.

Timely warnings may be disseminated by using one or a combination of the following communications: email distribution, text messages, phone calls, posting to the campus web pages, Angell College Center digital message board, social media posts, and audible broadcasts over public address systems, as well as local and regional news media outlets.

### **Emergency Notification and Evacuation**

An emergency notification will be issued to the campus community immediately upon confirmation of a significant emergency or dangerous situation occurring on campus that involves an immediate threat to the health or safety of students or employees.

Examples of a significant emergency or dangerous situation include an outbreak of a serious illness, a tornado, a gas leak, an armed intruder, or a chemical spill. If campus leadership determines the notification would compromise efforts to assist victims or to contain, respond to, or otherwise mitigate the emergency, an emergency notification may not be possible.

Members of the campus community including students and employees who learn of information which may warrant the issuance of an emergency notification should notify University Police at (518) 564- 2022 as soon as possible. University Police personnel will assign police officers to immediately take investigative steps to confirm the report and scope of the emergency.

The Chief of University Police or designee and other campus senior leadership have the authority to make the decision to issue an emergency notification, choose the mode of dissemination, determine the content and decide which segments of the community the notification targets, all of which will be determined on a case-by-case basis considering the scope of the emergency and those who may be affected or in danger.

When the decision to issue a notification has been made, the Chief of Police or designee will decide of what should be included in the message based upon what information would provide recipients with steps to provide for their safety, and who should receive it. The determination will be made on a case-by-case basis, considering the circumstances of the emergency and what will best safeguard the campus community. University Police and other campus senior leadership will coordinate for additional notifications that may be necessary to update the campus community about what steps they can take for their safety and to confirm when the campus has returned to normal operation.

Emergency notifications may be disseminated using one or a combination of the following communications methods depending upon the emergency and what segments of the community will be targeted: email distribution lists, text messages, phone calls, posting to the campus web pages, Angell College Center digital message board notifications, social media posts, audible broadcasts over public address systems, as well as dissemination to the larger community through local and regional news media outlets.

SUNY NY Alert is one of the key mechanisms the College notifies the campus community members of an emergency along with audible broadcasts. The college subscribes to the New York Alert System as provided through the State Emergency Management Office to provide emergency messages to the campus community during emergencies that may impact the campus community.

These notifications will be published and sent to subscribed users' cell phones via text messages, phone calls with automated verbal messages, email accounts and hard line phone calls.

All students and employees are automatically enrolled in SUNY NY Alert with their campus assigned e-mail address for email notification. Students and employees may enroll in additional SUNY NY Alert notification methods by logging into MyPlattsburgh ([my.plattsburgh.edu](https://my.plattsburgh.edu)) and selecting "update my NY Alert Contact Info," under NY Alert.

Under the direction of University Police, the campus' Office of Emergency Management (OEM) manages the campus emergency operation plans and publicizes emergency response and evacuation procedures on an annual basis. They are distributed in a manner designed to reach students, faculty and staff through the campus website, online guides for faculty and instructors, detailed policies related to fire alarm evacuation and shelter in place policies located in the SUNY Plattsburgh Campus Handbook, email notifications, emergency preparedness day trainings, tabletop exercises, and publications distributed throughout campus community.

These emergency notification methods, including SUNY NY Alert and emergency evacuation procedures, are tested on an annual basis by blaring rooftop sirens, sending emergency test emails and text alerts and test messages to digital sign boards around campus. Robo-type test phone calls are also included. Building evacuation procedures are tested throughout the year by campus safety team personnel, assisted by University Police officers who monitor the effectiveness of the evacuation program and adherence to College procedures. They are also physically drilled throughout the year.

### **CRIME PREVENTION, EDUCATION, AND AWARENESS**

#### **An Overview of Educational Programs**

SUNY Plattsburgh assists students and employees in creating an environment that supports intellectual, social, personal growth, and promotes health and safety. The College offers many opportunities for campus-wide programming at various times throughout the year. These education programs include primary prevention and awareness programs for all incoming students and new employees to promote the awareness of rape, dating violence, domestic violence, sexual assault, and stalking.

These education programs include: a statement that these crimes are prohibited at the College; definitions of consent, domestic violence, dating violence, sexual assault, and stalking in the College's jurisdiction; safe and positive bystander intervention when there's a risk of one of those incidents; information on risk reduction to recognize warning signs of abusive behavior and avoiding potential attacks; and information about disciplinary procedures. Educational programs provide information on College policies and regulations, procedures and practices for when violence occurs, and how to prevent future violence.

#### **Examples of Educational Programs**

The Title IX Office provides a variety of programming and training for SUNY Plattsburgh annually. Training topics include, but are not limited to, Title IX as a Resource, Sexual Assault/Harassment Services, LGBTQ Rights and Resources, Bystander Intervention, Social Justice and Diversity Reform and Healthy Communication. Title IX provides trainings for students, faculty, staff and visitors of the campus. Educational sessions such as bystander intervention and healthy communication helps to reframe violence and promote a community that is accountable for their own security and security of others.

#### **ONBOARDING EDUCATION**

Onboarding education is provided annually to freshmen, transfer, and graduate students during Opening Weekend. These programs provide information on a wide variety of topics to prospective students, parents, and residence hall staff. Part of orientation consists of presentations on sexual assault, domestic violence, alcohol abuse, and bystander intervention utilizing various aspects of the above described curriculums.

Additionally, all athletes and leaders of all College-recognized clubs and organizations on campus must attend annual training on violence, consent, bystander intervention, hazing, as well as policies and procedures of Title IX, sexual violence, and interpersonal violence. For examples of training/workshops, visit: <https://www.plattsburgh.edu/plattslife/health-safety/title-ix/training-and-workshop-materials.html>



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## BYSTANDER EDUCATION

Step UP! Bystander Intervention Program uses a 5-point model to keep students, faculty, staff and visitors safe. The model outlines how to notice an event, interpret it as a problem, assume personal responsibility, and choose a way to help. This program aims to heighten awareness, challenge social norms, decrease misperceptions about sexual assault, and provide skills that increase one's confidence to intervene effectively. Student athletes have taken a leadership role in launching this program.



## PEDAL PEER EDUCATION



The College has a comprehensive **peer educator** training program - PEDAL suitable for violence prevention and outreach. The training concentrates on the skills needed by all peer educators to:

- Understand the basics of prevention regardless of a particular health specialty.
- Become a caring helper to others.
- Provide awareness on health and safety risks.
- Make referrals of students at risk to professionals.
- Conduct educational programs and events.
- Increase their leadership abilities.
- Increase awareness of personal wellness.
- Teach team building.

University Police provide training to employees and students for reacting to active shooters. The training consists of strategies to employ in response and tactical first aid techniques for injured persons.

Training is provided to housing staff for assisting University Police in preventing crime and reporting. Clery Campus Security Authority training is provided to all housing staff face to face and to all remaining CSA's annually with written instruction provided by email.

## THEFT AWARENESS



Studies suggest that significant percentage of the larceny fall into the "crimes of opportunity" category. This term speaks to the nature of the larcenies being unplanned by the perpetrator. The perpetrator did not need special tools or technology to take what they wanted. Rather, the perpetrator merely observed that the owner had left their belongings unattended, and seized the opportunity to steal the item(s) in question. University Police, in conjunction with the Housing and Residence Life Office, developed a collaborative effort aimed at reducing the number of these types of larcenies on campus. The "Tagged" Program is a multi-departmental educational initiative that consists of raising the awareness of campus constituents about the increased risk they take in having their belongings stolen when they leave their dorm rooms open or personal property unattended in public areas. Awareness is generated through multiple channels. These channels included the creation and display of "Tagged" posters in areas found to be more susceptible to larcenies that remind individuals to secure and attend to their property. "Tagged" door hangers and table tents are utilized by the Residence Life staff, Library staff, and University Police personnel to alert and remind individuals of the increased likelihood of becoming the victim of a larceny if they leave dorm or office doors open or property unattended. The Tagged

program has reduced larcenies of unattended property and has effectively enhanced education on the topic.

## **DRUG, ALCOHOL AND SUBSTANCE ABUSE**

### **Student Drug Policies**

The State University of New York requires each campus to maintain regulations forbidding the use of narcotic and dangerous drugs.

It is the College's policy that illegal sale or possession of, or using controlled drugs or drug paraphernalia, as defined in the New York State Penal Law or Federal laws, is prohibited and will be enforced. In addition, knowingly being in the presence of illegal drugs and/or paraphernalia is also prohibited. In addition, the Drug Free Schools and Campuses Acts prohibits the unlawful possession, use, or distribution of alcohol and illicit drugs including cannabis.

### **Student Alcohol Policies**

The Alcohol policy of SUNY Plattsburgh complies with all State, Federal, and local laws, which prohibit the following:

- Sale of alcohol without a license.
- Sale or giving alcohol to any person under the age of 21.
- Purchase of any alcoholic beverage by any person under the age of 21.
- Possession of alcohol with the intent to consume the alcoholic beverage by any person under the age of 21.
- Possession of an open alcohol container in a public place.

In addition, the following are also prohibited by College policy on campus:

- Possession of an open alcohol container by a student of legal drinking age, within facilities on the SUNY Plattsburgh campus, outside of the legal and personal possession in Residence Halls, as defined in the Housing Manual, or at an event catered by Campus Dining Services, is prohibited.
- Alcohol events or parties are not permitted in Residence Halls. Only legal and personal consumption of alcohol, as defined in the Residence Hall Manual, is permitted in College Residence Halls.
- Persons 21 years of age or older may not knowingly be in the presence of alcohol containers while underage students are present, and Persons under 21 years of age may not knowingly be in the presence of alcohol containers except for events catered by Campus Dining Services. Empty alcohol containers shall be considered "alcohol containers" on the SUNY Plattsburgh campus.

The College will enforce all State, Federal, and Local laws and College policies related to the possession, use, and sale of alcohol.

### **Employee Drug and Alcohol Policies**

All State, Federal, and Local laws regarding alcohol and other drugs apply to all employees at the College. Employees will be subject to criminal, civil and disciplinary penalties if they distribute, sell, attempt to sell, possess, or purchase controlled substances while at the workplace, while performing in a work-related capacity or at any campus activity. Employees are also prohibited

from on-the-job use of or impairment from alcohol or illicit drugs.

Employees are prohibited from personally catering alcohol at events on campus.

Chartwells has been designated the caterer as well as the caretaker of the College Auxiliary Service (CAS) liquor license on the SUNY Plattsburgh campus. Samuel D's (The Hospitality Management Department-run restaurant) has its own separate liquor license. The College's policy on alcohol and drug use for employees can be found in Appendix C.

### **Drug-Free Schools and Communities Act Drug and Alcohol Abuse Programs**

The College provides ongoing drug and alcohol awareness programs. Educational programs are included in first-time and transfer orientation sessions and the Educational Opportunity Program's Summer Program. Community Directors and Community Advocates receive extensive information about alcohol and drug use during their training. Drug and alcohol education is one of the topics covered in a mandatory class for all first-year student athletes and is also included in the first-year seminars taught by Student Support Services Staff.

Ongoing educational programs are offered by the Fraternity/Sorority Life Office and Campus Housing & Community Living. For faculty and staff, the College has instituted a mandatory Drug and Alcohol- Free Workplace Training and a policy that is disseminated annually to all employees. Dissemination of pertinent information will continue to occur for all members of the campus community.

Confidential counseling and referral for treatment for alcohol and drug conditions is available to students at the Student Health and Counseling Center and employees at the Employee Assistance Program. In addition, the Champlain Valley Family Center for Drug Treatment and Youth Services provides counseling and other services to SUNY Plattsburgh's students.

For more information about the College's educational programs required under the Drug-Free Schools and Communities Act (DFSCA), please see the most recent DFSCA biennial review report, a copy of which can be requested by contacting the Student Conduct Office at (518) 564-3282.

### **HAZING**

Any activities that may be construed as hazing are specifically and unequivocally prohibited. As mandated by the Student Conduct Manual: "Hazing in every form is prohibited. Hazing is considered to be interference with personal liberty of others and includes any by some students over others for the purpose of joining, affiliating, or maintaining membership in a group or organization which may lead to injury, emotional disturbance, physical discomfort, or humiliation." Furthermore, hazing which involves the forced consumption of alcohol, drugs, or other substances is prohibited as well as hazing as defined in the Fraternal Standards Manual.

A hazing incident may be reported by anyone—the person who the activity directly affected; a person who assisted in the implementation of the activity; students or college personnel who witnessed the activity; family members or friends who have knowledge of the activity; or community members who witnessed the activity.

If you believe you are being hazed or if you have witnessed what you believe is an act of hazing, you should take the following steps. First, immediately write down a description of the activity, including dates, times, names of the individuals/organizations involved, the location the incident occurred. Secondly, contact University Police in person or by telephone at (518) 564-2022. Other

reporting options include reporting the incident to a campus administrator or calling the Hazing Hotline at (518) 564-5555. Please note that the Hotline is a voicemail- operated system. It is critical that you leave detailed information on the voicemail along with a way for an investigator to contact you for follow-up. Lastly, an online report can be submitted via

<https://www.plattsburgh.edu/plattslife/health-safety/university-police/silent-witness.html>

Anonymous or confidential reports will be accepted. It is recommended that you make a hazing report in a way that will allow for investigators to contact you for more information. If too little information is received, it is difficult for the incident to be investigated effectively.

<b>SEXUAL ASSAULT, DATING VIOLENCE, DOMESTIC VIOLENCE,</b>
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Rape and sexual assault, including sexual abuse and sexual misconduct, constitute serious crimes. Such behavior is prohibited by New York State law (see section 130 of the New York State Penal Law) and the College's Student Code of Conduct. The College also strongly condemns sexual harassment in any form. Individuals are encouraged to report allegations of rape or sexual assault to University Police (518) 564- 2022, the Plattsburgh Police Department (518) 563-3411 (if the crime occurred off campus), the New York State Police (518) 563-3761 or the New York State Police Sexual Assault 24-hour hotline 1-844-845-7269 and/or the Title IX Coordinator (518) 564 - 3281. Should the reporter wish to file a report with an outside law enforcement agency, University Police will assist the reporter in contacting the appropriate agency.

### **New York State "Enough is Enough" Legislation (129-B)**

New York State signed into law the most aggressive policy in the nation to fight against sexual assault on college campuses. "Enough is Enough" establishes a uniform sexual assault policy to protect New York's college students and standardizes campus response to sexual assault. By standing up and saying "Enough is Enough," the College makes a clear and bold statement that sexual violence is a crime, and you can be assured you have a right to have it investigated and prosecuted as such.

The "Enough is Enough" legislation requires all New York State colleges to adopt a set of comprehensive procedures and guidelines, including a uniform definition of affirmative consent, a statewide amnesty policy, and expanded access to law enforcement.

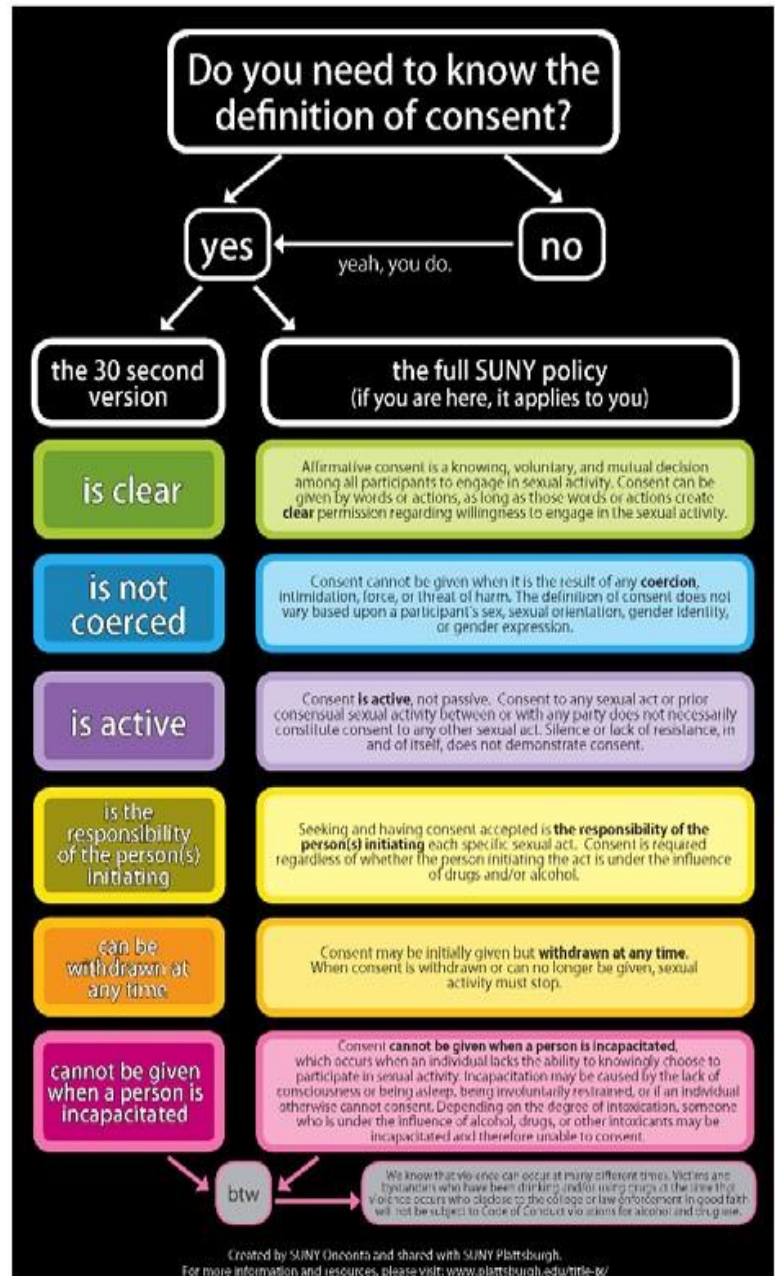
Students and employees have the right to report an incident of sexual assault to University Police, local law enforcement, and/or the State Police, or choose not to report; to report the incident to the College; to be protected by the College from retaliation for reporting an incident; and to receive assistance and resources from the College. Additionally, students, faculty, and staff have the right to request concurrent investigations through the College for potential campus adjudication while also seeking support through the criminal justice system.



## Affirmative Consent

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 sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

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



### Non-consent

- Silence, in and of itself, and/or lack of resistance cannot be interpreted as consent.
- Consent cannot be given when it is the result of any coercion, intimidation, force or threat of harm.
- Consent to any sexual act or prior consensual sexual activity between or with any party does not constitute consent to any other sexual act.
- Consent cannot be given when a person is incapacitated. Incapacitation occurs when an individual lacks the capacity to fully, knowingly choose to decide about participating in sexual activity, whether due to a disability that limits informed sexual decision-making, or because of impairment due to drugs or alcohol (whether such use is voluntary or involuntary), the lack of consciousness or being asleep, being involuntarily restrained, if any of the parties are under the age of 17, or otherwise cannot consent.



### You have the right to:

Make a report to University Police, local law enforcement, and/or state police.

Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously.

Decide 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 pressures from the institution.

Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard.

Be treated with dignity and to receive from the institution courteous, fair and respectful health care and counseling services where available.

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.

Describe the incident to as few institutional representatives as practicable and not to be required to unnecessarily repeat a description of the incident.

Be free from retaliation by the institution, the accused and/or the respondent, and/or their friends, family, and acquaintances within the jurisdiction of the institution.

SUNY Plattsburgh's policy is that response to sexual violence and related crimes is driven by the reporting individual. What that means is that in line with Federal and New York State law, while the College encourages you to use all of the response, support and reporting (including criminal reporting) resources offered here, the choice of what resources to use and when, is for the reporting individual to make.

### STUDENTS' BILL OF RIGHTS

SUNY Plattsburgh is committed to providing options, support and assistance to reporting individuals of sexual assault, domestic violence, dating violence,

*(As a reporting individual, you have the right to notify law enforcement of your choice. The College can assist in making a report to other law enforcement agencies. You may also choose to decline to notify law enforcement.)*

and/or stalking to ensure that they can continue to participate in College programs, activities, and employment. All reporting individuals of these crimes and violations, regardless of race, color, national origin, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, or criminal conviction, have rights regardless of whether the crime or violation occurs on campus, off campus, or while studying abroad.

## **Response**

When an incident of domestic violence, dating violence, sexual assault, or stalking occurs it is critical to preserve evidence of the crime for use in criminal or disciplinary proceedings. Do not shower, bathe, or wash; do not change clothes; do not launder clothing or bedding; do not comb hair; do not drink, eat, or do anything to alter physical appearance until a physical examination has been completed. Do not throw away other physical evidence such as condoms, towels, etc. Preserve electronic messages and other records that may be related.

Forensic examinations can help preserve evidence in case the reporting individual decides to file a report. Forensic examinations can be obtained at UVM Health Network - Champlain Valley Physicians Hall (CVPH) at 75 Beekman Street, Plattsburgh, NY 12901. For more information, call (518) 561-2000. Completing a forensic examination does not require filing a police report or a report with the College.

## **HOW TO REPORT**

Generally, Reporting Individuals may report to the Title IX Coordinator, [Title.IX@plattsburgh.edu](mailto:Title.IX@plattsburgh.edu) | (518) 564-3281.

As a student, faculty, or staff member, you have options when it comes to reporting.

You are not alone and there are members of both the campus and outside communities that are available to support and assist you throughout the process from reporting, to investigation, and on to a criminal trial or campus hearing.

If you have witnessed an assault while under the influence, and are afraid to report because you were engaging in personal alcohol or drug use, you will not face campus judicial charges.

There are three primary options to make a report of an incident of sexual assault or other interpersonal violence:

### **Confidential Reporting**

There are certain people on campus to which you can report to in a confidential manner. Specifically on SUNY Plattsburgh Campus, confidential resources are:

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- Counselors from Psychological Services. [518-564-3086](tel:518-564-3086)
- Medical Staff from SUNY Plattsburgh Health Center. [518-564-2187](tel:518-564-2187)
- Ward Hall Counseling Clinic (Graduate Student Counselors). [518-564-4178](tel:518-564-4178)

### Anonymous Reporting:

If you do not want to or are not ready at this time to make a report in-person, you may do so anonymously online [here](https://www.plattsburgh.edu/plattslife/health-safety/title-ix/report.html) (<https://www.plattsburgh.edu/plattslife/health-safety/title-ix/report.html>)

### Official Reporting:

If you are ready or would like more information on how to report, you may do so through Title IX, Campus Housing a Community Living CA/CD staff, University Police, or local law enforcement.

- The [Title IX Coordinator](#) has the capacity to initiate a campus investigation for campus judicial charges.
- [University Police](#) has the capacity to initiate a campus investigation for criminal charges.

### Your Reporting Options

When a reporting individual of domestic violence, dating violence, stalking, sexual assault and/or sexual violence is identified or comes forward, there are three possible processes that person can engage to seek remedy. A reporting individual has the choice to be involved in one, two, or all three processes.

The three processes include:

- Title IX investigation
- The criminal justice process assisted by either University Police or local law enforcement
- The campus judicial process College Title IX investigations and/or disciplinary

procedures will:

- Proceed independently of any action taken in the criminal or civil courts, as determined on a case-by-case basis in compliance with Title IX regulations. College procedures are not a substitute for criminal court proceedings; Absent extenuating circumstances, be completed within sixty days.
- Proceed with appropriate attention to reporting individual's safety; and
- Not require a reporting student to mediate directly with the person accused, including couples counseling

### For Reporting to Police:

Contact University Police (518) 564-2022, the Plattsburgh Police Department (518) 563-3411 (if the crime occurred off-campus in the City of Plattsburgh), the New York State Police (518) 563-3761, or the New York State Police Campus Sexual Assault 24-hour hotline (844) 845-7269.

Should the reporter wish to file a report with an outside law enforcement agency, University Police will assist the reporter in contacting the appropriate agency.

Campus webpage information about Sexual Assault and Interpersonal Violence may be found at : <https://www.plattsburgh.edu/plattslife/health-safety/title-ix/sexual-assault-interpersonal-violence.html>

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See also the response to sexual assault reporting flowchart here:

<https://www.plattsburgh.edu/documents/title-ix/response-to-sexual-assault-flowchart-updated-2020.pdf>

See also the response to interpersonal violence flowchart here:

<https://www.plattsburgh.edu/documents/title-ix/response-to-interpersonal-violence-flowchart-2020.pdf>

### HOW THE COLLEGE WILL SUPPORT YOU

When domestic violence, dating violence, sexual assault or stalking is reported, the College will discuss the reporting individual's rights and possible options to assist that person. Such options may include academic accommodations/services, emergency housing, alternate housing options, counseling/health services, and other resources within the community identified as useful for the reporting individual. SUNY Plattsburgh will not wait for the conclusion of the criminal investigation or criminal proceedings to begin its own investigation for reports of harassment, sexual, and/or interpersonal violence, and if needed, will take immediate steps to protect the person who experienced trauma in the educational setting (i.e., interim measures, such as classroom section change if available, issue a 72-hour no contact order, housing relocation, interim suspensions, etc.). University Police will assist reporting individuals to apply for orders of protection for those circumstances meeting the requirements under New York State Criminal and Family Law and will provide the application materials and support to obtain them. If an order of protection is violated, individuals should notify University Police at (518) 564-2022 and violations will be strictly enforced.

### WRITTEN NOTIFICATION

The College will provide written notification to reporting individuals regarding their rights and options, including: available and existing on- and off-campus services such as advocacy, counseling, health, legal assistance, visa and immigration assistance, student financial aid; available and applicable institutional disciplinary procedures, and an explanation of those procedures; orders of protection and College no contact orders; confidentiality in protective measures and Clery reporting and disclosure; and reasonable and available options and assistance with changing academic, living, transportation, and working situations, regardless of whether the reporting individual chooses to report the crime to law enforcement. A separate checklist will be provided to an accused student ("Respondent").

### CONFIDENTIAL RESOURCES

SUNY Plattsburgh is committed to providing a safe and supportive environment for people who have been, or are currently experiencing, sexual and/or relationship violence. In an effort to ensure reporting individuals have the necessary resources to make well-informed decisions, confidential reporting sources are available to assist them.

Professional counselors and health care providers at the Student Health & Counseling Center, as well as campus-affiliated pastoral counselors, who are informed of reportable crimes by persons they are counseling or giving care to, are



exempt from mandatory crime reporting.

Counselors are encouraged to review all victim's rights and resources with the individual. The Student Health & Counseling Center has been provided with copies of the campus Victim's Services Notice, which outlines resources and services available to reporting individuals.

Additionally, Planned Parenthood Sexual Assault Services: 24/7 hotline - 1-877-212- 2323 | Local Office: 518-561-0605 | <https://www.plannedparenthood.org/planned-parenthood-north-country-new-york/sas> and Behavioral Health Services North – Stop Domestic Violence: Local Office: 518-563- 6904 | 24/7 Hotline: **1-518-563-6904** | <https://bhsn.org/social-services/stop-domestic-violence/> each has a satellite office on campus that provides confidential advocacy services.

### **Student Health & Counseling Center**

Health Center Building  
Health Services (518) 564-2187  
Counseling Center (518) 564-3086

For more information on resources, please visit: <https://www.plattsburgh.edu/plattslife/health-safety/title-ix/sexual-assault-interpersonal-violence.html>

### **MAINTAINING PRIVACY**

The College will maintain as private as possible any accommodations or protective measures provided to individuals reporting sexual assault, domestic violence, dating violence, and stalking so long as it does not impair the ability to provide such measures.

### ***(Preponderance of the evidence is the standard of proof in all student disciplinary proceedings)***

Personally identifiable information about such individuals will not be included in any publicly available record-keeping, including the reporting and disclosure of crime statistics.

### **OTHER RESOURCES**

Individuals wishing to file an Affirmative Action Report should contact the campus Affirmative Action Officer: (518) 564-5062 | michael.thompson@plattsburgh.edu: located in the Kehoe Administration Building, Room 112 .

Other resources may be found in (Appendix E ) at the end of this publication.

### **POLICY FOR ALCOHOL AND/OR DRUG USE AMNESTY IN SEXUAL AND INTERPERSONAL VIOLENCE CASES**

The health and safety of every student at the College is of utmost importance. The College recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence 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 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 SUNY officials or law enforcement will not be subject to the 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.

### **Disciplinary Procedures and Sanctions for Dating Violence, Domestic Violence, Sexual Assault, or Stalking**

#### **PROCEDURES FOR STUDENT DISCIPLINE**

The College's disciplinary procedures will provide a fair, prompt, and impartial process from investigation to final result. The investigation and any hearing will be conducted by those who receive annual training on issues related to dating violence, domestic violence, sexual assault, and stalking, how to conduct an investigation, and a hearing process that protects the rights of all students involved promotes accountability. The standard of proof in these cases is preponderance of the evidence.

Both parties are entitled to the same opportunities to have an advisor of their choice present at any hearing and related meetings. There is no limit to the choice of an advisor; however, the parties are responsible for presenting evidence on their own behalf. Advisors may speak privately to their advisee during the proceeding, however they cannot present evidence or cross-question witnesses. Parties will be informed simultaneously in writing of the outcome of the process, the availability of any Outcome Review procedures, and when the results become final after any Outcome Review.

# **SUNY PLATTSBURGH STUDENT CONDUCT MANUAL 2021-2022**

### Guiding Principles

SUNY Plattsburgh is first and foremost an institution of learning and teaching, committed to serving the needs of society. Our campus community reflects and is a part of a society comprising all races, creeds, and social circumstances. The successful conduct of the college's affairs requires that there is acknowledgement and practice of the following basic principles:

- We affirm the inherent dignity in all of us, and we strive to maintain a climate of justice marked by respect for each other. We acknowledge that our society carries within it historical and deep-rooted misunderstandings and biases, and therefore we will endeavor to foster mutual understanding among the many parts of our whole.
- We affirm the right of freedom of expression within our community and also affirm our commitment to the highest standards of civility and decency toward all. We recognize the right of every individual to think and speak as dictated by personal belief, to lawfully express any idea, and to disagree with or counter another's point of view, limited only by regulations governing time, place, and manner. We promote open expression of our individuality and our diversity within the bounds of courtesy, sensitivity, and respect.
- We confront and reject all manifestations of discrimination, including but not limited to unjust or prejudicial treatment based on age, color, race, ability, marital status, national/ethnic origin, religion, veteran's status, sex [including pregnancy], gender expression or gender identity, sexual orientation, political activities or genetic information. We recognize and cherish the richness contributed to our lives by our diversity. We take pride in our various achievements, and we celebrate our differences.
- We recognize that each of us has an obligation to the community of which we have chosen to be a part. We will strive to build a true community of spirit and purpose based on mutual respect and caring.

Please utilize the following link to view SUNY Plattsburgh's "Shared Values."

<https://www.plattsburgh.edu/documents/about/shared-values-2018-03-18.pdf>

#### **Mission Statement: Student Conduct Office**

The Student Conduct Office will provide an educational and impartial adjudication process for the College Community, address reported conduct violations of students, student organizations, and intercollegiate athletic teams, and will promote personal, ethical, and social development while preserving the rights of all individuals involved.

SUNY Plattsburgh's Notice of Non-Discrimination: <https://www.plattsburgh.edu/about/offices-divisions/administrationfinance/management-services/campus-handbook/section-ii-affirmative-action-equal-opportunity/notice-of-non-discriminationpolicy.html>

SUNY Plattsburgh Campus Crime Statistics: <https://www.plattsburgh.edu/about/offices-divisions/administrationfinance/management-services/campus-handbook/section-viii-health-safety/clery-availability-policy.html>

Students' Bill of Rights: <https://www.plattsburgh.edu/plattslife/health-safety/title-ix/bill-of-rights.html>

*Revised August 2021*

### Framework for Addressing Student Conduct

To enter SUNY Plattsburgh is to accept an invitation to participate in the growth and development of a community marked by freedom, mutual respect, and civility. Choosing to become a member of this community implies a commitment to an open dialogue about the basic human questions fundamental to higher education and a responsibility to maintain an environment in which this dialogue can occur. Respect for the dignity, integrity, well-being, and property of others is essential to the wellbeing of the SUNY Plattsburgh community.

SUNY Plattsburgh, a community of students, faculty, staff, and administrators, recognizes the need to establish a student conduct manual, which contains rules and regulations to guide student actions and to define the possible consequences that may be imposed when these rules and regulations are determined to have been violated. The College, through its Student Conduct Manual, seeks to establish in its students a sense of responsibility to themselves and to others who are citizens of the total College community. It is the College's expectation that while here, all students would take into consideration other individuals and their rights to an environment that is conducive to academic achievement and personal growth.

It is the policy of SUNY Plattsburgh to ensure that the rights of an individual guaranteed by state laws and the U.S. Constitution are protected for all citizens regardless of their age, color, race, ability, marital status, national/ethnic origin, religion, veteran's status, sex [including pregnancy], gender expression or gender identity, sexual orientation or genetic information. When such rights are infringed upon by violence, true threats, or unlawful harassment, the College will use every necessary resource to rapidly and decisively identify perpetrators for criminal and/or administrative adjudication.

The Student Conduct Manual is a document designed to foster a community conducive to achieving the mission of SUNY Plattsburgh. The opportunity to participate in this academic community requires individual responsibilities. By voluntarily choosing to affiliate with the College, students indicate knowledge and acceptance of the responsibilities outlined in the Student Conduct Manual.



**The following documents are referenced herein and can be accessed via the following hyperlinks:**

**Housing Manual:** <https://www.plattsburgh.edu/documents/housing/housing-manual.pdf>

**Hazing: A Trust Betrayed:** <https://www.plattsburgh.edu/documents/fraternity-sorority-life/hazing-atrust-betrayed-sept-2019-rev.pdf>

**SUNY Plattsburgh Policies:** <https://www.plattsburgh.edu/about/offices-divisions/administrationfinance/management-services/campus-handbook/>

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## I. DEFINITIONS

### **Accused:**

- Shall mean a student accused of a violation of the Student Conduct Manual who has not yet entered the Student Conduct Process.

### **Advisor:**

- Any individual who provides the Respondent or Reporting Individual with support, guidance and/or advice (this includes legal Counsel).

### **Affirmative Consent:**

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 sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

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

### **Bystander:**

- A person who observes a crime, impending crime, conflict or unacceptable behavior.

**College:**

- Shall mean the State University of New York at Plattsburgh

**College Official:**

- Any person employed by the College, performing assigned administrative or professional responsibilities.

**Consensus:**

- A process of decision-making that seeks general agreement among all members of the Board.

**Complainant:**

- Shall refer to who files a Student Conduct Referral against a student for an alleged violation of the Student Conduct Manual. The “College” will serve as the Complainant in all Student Conduct Office proceedings. At hearings, the individual representing the College is responsible for presenting the College's case, providing live testimony, submitting relevant evidence, inviting witnesses identified by the College, and may question all Parties and Witnesses present.

**Dating Violence:**

- Dating violence is any act of violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Reporting Individual. The existence of such a relationship shall be determined based on the Reporting Individual’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. This definition does not include acts covered under domestic violence.

**Domestic Violence:**

- Domestic violence is any violent felony or misdemeanor crime committed by a current or former spouse or intimate partner of the Reporting Individual, a person sharing a child with the Reporting Individual, or a person cohabitating with the Reporting Individual as a spouse or intimate partner.

**Guest:**

- Any person who is not student at SUNY Plattsburgh or is an unidentified person who is being hosted by or visiting a SUNY Plattsburgh student on campus property.

**Incapacitation:**

- A person is mentally or physically incapacitated when their perception and/or judgment is so impaired that the person lacks the cognitive capacity to make or act on conscious decisions, including without limitation the following circumstances:

- The person is incapacitated due to the use or influence of alcohol or drugs, or due to a mental disability. Incapacitation due to alcohol or drug use is a state beyond “mere” intoxication or even being drunk. Indicators of incapacitation may include inability to communicate, lack of control over physical movements, and/or lack of awareness of circumstances.

In sum, an act will be deemed non-consensual if a person engages in sexual activity with an individual who is incapacitated, and who the person knows or reasonably should know is incapacitated.

**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 Student Conduct Office.

**Preponderance of Evidence:**

- The standard of proof used in all cases adjudicated by the Student Conduct Office, which asks whether it is “more likely than not” that the alleged violation occurred. If the evidence presented meets this standard, then the Respondent must be found Responsible.

**Published Institutional Policy:**

- Defined as the written regulations of the College as found in, but not limited to, policies at SUNY Plattsburgh, the Student Conduct Manual, Group Conduct Manual, and the Housing Manual.

**Reasonable Person:**

- Refers to a hypothetical person who exercises average care, skill, and judgment in conduct and who serves as a comparative standard.

**Reporting Individual:**

- Shall encompass the terms victim, survivor, complainant, claimant, witness with victim status, and any other term used by the campus to reference an individual who reports that they have personally experienced a violation pertaining to any of the following: sexual harassment, sexual assault, dating violence, domestic violence, and/or stalking. This terminology will be used on all official documents pertaining to the Student Conduct Office and the adjudication process administered therein.

**Respondent:**

- Shall mean a student accused of a violation of the Student Conduct Manual who has entered the Student Conduct Process.

**Sexual Exploitation:**

- Non-consensual, abusive sexual behavior that does not otherwise constitute sexual assault.

**Sexual Harassment:**

- Unwelcome, gender-based verbal, non-verbal, or physical conduct that is sexual in nature and sufficiently severe, persistent, or pervasive that it unreasonably interferes with, denies, or limits someone's ability to participate in or benefit from the University's educational program and/or activities, and is based on power differentials, the creation of a hostile environment, or retaliation.

**Sexual Violence:**

- Physical sexual acts perpetrated against a person's will or perpetrated where a person is incapable of giving consent. A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual assault with an object, sodomy, fondling, incest, and statutory rape. See the Sexual Harassment and Sexual Violence Policy for specific definitions. For the purposes of this document, **rape** will be defined as penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without affirmative consent being established.

**Stalking:**

- The term stalking means intentionally engaging in a course of conduct, directed at a specific person, which is likely to cause a reasonable person to fear for their 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 intimidate, annoy, or alarm them.

**Student:**

- For the purposes of this publication, an individual is considered a student if they are enrolled, registered for any classes, or residing on the SUNY Plattsburgh campus.

**Unrecognized Organization:**

- Means persons enrolled as students at the College who are associated with each other and who are not recognized as a collective grouping by the College or by Student Association. Unrecognized organizations are not permitted to participate, as an organization, in SUNY Plattsburgh sponsored activities.

**Victim/Survivor:**

- For a person who suffers personal, physical or psychological injury, it will be the choice of each individual disclosing or reporting violence, sexual violence, hazing, and/or stalking on how that person prefers to be identified personally--whether as victim, survivor, witness, witness- granted-victim-status, or another term.

**Witness:**

- A witness is someone who (1) directly observed an incident or (2) has direct or indirect knowledge related to the incident in question. Witnesses should be able to speak knowledgeably about the incident and be able to provide relevant information to Student

Conduct proceedings. Reliable witnesses are critical to the integrity and effectiveness of the Student Conduct Process. Any and all witness participation is voluntary.

**Additional information and clarification regarding the listed definitions can be found at the following links:**

- <https://www.plattsburgh.edu/about/offices-divisions/administration-finance/management-services/campus-handbook/section-ii-affirmative-action-equal-opportunity/sexual-violencepolicy.html>
- <https://www.plattsburgh.edu/about/offices-divisions/administration-finance/management-services/campus-handbook/section-ii-affirmative-action-equal-opportunity/interpersonal-violence-policy.html>

**\*For the purposes of this document and related forms, the terms “Student Conduct/Conduct” and “Judicial” are interchangeable.**

## II. STUDENT RIGHTS

### Respondents:

- A. The right to be presumed Not Responsible until responsibility is established. Responsibility is determined either by an admission of responsibility or by the presentation of information and evidence at a hearing, upon which the Director of Student Conduct or designee or a hearing board bases a decision of responsibility. Determinations made at **Student Conduct Board**, or **Administrative Hearings**, will be determined by a preponderance of the evidence presented.
- B. The right to be given written notice of the nature of the charges and to be informed of one’s rights. Notice will be sent by the Student Conduct Office via campus email.
- C. The right to offer a plea of Responsible or Not Responsible and request to have the matter reviewed via a hearing
- D. The right to remain silent during any portion of the Student Conduct Process. An adverse inference from the Respondent’s silence is prohibited.
- E. The right to bring up to two Advisors (as outlined in Section I of this document) to any meeting/hearing that is part of the adjudication process. State University policy permits the presence of Advisors for privately advising the student at the hearing.
- F. The right to invite witnesses (as outlined in Section I of this document) to participate in any hearing or review via signed statements or in-person testimony.
- G. The right to question the Complainant and anyone serving as a witness at a hearing.
- H. The right, prior to the hearing and upon request, of supervised access of all evidence that will be utilized in the hearing and the right of supervised access to the recorded proceedings of the hearing for a period of 6 months from the date of the hearing.
  - a. Note: Access is limited to a supervised review of the evidence as coordinated between the Respondent and the Student Conduct Office.
- I. The right to request a Student Conduct Appeal for cases that qualify as outlined in Section V. F.

**Reporting Individuals:**

- A. The right to be given written notice of the nature of the charges and to be informed of one's rights. Notice will be sent via campus email by the Student Conduct Office.
- B. The right to remain silent during any portion of the Student Conduct Process. An adverse inference from the Reporting Individual's silence is prohibited.
- C. The right to bring witnesses (as outlined in Section I of this document) and/or up to two Advisors (as outlined in Section I of this document) to any meeting/hearing that is part of the adjudication process. State University policy permits the presence of Advisors for privately advising the student at the hearing. Advisors are not, however, eligible to participate in the hearing, e.g. by presenting the student's case or cross-examining witnesses.
  - a. All requests to review evidence/case documents or reschedule meetings/hearings, must be made by the student themselves (not by others on their behalf).
- D. The right to question the Respondent and anyone serving as a witness at a hearing.
- E. The right, prior to the hearing and upon request, of supervised access of all evidence that will be utilized in the hearing and the right of supervised access to the recorded proceedings of the hearing for a period of 6 months from the date of the hearing.
  - a. Note: Access is limited to a supervised review of the evidence as coordinated between the Reporting Individual and the Student Conduct Office.
- F. The right to request a Student Conduct Appeal for cases that qualify as outlined in Section V. F.

### III. COLLEGE REGULATIONS

**Jurisdiction:** Generally, College jurisdiction and adjudication shall be limited to reported conduct that occurs on College property and/or at College-related events/activities, or that adversely affects the College community and/or the pursuit of its objectives. The College will also adjudicate reported conduct that occurs off-campus if it results in charges of a misdemeanor or felony. The Director of Student Conduct (designee), in consultation with the Vice President of Enrollment and Student Success (designee), will determine when the College will take action for reported off-campus conduct that also violates College policy and/or federal, state and/or local laws, statutes, or ordinances outside of the above-mentioned parameters.

**SECTION 1: Academic Dishonesty**

Cheating and Plagiarism are the willful misrepresentation of all or part of another's work as one's own.

- 1.01 Cheating in all its forms, or attempting to cheat is prohibited. Examples of cheating include, but are not limited to: Copying another's answers or giving or receiving un-permitted aid during classroom or take-home examinations or on assignments, papers, research reports and projects.
- 1.02 Plagiarism, in all its forms, is prohibited. Examples of plagiarism include, but are not limited to: the use of presentation of the ideas or words of another, whether from print, digital, or aural sources as one's own, failure to cite the source of information and ideas taken from the works of others.

**SECTION 2: Aiding and Abetting**

A student who aids, counsels, commands, induces or procures the person committing the violation; acts with the intent to facilitate a violation; will be subject to a referral to the Student Conduct Office.

**SECTION 3: Alcohol**



3.01 The Alcohol Policy of SUNY Plattsburgh is in compliance with New York State Laws and local City Ordinances, which prohibit the following:

- Sale of alcohol without a license
- Sale or giving alcohol to any person under the age of 21
- Purchase of any alcohol beverage by a person under the age of 21
- Possession of alcohol by any person under the age of 21 with the intent to consume.
- Possession of an open alcohol container in a public place

3.02 Possession of an open alcohol container by a student of legal drinking age, within facilities on the SUNY Plattsburgh campus, outside of the legal and personal possession in Residence Halls, as defined in the Housing Manual, or at an event catered by Campus Dining Services, is prohibited.

3.03 Persons 21 years of age or older may not knowingly be in the presence of alcohol containers while underage students are present, with the exception of events catered by Campus Dining Services. Empty alcohol containers shall be considered “alcohol containers” on the SUNY Plattsburgh campus.

3.04 Persons under 21 years of age may not knowingly be in the presence of alcohol containers on the SUNY Plattsburgh campus, with the exception of events catered by Campus Dining Services. Empty alcohol containers shall be considered “alcohol containers” on the SUNY Plattsburgh campus.

**SECTION 4: Animals**

4.01 Animals are not permitted in campus buildings except those approved as Service Animals under the ADA or those animals specifically approved in the Residence Halls by the Campus Housing and Community Living Office. Emotional Support Animals, as approved by and registered with Student Accessibility Services are only permitted in the Residence Halls.

4.02 Students who allow their pets to run loose on campus or allow them to create disturbances subject themselves to a Student Conduct referral.

**SECTION 5: Computer Use Violations**

Students using College computers or related services are expected to know and abide by the regulations governing their use as set forth by Library & Information Technology Services. Failure to abide by these regulations may result in a referral to the Student Conduct Office.

**SECTION 6: Dating & Domestic Violence**

6.01 Dating violence as outlined in Section I of this document is prohibited.

6.02 Domestic violence as outlined in Section I of this document is prohibited.

**SECTION 7: 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 or obscene language in a public place, obstructing vehicular or pedestrian traffic or threatening conduct, which is unreasonable in the time, place or manner in which it occurs.

**SECTION 8: Drugs**

8.01 Consistent with the Drug-Free Schools and Communities Act Amendments of 1989 (Public Law 101-226), possessing, using, or distributing a controlled substance or dangerous drug, or any drug unlawful to possess, e.g. marijuana/cannabis, except as expressly permitted by law. Drug paraphernalia including, but not limited to: bongs, water pipes, or hypodermic needles that are not specifically required for the administration of prescribed medications are not allowed on campus. Use of legal medication outside the parameters of the medical authorization is prohibited and

- prescription drugs on campus must have an authentic medical prescription.
- 8.02 Knowingly in the presence illegal drugs (including marijuana/cannabis) and/or paraphernalia is prohibited.

**SECTION 9: Endangerment**

- 9.01 Reckless or intentional acts, which endanger, or put at risk, the health and safety of any member of the community are prohibited.
- 9.02 Compromising the security measures of the campus is prohibited - i.e., propping open access doors to College buildings.
- 9.03 Failure to report any sexual abuse of a child occurring on SUNY Plattsburgh property or while off campus during official SUNY Plattsburgh business or sponsored activities will constitute a violation.

**SECTION 10: Failure to Comply**

- 10.01 Failure to comply with the directions of College officials acting in the performance of their official duties is prohibited.
- 10.02 Failure to show proper student identification or other identification to any faculty, staff, or student staff acting in the performance of their official duties constitutes a violation. All students are required to carry their student identification with them at all times.
- 10.03 Failure to comply with any Administrative Action taken by the College will constitute a violation. For the purposes of this Section, Administrative Action might refer to but is not limited to: No Contact Orders or Interim Suspensions.

**SECTION 11: Falsification of Information**

- 11.01 Willful falsification of information on College records or to College officials is prohibited.
- 11.02 Willfully providing false information for purposes of obtaining services is prohibited.
- 11.03 Possession or use of another person's ID card or an invalid ID is prohibited.

**SECTION 12: Firearms, Fireworks, Explosives, Weapons**

- 12.01 It is prohibited to carry or contain firearms, ammunition, gunpowder, air rifles, air pistols, Tasers, paintball guns or guns of any kind on campus.
- 12.02 Possession or use of fireworks on the College campus is prohibited.
- 12.03 Possession or use of illegal knives or other illegal weapons, dangerous chemicals, flammable liquids, explosive materials, except as authorized in the supervised pursuit, or the completion of academic programs, is strictly prohibited on the College campus. No more than two pocket knives, not exceeding a three-inch blade, are permitted; however, pocket knives may be confiscated by authorities as deemed necessary.

**SECTION 13: Fire Safety**

- 13.01 Intentionally setting a fire without proper authorization, or giving false alarm of fire is prohibited.
- 13.02 Tampering with fire alarm devices or fire equipment is prohibited.
- 13.03 Failure to adhere to fire evacuation procedures is prohibited.

**SECTION 14: 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.

**SECTION 15: Guests**

Students are responsible for informing their guests of College regulations and will be held

accountable for the behavior of their guests.

#### **SECTION 16: 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. (See Appendix A)

Harassment may include but is not limited to:

- Bias-related behavior: 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 (including, without limitation, hair texture and protective hairstyles), ability, marital status, national/ethnic origin, religion, veteran's status, sex [including pregnancy], gender expression or gender identity, sexual orientation or genetic information; or
- Subjecting a person or group of persons to unwanted physical contact or threat of such; or
- Engaging in a course of conduct, including following the person without proper authority (e.g., stalking), under circumstances which would cause a reasonable person to fear for their safety or the safety of others or to suffer emotional distress.

Note: A disciplinary charge of bias-related behavior that results in a finding of Responsible may subject the student to a sanction more severe than would be imposed in the absence of such motivation.

#### **SECTION 17: Hazing**

Hazing, in every form, is prohibited. Hazing is considered to be interference with the personal liberty of others and includes any act of domination by some students over others for the purpose of joining, affiliating, or maintaining membership in a group or organization which, creates risk of physical injury, emotional disturbance, physical discomfort or humiliation. Hazing can occur regardless of the person's willingness to participate. NOTE: 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. Examples of hazing can be found in the publication, "Hazing: A Trust Betrayed."

#### **SECTION 18: Misuse of College Property**

- 18.01 Willful or careless destruction, defacement of or tampering with College property or property of others is prohibited.
- 18.02 Use of College property outside of its intended or legal use is prohibited.
- 18.03 Solicitation on the College campus is prohibited outside of those activities approved and authorized by the College.
- 18.04 The posting of advertisements, flyers, posters or other such materials to building entrances, exits, exterior of any building, poles, signage or other campus owned structure without appropriate College approval.

#### **SECTION 19: Obstruction of College Activities**

Obstruction or disruption of regular College activities, including teaching, research, administration, campus services, and organized events; deliberate interference with the free speech, expression or movement of members of the College community, including guests or visitors engaged in permissible use of College facilities is prohibited.

**SECTION 20: Residence Hall/Published Institutional Policies**

Failure to abide by any College policy, including the regulations governing Campus Housing and Community Living as set forth in the Housing Manual, constitute a violation of the Student Conduct Manual. College policies can be found on the website and many can be found via the link on [page 4](#) of this document.

**SECTION 21: Retaliation**

Retaliation is any adverse action against another person for reporting a violation or for participating in any way in the investigation or conduct process. Retaliation includes harassment and intimidation, including but not limited to violence, threats of violence, property destruction, adverse educational or employment consequences, and bullying. Retaliation in every form is prohibited.

**SECTION 22: Sexual Violence**

Sexual Violence, as outlined in [Section I](#) of this document is prohibited.

**SECTION 23: Stalking, Sexual Harassment, and Sexual Exploitation**

23.01 Behavior that is considered stalking, as outlined in [Section I](#) of this document is prohibited.

23.02 Sexual Harassment, as outlined in [Section I](#) of this document is prohibited. 23.03

Sexual Exploitation, as outlined in [Section I](#) of this document is prohibited.

**SECTION 24: Student Group Violations**

Students are expected to know and abide by the regulations governing Group Conduct, as set forth in the Group Conduct Manual. Failure to abide by these regulations may result in a referral to the Student Conduct Office. (e.g., Accepting membership into an organization not eligible to have new members (due to the Group's suspension or withdrawal of recognition) or perpetuating the existence of a group that has lost recognition from the College is a violation.)

**SECTION 25: Theft**

25.01 Theft of property on the College campus is prohibited.

25.02 Theft of services on the College campus is prohibited.

25.03 Removal of College property from common use areas is prohibited.

25.04 Removal of books or other items from College facilities without following prescribed procedures are prohibited.

25.05 Possession of property illegally procured is prohibited.

**SECTION 26: Threatening or Abusive Behavior**

Intentionally or recklessly causing physical harm to any person or 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.

**SECTION 27: Trespass**

Entering any College facility except in accordance with established regulations is prohibited.

**SECTION 28: Use of the College Name**

Use of the name or logo of the College is prohibited unless specifically authorized in writing by the President of the College or delegated representative. Students are prohibited from falsely

presenting themselves as entities of the College beyond the normal scope of activities associated with their student or employment status.

#### **SECTION 29: Violation of the Student Conduct Process**

Abusing the Student Conduct System is prohibited. Examples include but are not limited to:

- a) Falsification, distortion, or misrepresentation of information during the conduct process.
- b) Disruption or interference with the orderly conduct of a Student Conduct proceeding.
- c) Knowingly instituting a Student Conduct referral without cause.
- d) Attempting to negatively influence any individual's proper participation in, or use of, the Student Conduct Process (e.g., intimidating anyone participating in the Student Conduct Process).
- e) Failure to comply with the sanction(s) imposed as a result of the Student Conduct Process.

#### **SECTION 30: Violations of Civil or Criminal Law**

Violation of Federal, state, or local laws in a way that affects the College community's pursuit of its educational purposes is prohibited and may subject students to disciplinary action. Such violation may be established independent of and prior to a criminal conviction. Arrests alone do not constitute a violation.

**Hate or Bias-Related Crime** - Intentionally selecting a person against whom a criminal offense is committed or intended to be committed because of a belief or perception regarding the race (including, without limitation, hair texture and protective hairstyles), color, national origin, ancestry, gender, religion, religious practice, age, disability, or sexual orientation, regardless of whether the belief or perception is correct.

Note: A student who is found to be Responsible for committing a hate or bias-related crime may be subject to a more severe sanction than would be imposed in the absence of such motivation.

## **IV. ORGANIZATION OF THE STUDENT CONDUCT SYSTEM:**

### **A. Director of Student Conduct**

The conduct system at SUNY Plattsburgh is under the direction of the **Director of Student Conduct**. The **Director of Student Conduct** is charged with the responsibility for seeing that due process is provided to students accused of violating College regulations and, to accomplish this task, has the following duties:

1. Annually revises and publishes a Student Conduct Manual, which details those College regulations for which all students will be held accountable through the College conduct system.
2. Solicits, selects, and trains Student Conduct staff, designees, and assistants as needed.
3. Solicits and trains faculty/staff and students who serve on Student Conduct/Appeal Boards.
4. Receives conduct referrals for alleged violations of college regulations, by individual students, as set forth in the Student Conduct Manual.
5. Sets up a review with each student so referred to discuss the charges and the student's rights.
6. Schedules and facilitates hearings as required.

7. Determines the sanction to be applied if the student is found to be Responsible in all cases except for the following cases: Academic Dishonesty and those heard by a Student Conduct Board. Sanctions for cases involving Academic Dishonesty are determined as outlined in Section IV, G.
8. Officially communicates all conduct charges and decisions to each Respondent.
9. Notifies college officials whose relevant interest necessitates their being informed of a violation of College Policy.
10. Maintains the College's official conduct records.

#### B. STUDENT CONDUCT BOARD

1. The **Student Conduct Board** is composed of the Director of Student Conduct (designee), who facilitates the hearing, and three board members.

In Academic Dishonesty cases, the **Student Conduct Board** is composed of the Director of Student Conduct or designee, who facilitates the hearing and three (3) board members. In cases of Academic Dishonesty, a representative from the Office of the Dean of the faculty where the course or academic activity in question is offered will serve as a board member.

The **Student Conduct Board** serves as a panel to hear the case for students who have offered a plea of Not Responsible and have been offered a Student Conduct Board Hearing. Selection of the board for any given case depends on the availability of members at the scheduled hearing time. By participating, board members agree to adhere to a strict code of confidentiality and declare a lack of personal acquaintance with or bias for/against the student involved. The College strives to create hearing panels that are reflective of the diverse experiences within our campus community while balancing availability and completed training in various competencies via the SUNY Student Conduct Institute. This training is supplemented by on-campus training provided by the Student Conduct Office.

2. The **Student Conduct Board** has the following responsibilities:
  - a. Hears cases as scheduled.
  - b. Hears all statements and evidence related to the case in question.
  - c. Seeks answers to all questions pertaining to the statements and evidence presented.
  - d. Establishes a finding of either Responsible or Not Responsible for each individual charge levied against the Respondent via a consensus.
  - e. In findings of Responsible, determines appropriate sanction(s).
  - f. Acts in an advisory capacity upon the request of the Director of Student Conduct (designee) in a case where the student has offered a plea of Responsible but where the sanction may be so severe that a full review of all relevant facts is desired for a fair perspective.

#### C. STUDENT CONDUCT APPEAL BOARD

The Student Conduct Appeal Board is chaired by the Vice President for Enrollment and Student Success (designee). If an Academic Dishonesty case is appealed, the Provost/Vice President for Academic Affairs (VPAA) or their designee hears the appeal. The appeal board will consist of three (3) board members. Board members who served as a Student Conduct Board member may not serve on the Appeal Board for the same case.

1. The Chair of the Appeal Board has the following responsibilities:

- a. To review requests for appeal along with all evidence presented at the original hearing to determine if the grounds for an appeal have been established.
  - b. Convene Student Conduct Appeal Boards for cases where the grounds for an appeal have been met.
  - c. Determine the sanction when a finding of responsibility is established.
  - d. Officially communicate outcomes to each student so charged.
  - e. Notify college officials whose relevant interest necessitates their being informed of a violation of College Policy.
2. The Student Conduct Appeal Board has the following responsibilities:
  - a. Hears appeals as scheduled.
  - b. Reviews all evidence presented at the original hearing.
  - c. Utilizes preponderance of evidence as a standard of proof for all appeals.
  - d. Upon a consensus, either upholds or overturns the finding of the Student Conduct Board Hearing.
  - e. In findings of Responsible, determines appropriate sanction(s).
  - f. The Chair of the Student Conduct Appeal Board has the responsibility for determining the final sanction, as appropriate. In Academic Dishonesty cases, the Provost/VPAA (designee) has the responsibility for determining the final sanction.

## V. STUDENT CONDUCT SYSTEM PROCEDURES:

### A. STUDENT CONDUCT REFERRAL

1. Any member of the College community may submit a conduct referral for a student when it is believed that the student has violated the Student Conduct Manual.
2. Student Conduct referrals must be submitted through the Director of Student Conduct online referral system. Members of the College Community who do not have direct access to this system must submit the referral via the Director of Student Conduct.

### B. CONDUCT CHARGES

1. The Director of Student Conduct, upon receiving a referral, reviews the charges and sends notice (Review of Conduct Charges) via email, of the reported violation to the student who has been referred.
2. If the Director of Student Conduct feels that a referral does not warrant charges, the case may be dismissed after a review with the Vice President for Enrollment and Student Success (designee).
3. The Review of Conduct Charges includes the following information:
  - a. a listing and summary of the charges which includes the name of the person who submitted the charges
  - b. the time, date, and location of their appointment
  - c. and a list of their rights when charged with a violation
4. Charges are forwarded to the student by the Student Conduct Office. While an academic semester is in session, the appointment for the review is generally set within 2-3 business days of receipt by the student who is being charged.

### C. REVIEW OF CONDUCT CHARGES



1. The Director of Student Conduct or designee reviews the charge(s) against the student and reviews the rights of the student. Failure to appear for the review without an attempt to reschedule within 24 hours after the scheduled appointment will result in the College proceeding in absentia.
2. The student may offer a plea of Responsible to any or all charge(s), at the time of the review. In this case, the Director of Student Conduct (designee) accepts the plea and determines the sanction that will be applied. (Except in instances referenced in Section IV, B, 2, f)
3. The student may offer a plea of Not Responsible to any or all charge(s) at the review.
  - a. The Director of Student Conduct or designee may determine that if the sanction for a violation is to be no greater than Probation with conditions, a hearing may not be justified. In such a case the Director of Student Conduct or designee will conduct an Internal Review. The Internal Review process will include the following:
    - The Respondent will be provided supervised access to the evidence presented against them.
    - They Respondent will have the ability to respond to the evidence in writing or verbally.
    - The Director of Student Conduct or designee will determine if they are Responsible or Not Responsible.

#### D. ADMINISTRATIVE HEARING

1. An **Administrative Hearing**, in most cases, will be held for a student who offers a plea of Not Responsible and whose sanction would not be subject to a sanction involving relocation.
2. An **Administrative Hearing** differs from a Student Conduct Board Hearing in that only the Director of Student Conduct (designee) hears the case rather than a panel of board members. Both Administrative and Student Conduct Board Hearings are hearings with full presentation of evidence and witnesses, when applicable.
  - a. A list of intended Advisors/Witnesses along with any special accommodations (i.e. Audio/Video needs) to be considered must be submitted to the Student Conduct Office no later than **5 business days prior** to the hearing in order to be permitted at the hearing unless otherwise authorized by the Director of Student Conduct (designee).
  - b. Relevant evidence possessed by the Complainant, Respondent, and Reporting Individual that is to be used at the hearing must be submitted to the Student Conduct Office no later than **5 business days** prior to the time of the hearing in order for it to be admissible, unless authorized by the Director of Student Conduct (designee). All determinations regarding evidence presented after the deadline will be made and explained by the Director of Student Conduct (designee) to all parties.
    - i. Evidence may consist of but is not limited to: Investigative Reports, photos, various digital media, (to be submitted as agreed upon by the Student Conduct Office) written witness statements, etc.
    - ii. In order to be considered at the hearing, witness statements must include the following: date the document is signed, printed name of author, and signature of the author. Witness statements may also be emailed directly to the Student Conduct Office via the student's campus email account.
    - iii. In-person and verbal witness testimony can be presented at the time of the hearing.
    - iv. All documents presented at the hearing will be retained by the Student Conduct Office as case documents and will become part of the case file.

3. In an **Administrative Hearing**, the Director of Student Conduct or designee will weigh the evidence as presented, will make a **final decision of Responsible or Not Responsible based on a preponderance of the evidence presented**, and will levy a sanction if responsibility is adjudged.

#### E. STUDENT CONDUCT BOARD HEARING

1. A **Student Conduct Board Hearing**, in most cases, will be held for a student who offers a plea of Not Responsible to a violation which could involve a sanction that includes relocation. A student who offers a plea of Not Responsible to an allegation that might result in relocation may request an Administrative Hearing. The sole discretion lies with the Director of Student Conduct (designee) to determine whether an Administrative Hearing may be held rather than a Student Conduct Board Hearing.
2. Both Administrative and Student Conduct Board Hearings are hearings with full presentation of evidence and witnesses (when applicable).
  - a. A list of intended Advisors/Witnesses along with any special accommodations to be considered must be submitted to the Student Conduct Office no later than **5 business days prior** to the hearing in order to be permitted at the hearing unless otherwise authorized by the Director of Student Conduct (designee).
  - b. Relevant evidence possessed by the Complainant, Respondent, and Reporting Individual that is to be used at the hearing must be submitted to the Student Conduct Office no later than **5 business days** prior to the time of the hearing in order for it to be admissible, unless authorized by the Director of Student Conduct (designee). All determinations regarding evidence presented after the deadline will be made and explained by the Director of Student Conduct (designee) to all parties.
    - i. Evidence may consist of but is not limited to: Investigative Reports, photos, various digital media, (to be submitted as agreed upon by the Student Conduct Office) written witness statements, etc.
    - ii. In order to be considered at the hearing, witness statements must include the following: date the document is signed, printed name of author, and signature of the author. Witness statements may also be emailed directly to the Student Conduct Office via the student's campus email account.
    - iii. In-person and verbal witness testimony can be presented at the time of the hearing.
    - iv. All documents presented at the hearing will be retained by the Student Conduct Office as case documents and will become part of the case file.
3. In the case of a student who offers a plea of Not Responsible, the Student Conduct Board makes a **final decision of Responsible or Not Responsible based on a preponderance of the evidence presented**.
4. A consensus decides the issue.
5. Once responsibility has been determined by the Student Conduct Board, the Board decides the sanction as soon as reasonably possible after the adjournment of the hearing.
6. In cases where a student has been found Responsible for a violation of any of the following sections: **6, Dating and Domestic Violence, 22, Sexual Violence, and 23, Stalking, Sexual Harassment, Sexual Exploitation**; the Respondent, Complainant and the Reporting Individual have the right to submit an Impact Statement prior to the Director of Student Conduct (designee) deciding appropriate sanctions. The Complainant, Respondent, and Reporting Individual shall also receive simultaneous notice of the results and sanctions imposed (and the rationale for the result and sanctions), as well as notice of the procedures for submitting an appeal, any possible changes to the result that may occur before it becomes final, and when the result becomes final.

## F. STUDENT CONDUCT APPEALS

An appeal is the process to request a review of the original student conduct outcome. The Respondent has the right to submit one request for appeal to the Student Conduct Office. 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. Note: Per the definition of “Reporting Individual” in Section I of this document, cases involving Sexual Misconduct (Stalking, Sexual Harassment, Sexual Exploitation, Sexual Violence, Dating Violence, and Domestic Violence) are the only cases where a Reporting Individual may request an appeal.

There is only one level of appeal permitted for each case.

### 1. Appeal Grounds

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

- a) **Procedural Error:** Procedural error occurs when the policies outlined in Student Conduct Manual are not followed, and as a result, the outcome of the case was significantly impacted. 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 original hearing or investigation 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 Board Hearing by choice (i.e., opting not to disclose information for any reason).
- c) **Sanction Involves Relocation:** Any case where the Respondent has been found Responsible (via a plea or as a result of a hearing) and the sanction involves their relocation, loss of residence license, Suspension, or Dismissal may have their sanction reviewed.
- d) **Sanction Severity: (For cases involving charges of Stalking, Sexual Harassment, Sexual Exploitation, Sexual Violence, Dating Violence, and Domestic Violence only)** 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 Guidelines per the link in Section VI of this document.

### 2. Appeal Procedure

- a) A request for appeal must be submitted electronically as an attachment within **5 business days** of when the Outcome Letter was sent. Requests for an appeal may not be submitted by anyone other than the Respondent (e.g., Advisors cannot submit a request for an appeal on the Respondent’s behalf). Appeals may be no longer than (2,500) words or (10) pages (including attachments). Appeals should be submitted in electronic form using ARIAL or TIMES NEW ROMAN, 12 point font, and double-spaced.
- b) Requests for an appeal are reviewed by the Vice President for Enrollment and Student Success (designee) who will determine if the appeal was submitted within the permitted time and if it meets the grounds for an appeal. The original decision and sanction will stand if the appeal is not timely or does not meet the grounds for appeal, and would thus mean the initial decision is final.
- c) If the request is timely AND meets the grounds, an Appeal Board will convene to review the appeal.
- d) Appeal outcomes are determined based on a comprehensive review of the following: the Respondent’s submitted application for appeal and a review of the original case along with the

rationale of the original Student Conduct hearing. A consensus will determine the Appeal Board's decision.

- e) The Appeal Board may send the case back to the Student Conduct Office for a new hearing if it is determined that there was a procedural error or if significant new evidence was presented as part of the appeal.
- f) The Appeal Board may uphold or amend the original decision.
- g) The appeal decision will be communicated to all necessary parties via campus email. This decision is final.

### 3. Appeals of Cases of Sexual Misconduct

- a) In cases of Stalking, Sexual Harassment, Sexual Exploitation, Sexual Violence, Dating Violence, and Domestic Violence, the Respondent, Complainant, and Reporting Individual (when applicable) will receive written notification detailing the outcome of the Student Conduct hearing and will have the option to submit a request for appeal or a statement of support of the hearing outcome within five business days according to the procedures described above under "Student Conduct Appeals."
- b) All submitted documentation related to the appeal will be considered concurrently. The appeal(s) shall be considered as outlined in this Section. All parties will be notified of the appeal decision within thirty days of when the appeal review took place. The decision is final.

## VI. SANCTIONS:

- A. **REPRIMAND** – A written or oral reprimand is an official statement from the Director of Student Conduct or designee to a student that a College regulation has been violated. This reprimand officially advises the student of a violation and warns that further violations may result in a more severe disciplinary action.
- B. **REPRIMAND WITH CONDITIONS** – Where appropriate, this level of written reprimand may include any or all of the following conditions:
  - 1. Educational program or task – Assignment of educational program and/or appropriate task.
  - 2. Loss of privileges – Removal of privileges or restriction of activities for a designated period of time.
  - 3. Restitution – Reimbursement by the student to cover the cost of damage or loss or property or services. Reimbursement may be partial or complete depending on circumstances, e.g. number of people involved or degree of responsibility.
  - 4. Referral – A student may be referred for an assessment or other appropriate professional help if it is believed that this can assist in avoiding further violations.
- C. **DISCIPLINARY PROBATION** – This is an official written notice that advises that the student may risk separation from the college if there are any further violations. Where appropriate, probation may include any or all of the following conditions:
  - 1. Educational program or task – Assignment of educational program and/or appropriate task during the period of probation.
  - 2. Loss of privileges – Removal of privileges or restriction of activities for a designated period of time, not to exceed the period of probation.

3. Restitution – Reimbursement by the student to cover the cost of damage or loss of property or services. Reimbursement may be partial or complete depending on circumstances, e.g. number of people involved or degree of responsibility.
  4. Referral – A student may be referred to interact with a faculty/staff member from another office or agency during the period of probation if it is believed that this can assist in avoiding further violations.
- D. **PROBATION WITH ACADEMIC CONDITION** (*This sanction can only be applied in cases of Academic Dishonesty.*) Loss of good standing as a member of the college community for a specified period. This is an official written notice that advises that the student may risk separation from the college if there are any further violations. Where appropriate, this probation may include any or all of the following conditions:
1. Reduction of a grade in a Course or academic activity in which the incident occurred.
  2. Failure of the Course or academic activity in which the incident occurred.
- E. **PROBATION WITH DISMISSAL FROM AN ACADEMIC PROGRAM** (*This sanction can only be applied in cases of Academic Dishonesty.*) Loss of good standing as a member of the college community for a specified period. This is an official written notice that advises that the student may risk separation from the College if there are any further violations.
- F. **JUDICIAL REGISTRATION RECORD HOLD** – If a student fails to complete the conditions of a sanction e.g. Reflection Paper, a Judicial Registration Record Hold may be placed on their registration account. With this hold in place, the student is prohibited from participating in registration and course adjustment, requesting transcripts, and from receiving a diploma. The Student Conduct Office will remove the hold after the student has met the conditions of the sanction.
- G. **RELOCATION** – Relocation to another room on campus
- H. **LOSS OF HOUSING LICENSE** – Removal of a student from campus residence. A student removed from campus residence will be continued on probation for a specified period. A student removed from campus residence will generally forfeit the privilege of visiting the residence halls. In cases resulting in loss of Residence License, all policies, conditions, refunds, and cancellation charges as outlined in the Housing Manual will apply.
- I. **“SANCTION” HELD IN ABEYANCE** – **This action can be applied to any sanction. It signifies that the sanction that has been held in abeyance will likely go into effect if the student is found to be Responsible of any additional violation of the Student Conduct Manual.**
- J. **SUSPENSION** – Temporary separation from the College for a specified period. At the end of the specified period the student may apply for readmission to the college. Special conditions affecting eligibility for readmission or special conditions to be in effect upon readmission may be designated. Restitution, where appropriate, may be required of a suspended student. Suspended students may not visit the campus unless prior permission by the Director of Student Conduct has been granted. Suspended students will not receive academic credit for the semester in which the suspension occurred.
- K. **DISMISSAL** – Permanent separation from the College. Dismissed students are not welcome on the SUNY Plattsburgh campus and may not visit the campus unless prior permission by the Director of Student Conduct has been granted. If found on campus without such permission, the dismissed student will be subject to arrest for Trespass. Dismissed students will not receive academic credit for the semester in which the dismissal occurred.

**Resolution Agreement:**

May be an option when students are referred to the Student Conduct Office as a result of a dispute. It is generally reserved for first time and less serious violations. A Resolution Agreement is a voluntary process that requires the commitment of all parties. The goal is to reach a written agreement to resolve the dispute and to prevent it from recurring. The Student Conduct Office will retain a record of the mediation efforts and the mediation agreement. The Student Conduct Process will proceed as it normally would if the parties fail to live up to the agreed settlement, or if resolution attempts fail to reach an agreement.

Students should be aware that while the Student Conduct actions are listed in order of severity they are not necessarily applied in that order. All actions are communicated to the student in writing. A copy of all correspondence is placed in the student's Student Conduct file. In the event that a student is found to be Responsible, a copy of the written notification is sent to appropriate College personnel. If a student is found to be Responsible for violating a College regulation pertaining to violence or nonviolent sex offense, the following information will be released upon request: name of student, offense, and sanction imposed.

#### **SANCTIONING ACADEMIC DISHONESTY CASES**

In Academic Dishonesty cases, the Dean of the faculty where the course was held or the incident occurred, in consultation with the Director of Student Conduct and the Dean of the Faculty of the student's major, determines the sanction to be applied if the student is found responsible. In determining sanctions, this group must take into account any previous cases of academic dishonesty by the student in question, as evidenced by records held in the Student Conduct Office.

Please see appendix C for more information: "Student Conduct Sanctioning Guideline." This information can also be found on our homepage: <https://www.plattsburgh.edu/about/offices-divisions/studentaffairs/student-conduct/index.html>

## **VII. POLICIES PERTAINING TO THE STUDENT CONDUCT SYSTEM:**

- A.** All students attending SUNY Plattsburgh are responsible for these regulations. This includes students living on and off campus. A student who violates college regulations off campus in a way that could adversely affect the normal educational function of the College or could injure, endanger, or put at risk, the health and safety of any member of the community may be subject to Student Conduct adjudication by the College. See "Jurisdiction" in Section II of this document for details.
- B.** A student who withdraws or is granted a leave of absence from the College, during the Student Conduct Process, or after a referral has been submitted against them for an alleged violation of the Student Conduct Manual will not be exempt from Student Conduct adjudication by the College. The Student Conduct Process will proceed regardless of whether or not the Respondent chooses to actively participate in the adjudication process in order to achieve a resolution in a timely manner.
- C.** A student who is charged with a violation and who is a graduating senior will be ineligible to graduate until adjudication on the case has been completed and eligibility to graduate is confirmed. If the judicial action results in Suspension or Dismissal, the student will be ineligible to graduate until the term of Suspension has been served. The student may contact the Registrar's Office to apply for graduation one month prior to the completion of the term of Suspension. In cases where the student has been Dismissed, the student will not be eligible to graduate.

- D. A student, who is charged with a violation just prior to the termination of a semester, where there is not sufficient time for the conduct process to occur, will have their case adjudicated as soon as feasible after the semester ends or at the beginning of the following semester.
- E. All Administrative Hearings and Student Conduct Board Hearings will be recorded. Students charged may request supervised access to the recording during the period that the recording is preserved. All recordings will be preserved and maintained for a minimum of five years. In cases resulting from charges of **6, Dating and Domestic Violence, 22, Sexual Violence, and 23, Stalking, Sexual Harassment, Sexual Exploitation**, the recording shall be preserved and maintained for at least seven years. The Student Conduct Office does not provide transcriptions. A copy of the recording will only be provided with a court-ordered subpoena.
- F. With the exception noted in paragraph U below, all conduct meetings/hearings are closed. A student who is charged may request, in writing, with justification, permission from the Director of Student Conduct for the hearing to be open to a particular person or persons. The sole discretion lies with the Director of Student Conduct or designee to determine whether to grant such permission. If the number of people exceeds space limitations, if circumstances interrupt the hearing, or if a group's or an individual's behavior is disorderly, the Director of Student Conduct or designee may require some or all people to leave the hearing.
- G. Cameras and other recording devices other than the College recorder are not permitted during any meeting or hearing within conduct process.
- H. All forms of conduct hearings will generally take place in the Student Conduct Office Conference Room of the Kehoe Administration Building unless notified otherwise.
- I. In accordance with the Family Educational Rights and Privacy Act of 1974, the College will release information pertaining to individual Student Conduct cases to appropriate college personnel. If a student is under 21 years of age, and is found to be Responsible for violating campus drug or alcohol regulations, notification will be sent to their home address regardless of dependent status. A student's name, offense committed, and the sanction imposed will be released upon request by any individual, if a violation was one of violence or a non-violent sex offense. Aside from those exceptions, information from a student's Student Conduct file will not be made available to anyone other than the student without the student's written consent.
- J. A student's written conduct record will be maintained for a period of three years from the end of the academic year in which the violation occurred. For more severe violations or if a student is found to be in violation of a College alcohol and/or drug policy, that student's conduct record, shall be maintained for a period of seven years from the end of the academic year in which the violation occurred, to meet the requirements of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act. If a student is Suspended or Dismissed from the College as a result of violation of College Policy, that student's judicial record shall be maintained indefinitely.
- K. Students who are Suspended or Dismissed for serious violations of the Student Conduct Manual will have the following permanent statement placed on their transcript as appropriate:  
 "Suspended after a finding of Responsibility for a Student Conduct Manual violation" or "Dismissed after a finding of Responsibility for a Student Conduct Manual violation." Suspended students, no sooner than one year after the conclusion of their suspension, may submit a written request to the Director of Student Conduct, to have the transcript notation removed. The decision of whether or not to remove the transcript notation, as well as determining when the notation will be removed is at the discretion of the Director of Student Conduct. Transcript notations for students who are dismissed are permanent. Students who withdraw or take a leave of absence after being charged with a violation of the Student Conduct Manual will have the following notation on their transcript: "Withdrew with Student Conduct Charges Pending" until the case is resolved.



- L. The College President or designee may place a student on Interim Suspension, including but not limited to, students charged with a felony, students involved in acts of violence, etc., upon making a determination that such action is necessary as the student in question poses a threat to the health and safety of any member of the campus community. A student placed on Interim Suspension will as soon as possible be afforded an appropriate hearing. The campus will promptly review existing Interim Suspensions at a party's request, including requests to modify the terms or discontinue it. Parties can submit evidence to support their request.
- M. A student who serves the public in a field placement and/or serves the public in an on-campus facility who is arrested for a felony and not placed on Interim Suspension by the President will be considered for immediate suspension from these activities by the Dean and Chairperson of their academic program until charges are adjudicated.
- N. When a student has failed to perform according to an indebtedness contract with the College, the College may invalidate the student's I.D. card, withhold transcripts or grades, revoke permission to register, and/or a referral to the Student Conduct Office which could result in Suspension if found Responsible.
- O. The Official College Refund Policy applies to students who are relocated. Students who are suspended or dismissed will be liable for all tuition and fees for that semester.
- P. Individuals who have been Suspended or Dismissed and that are found on campus without being granted prior permission by the Director of Student Conduct will be subject to arrest for trespass.
- Q. When a student is relocated off campus as a result of a conduct violation, that student's housing license with SUNY Plattsburgh will be considered cancelled by the student and any penalties associated with this cancellation of the contract will be the responsibility of the student.
- R. Failure to appear as scheduled at The Review of Conduct Charges, or at any subsequent hearing, Administrative or Student Conduct Board, without approval from the Director of Student Conduct (designee) for the absence will result in the College proceeding in absentia. Sole responsibility of whether or not a reason is satisfactory rests with the Director of Student Conduct (designee).
  - a. Each party (Respondent, Complainant, Reporting Individual) is permitted to request to reschedule a conduct meeting/hearing. Requests cannot be for any longer than 10 business days from the date of the established scheduled meeting/hearing. Requests may be granted based upon a reasonable determination by the Director of Student Conduct (designee). Each party may only reschedule their meeting/hearing one time.
- S. 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 Plattsburgh recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. SUNY Plattsburgh strongly encourages students to report incidents of domestic violence, dating violence, stalking, or sexual assault to institution officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to SUNY Plattsburgh officials or law enforcement will not be subject to SUNY Plattsburgh policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.
- T. In all cases where there is an identified Reporting Individual (**Sections 6, Dating and Domestic Violence, 22, Sexual Violence, and 23, Stalking, Sexual Harassment, Sexual Exploitation**); the Reporting Individual is entitled to the same opportunities in Administrative, Student Conduct Board, and Appeal hearings.

- a. To have witnesses and/or up to two Advisors of their choosing. An Advisor is not, however, eligible to participate in the hearing, e.g., by presenting the Reporting Individual's case or cross-examining witnesses.
  - b. The availability of identified Advisors will be considered but cannot be guaranteed when scheduling all meetings and hearings that are part of the adjudication process. In a circumstance where an identified Advisor cannot attend a scheduled meeting/hearing, the student has the opportunity to identify a different Advisor who is able to attend.
- U. In all cases where there is an identified Reporting Individual (**Sections 6, Dating and Domestic Violence, 22, Sexual Violence, and 23, Stalking, Sexual Harassment, Sexual Exploitation**); the Reporting Individual will be afforded reasonable accommodations at any hearings resulting from the case, to ensure their safety and to facilitate their involvement. These accommodations will include, but are not limited to telephone/videoconferencing, testifying with a room partition, or asking/responding to questions indirectly via the hearing officer. Other reasonable accommodations will be offered, when available, to the Reporting Individual by the Student Conduct Office. The campus will promptly review existing interim measures and accommodations at the request of the party who is affected by that interim measure or accommodation. The parties can submit evidence to support their request. Additional accommodations and protective measures can be found via the two links on [page 7](#) of this document.
- V. The College will conduct a timely review of all complaints of sexual violence, domestic violence, dating violence, and/or stalking. Absent extenuating circumstances, review and resolution is expected to take place within sixty (60) calendar days from receipt of the complaint.
- W. In all cases where there is an identified Reporting Individual (**Sections 6, Dating and Domestic Violence, 22, Sexual Violence, and 23, Stalking, Sexual Harassment, Sexual Exploitation**); the sanction given to that student will be communicated simultaneously, in writing, to the Respondent, Complainant, and Reporting Individual involved.
- X. If a student is found to be Responsible for a violation of **Section 22, Stalking, Sexual Harassment, or Sexual Exploitation**, the available sanctions include: Probation or Suspension, of one, two, three, four, five, six, seven, or eight semesters, or Dismissal. If a student is found to be Responsible for a violation of **Sections 6, Dating and Domestic Violence and/or 23, Sexual Violence**, the available sanctions include Suspensions of one, two, three, four, five, six, seven, or eight semesters or Dismissal.
- Y. If a student is found to be Responsible for a violation of **6, Dating and Domestic Violence, 22, Sexual Violence, and 23, Stalking, Sexual Harassment, Sexual Exploitation**, the Respondent, Complainant, and the Reporting Individual have the option to submit an Impact Statement during the point of the proceeding where the decision maker is deliberating on appropriate sanctions. The Impact Statement must be typed and submitted by the time of the scheduled hearing or it may be sent as an attachment via email. Impact Statements are to be submitted to the Director of Student Conduct (designee) and must be no more than two pages, double spaced or 500 words.
- Z. Officials serving as part of the Student Conduct Process will receive annual training on issues related to dating violence, domestic violence, sexual assault, and stalking, and the procedure to conduct an adjudication process that protects the safety of those reporting acts of sexual violence and promotes accountability.
- AA. University Police Officials, the Director of Student Conduct, and the Title IX Coordinator(s) have the authority to issue a "72-hour No Contact Order" upon receipt of a report that involves an accusation towards a student at SUNY Plattsburgh for sexual violence, stalking, sexual harassment, sexual exploitation, domestic violence, dating violence (as defined in the Student Conduct Manual), related violent behaviors, including hazing, an act or threat of physical violence, and

ongoing hostile environments. If the individuals issued the "No Contact Order" continues to contact one another, it will be considered a violation of college policy subject to additional conduct charges. In addition, if the Respondent and the Reporting Individual observe each other in a public place, it is the responsibility of the Respondent to leave the area immediately and without directly contacting the Reporting Individual. The campus will promptly review existing No Contact Orders at a party's request, including requests to modify the terms of or discontinue the Order. The parties can submit evidence to support their requests. If the campus finds it appropriate, it can even make a schedule for parties who seek to use the same facilities without running afoul of the No Contact Order.

**RULES AND REGULATIONS  
FOR MAINTENANCE OF PUBLIC ORDER**

Rules adopted in compliance with Section 6450 of the Educational Law  
are applicable to this college. These rules are available at

<https://www.plattsburgh.edu/about/offices-divisions/administration-finance/management-services/campushandbook/section-viii-health-safety/trustee-rules-for-maintaining-campus-order-policy.html>

**Section VIII – Appendixes**

**Appendix A**

**Student Bill of Rights**

Pursuant to NYS Education Law, Article 129-B, (Section 6443)

All students have the right to:

- A.** Make a report to local law enforcement and/or state police.
- B.** Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously.
- C.** 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 pressures from the institution.
- D.** Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard.
- E.** Be treated with dignity and to receive from the institution courteous, fair and respectful health care and counseling services where available.
- F.** 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.
- G.** Describe the incident to as few institutional representatives as practicable and not to be required to unnecessarily repeat a description of the incident.
- H.** Be free from retaliation by the institution, the accused and/or the respondent, and/or their friends, family and acquaintances within the jurisdiction of the institution. **I.** Access to at least one level of appeal of a determination.
- J.** 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.
- K.** Exercise civil right and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of the institution.

## Appendix B

### Free Speech

#### Freedom of Speech: A Brief Overview

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

-U.S. Const. Amend. I

The SUNY Plattsburgh community embraces principles of free speech, recognizes the complexity of issues surrounding this topic, and believes that they require careful and ongoing thought and attention as a community. As a public university, we are bound to uphold the First Amendment. More broadly, we value the free expression of ideas, including the right of all views, popular and unpopular, to be voiced. This is critical to our educational mission to prepare graduates to thrive in a democratic society. It is our responsibility to educate students about the fundamental importance of free expression and diverse views and their history in the United States. It is also our mission to model and teach civility and tolerance for diverse viewpoints.

The College employs policies that provide meaningful opportunities for members of our community to express their views, along with policies that regulate time, place, and manner for the exercise of free speech so that the normal work of the campus is not disrupted. Similarly, the College does not regulate speech based on its content, but has appropriately created content-neutral regulations governing expression on campus.

The College recognizes that some speech contributes to the marginalization of some community members, especially those who may feel they do not have the same privilege or opportunity as others to exercise their free speech rights. Nonetheless, the courts have routinely deemed campus “hate speech codes” as unconstitutional. Thus, hurtful, upsetting, or offensive speech, including hate speech, is still protected provided it does not cross the line into true threats. As a result, the College supports “more speech” as an appropriate response to such expression. Thus, the College encourages community members to speak out about speech they find to be offensive or hateful. Our community should expect campus leaders to exercise their own free speech rights in responding to extreme speech acts, while recognizing that leadership cannot respond to all speech that some consider offensive. The College values practices that increase awareness among students and faculty about the impact that words and expressions may have, so that we sustain a respectful environment for teaching and learning. Our support for free speech does not mean that the institution agrees with all views expressed or that the College affords moral equivalency to all views.

We condemn and will continue to condemn and take action against acts of hatred, bigotry, racism, sexism, intolerance, and violence on our campus.

Thoughts on Freedom of Speech

**Q. Is controversial speech legal?**

A. Yes. The Constitutional right to free speech as set forth in the First Amendment to the United States Constitution affirms, with few exceptions, the lawfulness of individuals' and groups' right to communicate virtually any idea regardless of how widely shared or accepted by others it may be.

**Q. Can the College restrict speech on campus?**

A. Yes. However, any restriction must be content-neutral and narrowly tailored to serve a significant government interest. In general, this means that the college can determine the time, place and manner of speech so as to ensure minimal interference with the operation of the college, its provision of services, and people's access to it.

**Q. Can the College restrict speech because it is controversial?**

A. No. College policy may not supersede the Constitution. Moreover, restricting any individual's or group's speech solely on the basis of it being upsetting, or even demonstrably wrong, jeopardizes everyone's rights. The laws that assure free speech for neo-Nazis and pornographers also protect rights of anti-war protesters, civil rights workers, lesbian and gay activists and others fighting for peace, justice, fairness and equality.

**Q. What is the college's official position on controversial speech?**

A. The college has a legal, and indeed a moral, obligation to ensure that it protects the free exchange of ideas. The principles of academic freedom demand that all ideas are given a fair opportunity to rise or fall on their own merit; only then can we have any confidence in our own opinions and beliefs. For this reason, the college will remain a neutral venue and provide the same level of safety and respect to all speakers.

**Q. What is the College's response to bigoted or offensive speech?**

A. SUNY Plattsburgh strives to ensure a safe environment for all constitutionally-protected speech, regardless of its content, and encourages college community members to fully understand their right to free speech under the First Amendment. The College also supports forums and symposia on controversial topics where they can be discussed and debated in an intellectually-stimulating and productive manner.

**Q. How should I respond to controversial speech?**

A. Academic freedom and freedom of speech are hard to take sometimes; it is difficult to see and hear things that challenge your personal beliefs and offend the things that you cherish. But if academic freedom and freedom of speech are to mean anything, they mean that critics cannot silence that with which they disagree – however strongly they may disagree.

You, alone or as part of a group, have the right to respond to a controversial speaker with protected speech of your own. This includes – but is not limited to – talking, circulating literature, displaying signs and singing. However, you may not threaten a speaker or commit any violent act against a speaker. Nor may you participate in the creation of a situation in which the speaker cannot be heard.

You also have the right to ignore a controversial speaker – which is sometimes the best way to show your disagreement with their message and deny them the attention they are often seeking.

## Appendix C

### Student Conduct Sanction Guideline

SUNY Plattsburgh maintains that there is a need to have flexibility in sanctioning those students who have violated the Student Conduct Manual. This flexibility is in place so that the Director of Student Conduct, or designee, may sanction as appropriate to fit the situation as determined to have occurred via the facts of a case. Having said that, it is also important that some standards be maintained to ensure that all are treated equitably within the Student Conduct process and that a student involved in the process can be aware of the possible consequences of their actions.

This general guideline of standards outlines what the likely minimum sanction might be for first-time violations that pertain to COVID-19.

Please note that depending on the severity of the violation, a student may be Suspended or Dismissed after being found Responsible for their first violation.

#### **Section 1: Academic Dishonesty**

- 1.01 Sanction is set through a faculty process
- 1.02 Sanction is set through a faculty process

#### **Section 2: Aiding and Abetting**

The sanction given for violation of this section is solely based on what the student aided and abetted another in doing.

#### **Section 3: Alcohol**

- 3.01 Probation
- 3.02 Reprimand
- 3.03 Reprimand
- 3.04 Reprimand

#### **Section 4: Animals**

Reprimand

#### **Section 5: Computer Use Violations**

Reprimand w/ potential account restrictions

#### **Section 6: Dating & Domestic Violence**

- 6.01 Suspension of one, two, three, four, five, six, seven, or eight semesters, or Dismissal
- 6.02 Suspension of one, two, three, four, five, six, seven, or eight semesters, or Dismissal

#### **Section 7: Disruptive Conduct**

Reprimand

#### **Section 8: Drugs**

- 8.01 Probation
- 8.02 Reprimand



**Section 9: Endangerment**

- 9.01 Incident dependent 9.02  
Incident dependent
- 9.03 Incident dependent

**Section 10: Failure to Comply**

- 10.01 Reprimand
- 10.02 Reprimand
- 10.03 Reprimand

**Section 11: Falsification of Information**

- 11.01 Reprimand
- 11.02 Reprimand w/ conditions
- 11.03 Reprimand

**Section 12: Firearms, Fireworks, Explosives, Weapons**

- 12.01 Probation w/ conditions 12.02  
Probation w/ conditions
- 12.03 Probation w/ conditions

**Section 13: Fire Safety**

- 13.01 Probation
- 13.02 Probation
- 13.03 Probation

**Section 14: Gambling**

- Incident dependent

**Section 15: Guests**

- Dependent upon action of guest(s)

**Section 16: Harassment**

- Probation

Note: A disciplinary charge of bias-related behavior that results in a finding of Responsible may subject the student to a sanction more severe than would be imposed in the absence of such motivation.

**Section 17: Hazing**

- Probation w/ conditions

**Section 18: Misuse of College Property**

- 18.01 Reprimand w/ conditions (restitution)
- 18.02 Reprimand w/ conditions (restitution)
- 18.03 Reprimand

**Section 19: Obstruction of College Activities**

- Reprimand

**Section 20: Residence Hall/Published Institutional Policies**

Incident dependent

**Section 21: Retaliation**

Probation

**Section 22: Sexual Violence**

Suspension of one, two, three, four, five, six, seven, or eight semesters, or Dismissal

**Section 23: Stalking, Sexual Harassment, and Sexual Exploitation**

23.01 Probation or Suspension, of one, two, three, four, five, six, seven, or eight semesters, or Dismissal

23.02 Probation or Suspension, of one, two, three, four, five, six, seven, or eight semesters, or Dismissal

23.03 Probation or Suspension, of one, two, three, four, five, six, seven, or eight semesters, or Dismissal

**Section 24: Student Group Violations**

Reprimand

**Section 25: Theft**

25.01 Reprimand w/conditions 25.02  
Reprimand w/conditions

25.03 Reprimand w/conditions

25.04 Reprimand w/conditions

25.05 Reprimand

**Section 26: Threatening or Abusive Behavior**

Probation

**Section 27: Trespass**

Reprimand w/ conditions

**Section 28: Use of the College Name**

Reprimand w/ conditions

**Section 29: Violation of the Student Conduct Process**

Registration Record Hold

**Section 30: Violations of Civil or Criminal Law**

Probation

Note: A student who is found to be Responsible for committing a hate or bias-related crime may be subject to a more severe sanction than would be imposed in the absence of such motivation.

*(Judicial Educator Modules may be assigned with any sanction where appropriate and as determined by the Director of Student Conduct or designee)*

## Appendix D

### **Rules of Decorum for Conduct Proceedings**

#### **Purpose of the Rules of Decorum**

Student Conduct hearings are not civil or criminal proceedings, and are not designed to mimic formal trial proceedings. They are primarily educational in nature and foundation of the conduct process reflects that.

To achieve this purpose, institutions may provide for reasonable rules of order and decorum, which may be enforced through the removal of any person who refuses to comply with the rules.

At base, these Rules of Decorum require that all parties, advisors of choice, and institutional staff treat others who are engaged in the process with respect.

The rules and standards apply equally to all Parties and their Advisors regardless of sex, gender, or other protected class, and regardless of their role.

#### **Rules of Decorum**

The following Rules of Decorum are to be observed in all hearings and applied equally to all parties (meaning the Respondent, Complainant, Reporting Individual, Advisors, and Witnesses:

1. Questions must be conveyed in a neutral tone.
2. No party may act abusively or disrespectfully during the hearing toward any other party or to witnesses, advisors, or decision-makers.
3. No one may yell, scream, badger, or physically “lean in” to another person’s personal space. No one may not approach another person without obtaining permission from the Board Hearing Officer.
4. No one may use profanity or make irrelevant character attacks upon another person. Questions are meant to be interrogative statements used to test knowledge or understand a fact; they may not include accusations within the text of the question.
5. No one asking questions may ask repetitive questions. This includes questions that have already been asked by the Board or another party. When the Board Hearing Officer determines a question has been “asked and answered” or is otherwise not relevant, the person asking the question must move on.
6. No person may take action at the hearing that a reasonable person in the shoes of the affected party would see as intended to intimidate that person (whether party, witness, or official) into not participating in the process or meaningfully modifying their participation in the process.

#### **Warning and Removal Process**

The Hearing Officer shall have sole discretion to determine if the Rules of Decorum have been violated. The Hearing Officer will notify the offending person of any violation of the Rules.

Upon a second or further violation of the Rules, the Hearing Officer shall have discretion to remove the offending person or allow them to continue participating in the hearing or other part of the process.

Reasonable delays, including the temporary adjournment of the hearing, may be considered should an advisor be removed.

The Hearing Officer shall document any decision to remove a person in the written determination regarding responsibility.

Appendix E

**Student Conduct Hearing Script**

***Case# XXXXXX***

***Date/Time***

The **Hearing Officer** is the institution's representative in the hearing, and often holds the title of Director of the Student Conduct Office (designee). The Hearing Officer is the keeper of the hearing process, overseeing that everything is moving forward consistent with the institution's policies. They provide introductory information, keep general order, run the script, and lead the process once the hearing gets going. They write the rationale for the determination regarding responsibility on the Conduct Board's behalf.

The Conduct Board, which is comprised of three (3) board members, asks questions of the parties and witnesses, makes credibility determinations and factual judgments, and works with the Hearing Officer to draft the determination regarding responsibility. All board members receive annual training.

***/.Introduction:***

**Hearing Officer:** We are officially on the record at approximately **Time/Date** for case #XXXXXX. I would ask everyone to mute their devices/cell phones for the duration of the hearing. Thank you. My name is Larry Allen. I am the Director of Student Conduct and I am serving as the Hearing Officer for this hearing. Today's hearing is being recorded, therefore please be reminded to speak clearly throughout the hearing. The use of any other recording device, outside of the one used by the Student Conduct Office for this hearing, is prohibited. The recording of this hearing will be made to be used in any deliberations by the Board or Appeal Board, and may be accessed by the Respondents upon request prior to any appeal. This recording represents the sole official verbatim record of today's hearing and is the property of this institution.

Would each member of the Board please introduce themselves? *[introduction]*.

**Three Names**

**The Respondents in this case are:**

1. List of names

**The Advisor(s) for the Respondent(s) is/are:**

List of names or none identified

**The Complainant for this case is:**

1. The College as represented by: member from University Police, Housing and Residence Life, Faculty Member, etc.

**Board Member Confirmation:** Do you have any objections to any of the board members serving in their official capacity today? *[answer from each party]*

*If the answer is yes: The Hearing Officer will consider the stated objection and determine the validity of the objection. If the objection is determined to be valid, the board member in question will leave the proceedings and will be substituted by an alternate board member if possible. If no other board member is available, the hearing will be adjourned until another time. Parties will be asked if there are any objections to the alternate board member.*

*If the answer is no: The proceedings will continue.*

**Witnesses for this case are:**

Called by the College:

1. List of names

Called by the Respondents:

1. List of names

### **Purpose of the Hearing**

This hearing is intended to review policy violations that have been charged to the aforementioned Respondents. It is a violation of the Student Conduct Manual to present false information and intentionally providing false information may lead to further disciplinary action. If you do not remember a detail, or are unsure of a response, it is appropriate to say so. You should also feel free to ask for any question to be repeated, rephrased, or further explained, so that you are in the best position to answer it fully and honestly. *[Also, please be reminded this is a student conduct process, reflective of the educational philosophy of the College, and not a criminal proceeding.]*

### **II. Privacy & Decorum Expectations**

This is a closed hearing, and not open to the public. The individuals participating in this process can and should expect that the information discussed and the documents presented are to be kept to this hearing space (in person or virtually) in order to protect the privacy of all individuals involved. It is prohibited to provide materials or access to these proceedings to any party not authorized by the Student Conduct Office. Doing so will likely result in College charges.

At this time, I will set the following requirements for decorum related to today's proceedings: Advisors are not permitted to speak during today's proceedings. Advisors may speak ONLY with their advisee during this process outside of the rarest of non-substantive circumstances (such as asking for directions to a restroom or similar situation).

During questioning, Respondents may ask questions respectfully in a way that is intended to bring forth further relevant information for the College to use in making its determination in this matter. All behavior at the hearing is governed by the Decorum Policy, a copy of which has been provided to each of you. At this point, I would ask all Parties (Complainant, Respondent/Reporting Individual) and advisors to acknowledge receipt of the Decorum

Policy and affirm on the record that they understand the terms of the Decorum Policy. *[Affirmation]*

Students, please indicate to me directly should you require a break and I will accommodate your request as reasonable. If you have a procedural question or concern, these may also be directed to me as the Board Hearing Officer for the proceedings by raising a hand to indicate you would like to raise a question or concern.

### **III. Due Process Rights**

I will now ask each Party (Respondent/Reporting Individual); do you understand your rights as outlined in the Student Conduct Manual? You will find a copy of your rights in your Hearing Packet. *[answer from each Party]*

Does anyone have any questions before we begin? *[pause]*

Hearing none, I will proceed with "Review of Conduct Charges"

### **IV. Review of Conduct Charges**

**Hearing Officer:** According to the Review of Conduct Charges the following charges and references apply to this case.

#### **List of Charges for and References for Respondents**

I will now address "Access to Evidence"

### **V. Access to Evidence**

**Hearing Officer:** All parties had an opportunity to review the evidence and the opportunity to submit their own evidence prior to the hearing to afford the parties and the Board the ability to prepare for these proceedings. All evidence is now accepted by the Board in its final form, but it is not conclusive and all determinations of fact will be made independently by the Board. You will now each have a brief opportunity to describe your experience related to these allegations.

Each Party (Complainant/Respondent/Reporting Individual) is now able to provide an opening statement no longer than *five (5)* minutes in length uninterrupted. If you choose not to provide an opening statement, please state as such when given the opportunity to speak.

**{Opening Statements}**

Thank you for your opening statements.

### **VI. Questioning**

**Hearing Officer:** We will now begin the questioning portion of the hearing. The Board will start by asking direct questions of the Parties. Following questions by the Board, the Parties, (Complainant/Respondent/Reporting Individual) will have the opportunity to ask each other questions. **VII. Witnesses** *[This entire section is*

*repeated for each witness called]*

**Hearing Officer:** We will now call the identified witnesses.

Thank you for joining us today. For the record, would you please state your name and role on campus as it relates to this matter?

#### **Witness Introduction**

*{pause for questions from Board then Parties (Complainant/Respondent/Reporting Individual)}* Rinse & Repeat

*{at the end of all witness questioning}* **Hearing Officer:** We will now close questioning with any final questions from the Board to the parties.

#### **VIII. Closing Statements**

**Hearing Officer:** That concludes all witnesses requested by the College and by the Parties that were able to attend the hearing. We will now allow the Parties (Complainant/Respondent/Reporting Individual) the opportunity to provide a closing statement no longer than five (5) minutes in length, uninterrupted. If you choose not to provide a closing statement, please state as such when given the opportunity to speak.

*{Closing Statements}*

#### **IX. Closing**

**Hearing Officer:** Thank you, all, for your participation. At this time, the hearing has concluded. The Board will move to closed deliberations. Every effort will be made for you to be notified of the outcome as soon as reasonably possible. Thank you and take care.

## Appendix F

The following College policy and procedures will be applied to all Title IX cases that fall under the Final Rule as outlined below.

Language within this policy that applies to the adjudication process facilitated by the Student Conduct Office is in RED.

A link to the official policy in full from the campus website can be [found here](#).

### **Grievance Policy for Addressing Formal Complaints of Sexual Harassment**

#### **Under the Title IX Regulations**

##### **1.0 Purpose**

Title IX of the Educational Amendments of 1972 prohibits any person in the United States from being discriminated against on the basis of sex in seeking access to any educational program or activity receiving federal financial assistance. The U.S. Department of Education, which enforces Title IX, has long defined the meaning of Title IX's prohibition on sex discrimination broadly to include various forms of sexual harassment and sexual violence that interfere with a student's ability to equally access our educational programs and opportunities.

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, SUNY Plattsburgh will implement the following Title IX Grievance Policy, effective August 14, 2020.

##### **3.0 Units and Persons Affected**

All college students and college employees, as well as contractors/vendors and visitors to the campus.

##### **4.0 Policy Statement**

###### **How does the Title IX Grievance Policy impact other campus disciplinary policies?**

In recent years, "Title IX" cases have become a short-hand for any campus disciplinary process involving sex discrimination, including those arising from sexual harassment and sexual assault. But under the Final Rule, SUNY Plattsburgh 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 defined below.

SUNY Plattsburgh remains committed to addressing any violations of its policies, even those not meeting the narrow standards defined under the Title IX Final Rule.

Specifically, our campus has:



A **Code of Conduct** that defines certain behavior as a violation of campus policy, and a separate **Sexual Misconduct Policy** that addresses the types of sex-based offenses constituting a violation of campus policy, and the procedures for investigating and adjudicating those sex-based offenses. *[Note: Any Sexual Misconduct Policy that runs parallel to the Title IX Grievance Policy, such as a policy implementing New York Education Law 129-B or other state laws or policies, can only fully govern how the institution responds to violations falling outside their Title IX jurisdiction]*

To the extent that alleged misconduct falls outside the Title IX Grievance Policy, or misconduct falling outside the Title IX Grievance Policy is discovered in the course of investigating covered Title IX misconduct, the institution retains authority to investigate and adjudicate the allegations under the policies and procedures defined within the The Student Code of Conduct/ Non-Title IX Sexual Harassment and Sexual Violence Policy and/or the Non-Title IX Interpersonal Violence Policy through a separate grievance proceeding.

The Non-Title IX Sexual Harassment and Sexual Violence Policy can be found here:

<https://www.plattsburgh.edu/about/offices-divisions/administration-finance/management-services/campus-handbook/section-ii-affirmative-action-equal-opportunity/sexual-violence-policy.html>.

The Non-Title IX Interpersonal Violence Policy can be found here:

<https://www.plattsburgh.edu/about/offices-divisions/administration-finance/management-services/campus-handbook/section-ii-affirmative-action-equal-opportunity/interpersonal-violence-policy.html>.

The elements established in the Title IX Grievance Policy under the Final Rule have no effect and are not transferable to any other policy of the College for any violation of the Code of Conduct, employment policies, or any civil rights violation except as narrowly defined in this Policy. This Policy does not set a precedent for other policies or processes of the College and may not be cited for or against any right or aspect of any other policy or process.

### **How does the Title IX Grievance Policy impact the handling of complaints?**

Our existing Title IX office and reporting structure remains in place. What has changed is the way our Title IX office will handle different types of reports arising from sexual misconduct, as detailed in full throughout Section 2.

### **General Rules of Application**

#### **Effective Date**

This Title IX Grievance Policy will become effective on August 14, 2020, and will only apply to formal complaints of sexual harassment brought on or after August 14, 2020. Complaints brought prior to August 14, 2020 will be investigated and adjudicated according to the Title IX Grievance Policy if a case is not complete by that date.[2]

#### **Revocation by Operation of Law**

Should any portion of the Title IX Final Rule, 85 Fed. Reg. 30026 (May 19, 2020), be stayed or held invalid by a court of law, or should the Title IX Final Rule be withdrawn or modified to not require the elements of this policy, this policy, or the invalidated elements of this policy, will be deemed revoked as of the publication date of the opinion or order and for all reports after that date, as well as any elements of the process that occur after that date if a case is not complete by that date of opinion or order publication. Should the Title IX Grievance Policy be revoked in this manner, any conduct covered under the Title IX Grievance Policy shall be investigated and adjudicated under the existing Student Code of Conduct/ Non-Title IX Sexual Harassment and Sexual Violence Policy and/or the Non-Title IX Interpersonal Violence Policy.

#### **Non-Discrimination in Application**

The requirements and protections of this policy apply equally regardless of sex, sexual orientation, gender identity, gender expression, or other protected classes covered by federal or state law. All requirements and protections are equitably provided to individuals regardless of such status or status as a Complainant, Respondent, or Witness. Individuals who wish to file a complaint about the institution's policy or process may contact the Department of Education's Office for Civil Rights using contact information available at <https://ocrcas.ed.gov/contact-ocr>.

## 5.0 Definitions

### Covered Sexual Harassment

For the purposes of this Title IX Grievance Policy, "covered sexual harassment" includes any 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 State 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.

Note that conduct that does not meet one or more of these criteria may still be prohibited under the Student Code of Conduct and/or the Non-Title IX Sexual Harassment and Sexual Violence Policy and/or the Non-Title IX Interpersonal Violence Policy.

### Consent

For the purposes of this Title IX Grievance Policy, "consent" means a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

- Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.

- Consent may be initially given but withdrawn at any time.
- Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.
- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
- When consent is withdrawn or can no longer be given, sexual activity must stop. **Education Program or Activity**

For the purposes of this Title IX Grievance Policy, SUNY Plattsburgh’s “education program or activity” includes:

- Any on-campus premises
- Any off-campus premises that SUNY Plattsburgh 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 Plattsburgh’s programs and activities over which the SUNY Plattsburgh has substantial control.

### **Formal Complaint**

For the purposes of this Title IX Grievance Policy, “formal complaint” means a document – including an electronic submission - 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 Plattsburgh’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.

### **Complainant**

For the purposes of this Title IX Grievance Policy, Complainant means any individual who has reported being or is alleged to be the victim of conduct that could constitute covered sexual harassment as defined under this policy.

### **Relevant evidence and questions**

“Relevant” evidence and questions refer to any questions and evidence that tends to make an allegation of sexual harassment more or less likely to be true.

“Relevant” evidence and questions do not include the following types of evidence and questions, which are deemed “irrelevant” at all stages of the Title IX Grievance Process:

- Evidence and questions about the complainant’s sexual predisposition or prior sexual behavior unless:
  - They are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or
  - They concern specific incidents of the complainant’s prior sexual behavior with respect to the respondent and are offered to prove consent. 34 C.F.R. § 106.45(6)(i).
- Evidence and questions that constitute, or seek disclosure of, information protected under a legally recognized privilege.
- Any party’s medical, psychological, and similar records unless the party has given voluntary, written consent. 85 Fed. Reg. 30026, 30294 (May 19, 2020).

## Respondent

For the purposes of this Title IX Grievance policy, Respondent means any individual who has been reported to be the perpetrator of conduct that could constitute covered sexual harassment as defined under this policy.

## Privacy vs. Confidentiality

Consistent with campus policies references made to *confidentiality* refer to the ability of identified confidential resources to not report crimes and violations to law enforcement or college officials without permission, except for extreme circumstances, such as a health and/or safety emergency or child abuse. References made to *privacy* mean SUNY Plattsburgh offices and employees who cannot guarantee confidentiality but will maintain privacy to the greatest extent possible, and information disclosed will be relayed only as necessary to investigate and/or seek a resolution and to notify the Title IX Coordinator or designee, who is responsible for tracking patterns and spotting systemic issues. SUNY Plattsburgh will limit the disclosure as much as practicable, even if the Title IX Coordinator determines that the request for confidentiality cannot be honored.

## Disability Accommodations

This Policy does not alter any institutional obligations under federal disability laws including the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Parties may request reasonable accommodations for disclosed disabilities to the Title IX Coordinator at any point before or during the Title IX Grievance Process that do not fundamentally alter the Process. The Title IX Coordinator will not affirmatively provide disability accommodations that have not been specifically requested by the Parties, even where the Parties may be receiving accommodations in other institutional programs and activities.

## 6.0 Responsibilities

### Making a Report Regarding Covered Sexual Harassment to the Institution

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report.

Contact Information for the Title IX Coordinator:

Name:	Dr . Ann James
Title:	Title IX Coordinator
Office Address:	Kehoe 6 <sup>th</sup> Floor (060)
Email Address:	Title.IX@plattsburgh.edu
Telephone Number:	518.564.3281

Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator.

## Confidential Reporting

The following Officials will provide privacy, but not confidentiality, upon receiving a report of conduct prohibited under this policy:

- Title IX Coordinator or designee – information above

- SUNY Plattsburgh University Police - Health Center Building | 518.564.2022
- SUNY Plattsburgh Human Resources – 912 Kehoe | 518.564.5062
- SUNY Plattsburgh Affirmative Action Officer – 912 Kehoe | 518.564.5062 |  
Campus Housing and Community Living Staff – 103 Algonquin Hall | 518.564.3824 |  
housing@plattsburgh.edu
- SUNY Plattsburgh Campus Security Authorities (people with this designation are required to notify you upon disclosure)
- SUNY Plattsburgh Responsible Employees (people with this designation are required to notify you upon disclosure)
- Law Enforcement Agencies at state, city, and county level:
  - Plattsburgh City Police – 45 Pine St., Plattsburgh, NY 12901 | 518.563.3411
  - NYS Police at Plattsburgh – 10 Dunning Way, Plattsburgh, NY 12901 | 518.563.3761 - NYS  
Police Campus Sexual Assault Victims Unit – 24- hr Hotline: 1.844.845.7269

The following Officials may provide confidentiality:

- SUNY Plattsburgh Health & Counseling Services – Health Center Building | 518.564.2187 (Health) | 518.564.3086 (Counseling)
- Employee Assistance Program – 401 A Beaumont Hall | 518.564.5187 | oharaea@plattsburgh.edu
- Planned Parenthood Sexual Assault Services – 66 Brinkerhoff St., Plattsburgh, NY 12901 | 518.561.4430 | 24-hr Hotline: 1.877.212.2323
- BHSN STOP Domestic Violence – 22 US Oval, Plattsburgh, NY 12903 | 518.563.6904 | 24-Hour Hotline: 1.888.563.6904

### **Non-Investigatory Measures Available Under the Title IX Grievance Policy**

#### **Supportive Measures**

Complainants (as defined above), who report allegations that could constitute covered sexual harassment under this policy, have the right to receive supportive measures from SUNY Plattsburgh regardless of whether they desire to file a complaint, which may include resources, accommodations, interim measures, and informal resolutions as appropriate. Supportive measures are non-disciplinary and non-punitive.

Supportive Measures suggested by the Preamble: As appropriate, supportive measures may include, but not be limited to:

- Counseling
- Extensions of deadlines or other course-related adjustments
- Modifications of work or class schedules
- Campus escort services
- Restrictions on contact between the parties (no contact orders)
- Changes in work or housing locations
- Leaves of absence
- Increased security and monitoring of certain areas of the campus
- Timely warnings
- Room combination change or safe housing
- Off-campus safe housing and Family Court Orders of Protections through local agencies
- Confidential student directory information provided by request through the Registrar's Office
- Referral for available Visa and immigration, Financial Aid and Legal Assistance

See 85 Fed. Reg. 30401.

## **Emergency Removal**

Per this policy SUNY Plattsburgh retains the authority to remove a respondent from SUNY Plattsburgh's program or activity on an emergency basis, where SUNY Plattsburgh (1) undertakes an individualized safety and risk analysis and (2) determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of covered sexual harassment justifies a removal.

If SUNY Plattsburgh determines such removal is necessary, the respondent will be provided notice and an opportunity to challenge the decision immediately following the removal.

## **Administrative Leave**

SUNY Plattsburgh retains the authority to place a non-student employee respondent on administrative leave during the Title IX Grievance Process, consistent with the Campus Handbook and appropriate section(s) of the contract related to that employees' bargaining unit.

## **7.0 Related Procedures**

### **The Title IX Grievance Process**

#### **Filing a Formal Complaint**

The timeframe for the Title IX Grievance Process begins with the filing of a Formal Complaint. The Grievance Process will be concluded within a reasonably prompt manner, and no longer than ninety (90) school/calendar/business days after the filing of the Formal Complaint, provided that the Process may be extended for a good reason, including but not limited to the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities. The procedure for applying for extensions is described below.

To file a Formal Complaint, a complainant must provide the Title IX Coordinator a written, signed complaint describing the facts alleged. Complainants are only able to file a Formal Complaint under this Policy if they are currently participating in, or attempting to participate in, the education programs or activities of SUNY Plattsburgh, including as an employee. For complainants who do not meet this criteria, the College will utilize existing policy in The Student Code of Conduct/ Non-Title IX Sexual Harassment and Sexual Violence Policy and/or the Non-Title IX Interpersonal Violence Policy through a separate grievance proceeding. The Non-Title IX Sexual Harassment and Sexual Violence Policy can be found here: <https://www.plattsburgh.edu/about/offices-divisions/administration/finance/management-services/campus-handbook/section-ii-affirmative-action-equal-opportunity/sexual-violencepolicy.html>. The Non-Title IX Interpersonal Violence Policy can be found here: <https://www.plattsburgh.edu/about/offices-divisions/administration/finance/management-services/campus-handbook/section-ii-affirmative-action-equal-opportunity/interpersonal-violence-policy.html>.

If a complainant does not wish to make a Formal Complaint, the Title IX Coordinator may determine a Formal Complaint is necessary. SUNY Plattsburgh will inform the complainant of this decision in writing, and the complainant need not participate in the process further but will receive all notices issued under this Policy and Process.

Nothing in the Title IX Grievance Policy or Student Code of Conduct/Campus Handbook prevents a complainant from seeking the assistance of state or local law enforcement alongside the appropriate on-campus process.

#### **Informal Resolution**

A complainant who files a Formal Complaint may elect, at any time, to address the matter through the Institution's Informal Resolution Process. All Parties to a Formal Complaint must agree to enter the Informal Resolution Process through an informed written consent.

### **Multi-Party Situations**

The institution may consolidate Formal Complaints alleging covered sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of covered sexual harassment arise out of the same facts or circumstances.

### **Determining Jurisdiction**

The Title IX Coordinator or designee will determine if the instant Title IX Grievance Process should apply to a Formal Complaint. The Process will apply when all of the following elements are met, in the reasonable determination of the Title IX Coordinator:

1. The conduct is alleged to have occurred on or after August 14, 2020;
2. The conduct is alleged to have occurred in the United States;
3. The conduct is alleged to have occurred in {institution's} education program or activity; and 4. The alleged conduct, if true, would constitute covered sexual harassment as defined in this policy.

If all of the elements are met, SUNY Plattsburgh will investigate the allegations according to the Grievance Process.

### **Allegations Potentially Falling Under Two Policies:**

If the alleged conduct, if true, includes conduct that would constitute covered sexual harassment and conduct that would not constitute covered sexual harassment, the Title IX Grievance Process will be applied in the investigation and adjudication of all of the allegations.

### **Mandatory Dismissal**

If any one of these elements are not met, the Title IX Coordinator or designee will notify the parties that the Formal Complaint is being dismissed for the purposes of the Title IX Grievance Policy. Each party may appeal this dismissal using the procedure outlined in "Appeals," below.

### **Discretionary Dismissal**

The Title IX Coordinator or designee may dismiss a Formal Complaint brought under the Title IX Grievance Policy, or any specific allegations raised within that Formal Complaint, at any time during the investigation or hearing, if:

- A complainant notifies the Title IX Coordinator in writing that they would like to withdraw the Formal Complaint or any allegations raised in the Formal Complaint;
- The respondent is no longer enrolled or employed by {the institution}; or,
- If specific circumstances prevent {the institution} from gathering evidence sufficient to reach a determination regarding the Formal Complaint or allegations within the Formal Complaint.

Any party may appeal a dismissal determination using the process set forth in "Appeals," below.

### **Notice of Dismissal**

Upon reaching a decision that the Formal Complaint will be dismissed, the institution will promptly send written notice of the dismissal of the Formal Complaint or any specific allegation within the Formal Complaint, and the reason for the dismissal, simultaneously to the parties through their institutional email accounts. It is the responsibility of parties to maintain and regularly check their email accounts.

### **Notice of Removal**

Upon dismissal for the purposes of Title IX, SUNY Plattsburgh retains discretion to utilize The Student Code of Conduct/ Non-Title IX Sexual Harassment and Sexual Violence Policy and/or the Non-Title IX Interpersonal Violence Policy.

The Non-Title IX Sexual Harassment and Sexual Violence Policy can be found here:

<https://www.plattsburgh.edu/about/offices-divisions/administration-finance/management-services/campus-handbook/section-ii-affirmative-action-equal-opportunity/sexual-violence-policy.html>.

The Non-Title IX Interpersonal Violence Policy can be found here:

<https://www.plattsburgh.edu/about/officesdivisions/administration-finance/management-services/campus-handbook/section-ii-affirmative-action-equalopportunity/interpersonal-violence-policy.html> to determine if a violation of The Student Code of Conduct/ NonTitle IX Sexual Harassment and Sexual Violence Policy and/or the Non-Title IX Interpersonal Violence Policy has occurred. If so, SUNY Plattsburgh will promptly send written notice of the dismissal of the Formal Complaint under the Title IX Grievance Process and removal of the allegations to the conduct process.

### **Notice of Allegations**

The Title IX Coordinator will draft and provide the Notice of Allegations to any party to the allegations of sexual harassment. Such notice will occur as soon as practicable, after the institution receives a Formal Complaint of the allegations, if there are no extenuating circumstances.

The parties will be notified by their institutional email accounts if they are a student or employee, and by other reasonable means if they are neither.

The institution will provide sufficient time for the parties to review the Notice of Allegations and prepare a response before any initial interview.

The Title IX Coordinator or designee may determine that the Formal Complaint must be dismissed on the mandatory grounds identified above, and will issue a Notice of Dismissal. If such a determination is made, any party to the allegations of sexual harassment identified in the Formal Complaint will receive the Notice of Dismissal in conjunction with, or in separate correspondence after, the Notice of Allegations.

### **Contents of Notice**

The Notice of Allegations will include the following:

- Notice of the institution's Title IX Grievance Process including any Informal Resolution Process
- Notice of the allegations potentially constituting covered sexual harassment, and sufficient details known at the time the notice is issued, such as the identities of the parties involved in the incident, if known, including the complainant; the conduct allegedly constituting covered sexual harassment; and the date and location of the alleged incident, if known.
- A statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- A statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney, as required under 34 C.F.R. § 106.45(b)(5)(iv);
- A statement that before the conclusion of the investigation, the parties may inspect and review evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which the institution does not intend to rely in reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a party or other source, as required under 34 C.F.R. § 106.45(b)(5)(vi);



Under the Student Code of Conduct falsification of information is prohibited: 11.01 Willful falsification of information on College records or to College officials is prohibited; 11.02 Willfully providing false information for purposes of obtaining services is prohibited; 11.03 Possession or use of another person's ID card or an invalid ID is prohibited.

### **Ongoing Notice**

If, in the course of an investigation, the institution decides to investigate allegations about the complainant or respondent that are not included in the Notice of Allegations and are otherwise covered "sexual harassment" falling within the Title IX Grievance Policy, the institution will notify the parties whose identities are known of the additional allegations by their institutional email accounts or other reasonable means.

The parties will be provided sufficient time to review the additional allegations to prepare a response before any initial interview regarding those additional charges.

### **Advisor of Choice and Participation of Advisor of Choice**

SUNY Plattsburgh will provide the parties equal access to advisors and support persons; any restrictions on advisor participation will be applied equally.

The SUNY Plattsburgh has a long-standing practice of requiring students to participate in the process directly and not through an advocate or representative. Students participating as Complainant or Respondent in this process may be accompanied by an Advisor of Choice to any meeting or hearing to which they are required or are eligible to attend. The Advisor of Choice is not an advocate. Except where explicitly stated by this Policy, as consistent with the Final Rule, Advisors of Choice shall not participate directly in the process as per standard policy and practice of SUNY Plattsburgh.

SUNY Plattsburgh will not intentionally schedule meetings or hearings on dates where the Advisors of Choice for all parties are not available, provided that the Advisors act reasonably in providing available dates and work collegially to find dates and times that meet all schedules.

SUNY Plattsburgh's obligations to investigate and adjudicate in a prompt timeframe under Title IX and other college policies apply to matters governed under this Policy, and SUNY Plattsburgh cannot agree to extensive delays solely to accommodate the schedule of an Advisor of Choice. The determination of what is reasonable shall be made by the Title IX Coordinator, Director of Student Conduct, or designee. SUNY Plattsburgh will not be obligated to delay a meeting or hearing under this process more than five (5) days due to the unavailability of an Advisor of Choice, and may offer the party the opportunity to obtain a different Advisor of Choice or utilize one provided by SUNY Plattsburgh.

### **Notice of Meetings and Interviews**

SUNY Plattsburgh will provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings with a party, with sufficient time for the party to prepare to participate.

### **Delays**

Each party may request a one-time delay in the Grievance Process of up to five (5) days for good cause (granted or denied in the sole judgment of the Title IX Coordinator, Director of Student Conduct, or designee) provided that the requestor provides reasonable notice and the delay does not overly inconvenience other parties.

For example, a request to take a five day pause made an hour before a hearing for which multiple parties and their advisors have traveled to and prepared for shall generally not be granted, while a request for a five day pause in the

middle of investigation interviews to allow a party to obtain certain documentary evidence shall generally be granted.

The Title IX Coordinator, Director of Student Conduct, or designee shall have sole judgment to grant further pauses in the Process.

## **Investigation**

### **General Rules of Investigations**

The Title IX and Non-Discrimination Investigator and/or the Title IX Coordinator and/or an investigator designated by the Title IX Coordinator will perform an investigation under a reasonably prompt timeframe of the conduct alleged to constitute covered sexual harassment after issuing the Notice of Allegations.

SUNY Plattsburgh and not the parties, has the burden of proof and the burden of gathering evidence, i.e. the responsibility of showing a violation of this Policy has occurred. This burden does not rest with either party, and either party may decide not to share their account of what occurred or may decide not to participate in an investigation or hearing. This does not shift the burden of proof away from SUNY Plattsburgh and does not indicate responsibility.

SUNY Plattsburgh cannot access, consider, or disclose medical records without a waiver from the party (or parent, if applicable) to whom the records belong or of whom the records include information. SUNY Plattsburgh will provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence, (i.e. evidence that tends to prove and disprove the allegations) as described below.

### **Inspection and Review of Evidence**

Prior to the completion of the investigation, the parties will have an equal opportunity to inspect and review the evidence obtained through the investigation. The purpose of the inspection and review process is to allow each party the equal opportunity to meaningfully respond to the evidence prior to conclusion of the investigation.

Evidence that will be available for inspection and review by the parties will be any evidence that is directly related to the allegations raised in the Formal Complaint. It will include any:

1. Evidence that is relevant, even if that evidence does not end up being relied upon by the institution in making a determination regarding responsibility;
2. Inculpatory or exculpatory evidence (i.e. evidence that tends to prove or disprove the allegations) that is directly related to the allegations, whether obtained from a party or other source.

*All parties must submit any evidence they would like the investigator to consider prior to when the parties' time to inspect and review evidence begins. See, 85 Fed. Reg. 30026, 30307 (May 19, 2020).*

The institution will send the evidence made available for each party and each party's advisor, if any, to inspect and review through an electronic format or a hard copy. The Institution is not under an obligation to use any specific process or technology to provide the evidence and shall have the sole discretion in terms of determining format and any restrictions or limitations on access.

The parties will have ten (10) calendar days to inspect and review the evidence and submit a written response by email to the investigator. The investigator will consider the parties' written responses before completing the Investigative Report. *Parties may request a reasonable extension as their designated extension request.*

The institution will provide the parties up to ten (10) days to provide a response, after which the investigator will not

be required to accept a late submission. Investigator has (10) days to generate a report or, alternatively, may provide the parties with written notice extending the investigation providing a reasonable timeline for the days of the extension and explaining the reason for the extension.

Any evidence subject to inspection and review will be available at any hearing, including for purposes of cross-examination.

The parties and their advisors must sign an agreement not to disseminate any of the evidence subject to inspection and review or use such evidence for any purpose unrelated to the Title IX grievance process. See, 85 Fed. Reg. 30026, 30435 (May 19, 2020).

The parties and their advisors agree not to photograph or otherwise copy the evidence. See, 85 Fed. Reg. 30026, 30435 (May 19, 2020).

#### **Inclusion of Evidence Not Directly Related to the Allegations:**

Evidence obtained in the investigation that is determined in the reasoned judgment of the investigator not to be directly related to the allegations in the Formal Complaint will not be disclosed, or may be appropriately redacted before the parties' inspection to avoid disclosure of personally identifiable information of a student. Any evidence obtained in the investigation that is kept from disclosure or appropriately redacted will be documented in a "privilege log" that may be reviewed by the parties and their advisors, if any. See, 85 Fed. Reg. 30026, 30438 (May 19, 2020).

#### **Investigative Report**

The Title IX and Non-Discrimination Investigator and/or the Title IX Coordinator and/or an investigator designated by the Title IX Coordinator will create an Investigative Report that fairly summarizes relevant evidence, will and provide that Report to the parties at least ten (10) calendar days prior the hearing in an electronic format or a hard copy for each party's review and written response.

The Investigative Report is not intended to catalog all evidence obtained by the investigator, but only to provide a fair summary of that evidence.

Only relevant evidence (including both inculpatory and exculpatory – i.e. tending to prove and disprove the allegations - relevant evidence) will be referenced in the Investigative Report.

The investigator may redact irrelevant information from the Investigative Report when that information is contained in documents or evidence that is/are otherwise relevant. See, 85 Fed. Reg. 30026, 30304 (May 19, 2020).

#### **Hearing**

##### **General Rules of Hearings**

SUNY Plattsburgh will not issue a disciplinary sanction arising from an allegation of covered sexual harassment without holding a live hearing *unless otherwise resolved through an informal resolution process*.

The live hearing may be conducted with all parties physically present in the same geographic location, or, at SUNY Plattsburgh's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually through video conferencing, such as Zoom or Skype. This technology will enable participants simultaneously to see and hear each other. At its discretion, SUNY Plattsburgh may delay or adjourn a hearing based on technological errors not within a party's control.

All proceedings will be recorded through audio recording. That recording will be made available to the parties upon request for inspection and review per Section (VII)(E) of the Student Conduct Manual. Section (VII)(E) of the Student Conduct Manual as it relates to this policy reads:

- Students charged may request supervised access to the recording during the period that the recording is preserved. All recordings will be preserved and maintained for a minimum of five years. In cases resulting from charges of 6, Dating and Domestic Violence, 22, Sexual Violence, and 23, Stalking, Sexual Harassment, Sexual Exploitation, the recording shall be preserved and maintained for at least seven years. The Student Conduct Office does not provide transcriptions. A copy of the recording will only be provided with a court-ordered subpoena.

Prior to obtaining access to any evidence, the parties and their advisors must sign an agreement not to disseminate any of the testimony heard or evidence obtained in the hearing or use such testimony or evidence for any purpose unrelated to the Title IX Grievance Process. Once signed, this Agreement may not be withdrawn See, 85 Fed. Reg. 30026, 30435 (May 19, 2020).

### **Continuances or Granting Extensions**

SUNY Plattsburgh may determine that multiple sessions or a continuance (i.e. a pause on the continuation of the hearing until a later date or time) is needed to complete a hearing. If so, SUNY Plattsburgh will notify all participants and endeavor to accommodate all participants' schedules and complete the hearing as promptly as practicable.

### ***Newly-discovered Evidence***

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

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

The Board Hearing Officer 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 newlydiscovered evidence or witness has the burden of establishing these questions by the preponderance of the evidence.

If the Board Hearing Officer 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.

### **Participants in the live hearing**

Live hearings are not public, and the only individuals permitted to participate in the hearing are as follows:

#### ***Complainant and Respondent (The Parties)***

- The parties cannot waive the right to a live hearing.
- The institution may still proceed with the live hearing in the absence of a party, and may reach a determination of responsibility in their absence, including through any evidence gathered that does not constitute a "statement" by that party. 85 Fed. Reg. 30026, 30361 (May 19, 2020).
  - For example, A verbal or written statement constituting part or all of the sexual harassment itself is not a "prior statement" that must be excluded if the maker of the statement does not submit to cross-examination about that statement. In other words, a prior statement would not include a document, audio recording, audiovisual reading, and digital media, including but not limited to text messages, emails, and social media postings, that constitute the conduct alleged to have been the act of sexual harassment under the formal complaint. See, OCR Blog (May 22, 2020), available at <https://www2.ed.gov/about/offices/list/ocr/blog/20200522.html>
- SUNY Plattsburgh will not threaten, coerce, intimidate or discriminate against the party in an attempt to

secure the party's participation. See 34 C.F.R. § 106.71; see also 85 Fed. Reg. 30026, 30216 (May 19, 2020). · If a party does not submit to cross-examination, the decision-maker cannot rely on any prior statements made by that party in reaching a determination regarding responsibility, but may reach a determination regarding responsibility based on evidence that does not constitute a "statement" by that party. · The decision-maker cannot draw an inference about the determination regarding responsibility based solely on a party's absence from the live hearing or refusal to answer cross examination or other questions.

See 34 C.F.R. §106.45(b)(6)(i).

- The parties shall be subject to the institution's Rules of Decorum

#### *The Decision-maker*

- The hearing body/Board will consist of a panel of three (3) decision-makers.
- No member of the hearing body/Board will also have served as the Title IX Coordinator, Title IX investigator, or advisor to any party in the case, nor may any member of the hearing body/Conduct Board serve on the appeals body in the case.
- No member of the hearing body/Board will have a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.
- The hearing body/Board will be trained on topics including how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for complainants, and any technology to be used at the hearing.
- The parties will have an opportunity to raise any objections regarding a decision-maker's actual or perceived conflicts of interest or bias at the commencement of the live hearing.

#### *Advisor of choice*

- The parties have the right to select an advisor of their choice, who may be, but does not have to be, an attorney.
- The advisor of choice may accompany the parties to any meeting or hearing they are permitted to attend, but may not speak for the party, except for the purpose of cross-examination.
- In addition to selecting an advisor to conduct cross-examination, the parties may select an advisor who may accompany the parties to any meeting or hearing they are permitted to attend, but may not speak for the party.
- The parties are not permitted to conduct cross-examination; it must be conducted by the advisor. As a result, if a party does not select an advisor, the institution will select an advisor to serve in this role for the limited purpose of conducting the cross-examination at no fee or charge to the party.
- The advisor is not prohibited from having a conflict of interest or bias in favor of or against complainants or respondents generally, or in favor or against the parties to the particular case.
- The advisor is not prohibited from being a witness in the matter.
- If a party does not attend the live hearing, the party's advisor may appear and conduct cross-examination on their behalf. 85 Fed. Reg. 30026, 30340 (May 19, 2020).
- If neither a party nor their advisor appear at the hearing, SUNY Plattsburgh will provide an advisor to appear on behalf of the non-appearing party. See, 85 Fed. Reg. 30026, 30339-40 (May 19, 2020). · Advisors shall be subject to the institution's Rules of Decorum, and may be removed upon violation of those Rules.
- Witnesses cannot be compelled to participate in the live hearing, and have the right not to participate in the hearing free from retaliation. See, 85 Fed. Reg. 30026, 30360 (May 19, 2020).
- If a witness does not submit to cross-examination, as described below, the decision-maker cannot rely on any statements made by that witness in reaching a determination regarding responsibility, including any statement relayed by the absent witness to a witness or party who testifies at the live hearing. 85 Fed. Reg. 30026, 30347 (May 19, 2020).
- Witnesses shall be subject to the institution's Rules of Decorum

## Hearing Procedures

For all live hearings conducted under this Title IX Grievance Process, the procedure will be as follows:

Board Hearing Officer will open and establish rules and expectations for the hearing as well as introducing the parties present and the allegations involved.

The Parties will each be given the opportunity to provide opening statements;

The hearing body/Board will ask questions of the Parties and Witnesses;

The hearing will then proceed with the parties being given the opportunity for live cross examination. During the Parties' cross-examination, Decision-makers/Board will have the authority to pause cross-examination at any time for the purposes of asking follow up questions. The Board Hearing Officer may pause cross-examination at any time it is necessary in order to enforce the established rules of decorum.

Should a Party or the Party's Advisor choose not to cross-examine a Party or Witness, the Party shall affirmatively waive cross-examination through a written or oral statement to the Board

Hearing Officer. A Party's waiver of cross-examination does not eliminate the ability of the Decision-maker/Board to use statements made by the Party.

### Live Cross-Examination Procedure

Each party's advisor will conduct live cross-examination of the other party or parties and witnesses. During this live-cross examination the advisor will ask the other party or parties and witnesses relevant questions and followup questions, including those challenging credibility directly, orally, and in real time.

Before any cross-examination question is answered, the Board Hearing Officer will determine if the question is relevant. Cross-examination questions that are duplicative of those already asked, including by Decisionmaker/Board may be deemed irrelevant if they have been asked and answered.

### Review of Recording

The recording of the hearing will be available for supervised review upon request by the parties within **one (1) business day of the hearing** unless there are any extenuating circumstances. The recording of the hearing will not be provided to parties or advisors of choice. Please see Section (VII)(E) of the Student Conduct Manual for more information.

## Determination Regarding Responsibility

### Standard of Proof

SUNY Plattsburgh uses the preponderance of the evidence standard for investigations and determinations regarding responsibility of formal complaints covered under this Policy. This means that the investigation and hearing determines whether it is more likely than not that a violation of the Policy occurred.

### General Considerations for Evaluating Testimony and Evidence

While the opportunity for cross-examination is required in all Title IX hearings, determinations regarding responsibility may be based in part, or entirely, on documentary, audiovisual, and digital evidence, as warranted in the reasoned judgment of the Decision-maker/Board.

Decision-makers shall not draw inferences regarding a party or witness' credibility based on the party or witness' status as a complainant, respondent, or witness, nor shall it base its judgments in stereotypes about how a party or witness would or should act under the circumstances.

Generally, credibility judgments should rest on the demeanor of the party or witness, the plausibility of their testimony, the consistency of their testimony, and its reliability in light of corroborating or conflicting testimony or

evidence.

Still, credibility judgments should not rest on whether a party or witness' testimony is non-linear or incomplete, or if the party or witness is displaying stress or anxiety.

Decision-makers will afford the highest weight relative to other testimony to first-hand testimony by parties and witnesses regarding their own memory of specific facts that occurred. Both inculpatory and exculpatory (i.e. tending to prove and disprove the allegations) evidence will be weighed in equal fashion.

Except where specifically barred by the Title IX Final Rule, a witness' testimony regarding third-party knowledge of the facts at issue will be allowed, but will generally be accorded lower weight than testimony regarding direct knowledge of specific facts that occurred.

The Final Rule requires that SUNY Plattsburgh allow parties to call "expert witnesses" for direct and cross examination. SUNY Plattsburgh does not provide for expert witnesses in other proceedings. While the expert witness will be allowed to testify and be crossed as required by the Final Rule, the Decision-maker/Board will be instructed to afford lower weight to non-factual testimony of the expert relative to fact witnesses, and any expert testimony that is not directed to the specific facts that occurred in the case will be afforded lower weight relative to fact witnesses, regardless of whether the expert witness testimony is the subject of cross examination and regardless of whether all parties present experts as witnesses.

The Final Rule requires that SUNY Plattsburgh allow parties to call character witnesses to testify. SUNY Plattsburgh does not provide for character witnesses in other proceedings. While the character witnesses will be allowed to testify and be crossed as required by the Final Rule, the Decision-maker/Board will be instructed to afford very low weight to any non-factual character testimony of any witness.

The Final Rule requires that SUNY Plattsburgh admit and allow testimony regarding polygraph tests ("lie detector tests") and other procedures that are outside of standard use in academic and non-academic conduct processes. While the processes and testimony about them will be allowed to testify and be crossed as required by the Final Rule, the Decision-maker/Board will be instructed to afford lower weight to such processes relative to the testimony of fact witnesses.

Where a party or witness' conduct or statements demonstrate that the party or witness is engaging in retaliatory conduct, including but not limited to witness tampering and intimidation, the {Decision-maker} may draw an adverse inference as to that party or witness' credibility.

### **Components of the Determination Regarding Responsibility**

The written Determination Regarding Responsibility will be issued simultaneously to all parties through their institution email account, or other reasonable means as necessary. The Determination will include:

1. Identification of the allegations potentially constituting covered sexual harassment;
2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
3. Findings of fact supporting the determination;
4. Conclusions regarding which section of the Student Code of Conduct if any, the respondent has or has not violated.
5. For each allegation:
  - a. A statement of, and rationale for, a determination regarding responsibility;
  - b. A statement of, and rationale for, any disciplinary sanctions the recipient imposes on the respondent; and

- c. A statement of, and rationale for, whether remedies designed to restore or preserve equal access to the recipient's education program or activity will be provided by the recipient to the complainant; and
6. The recipient's procedures and the permitted reasons for the complainant and respondent to appeal (described below in "Appeal").

### **Timeline of Determination Regarding Responsibility**

SUNY Plattsburgh will strive to issue a determination regarding responsibility within ten (10) business days of the completion of the hearing.

### **Finality**

The determination regarding responsibility becomes final either on the date that the institution provides the parties with the written determination of the result of the appeal, if an appeal is filed consistent with the procedures and timeline outlined in "Appeals" below, or if an appeal is not filed, the date on which the opportunity to appeal expires.

### **Appeals**

Each party may appeal (1) the dismissal of a formal complaint or any included allegations and/or (2) a determination regarding responsibility. To appeal, a party must submit their written appeal within five (5) business days of being notified of the decision, indicating the grounds for the appeal.

The limited grounds for appeal available are as follows:

- Procedural irregularity that affected the outcome of the matter (i.e. a failure to follow the institution's own procedures);
- New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
- The Title IX Coordinator, investigator(s), or a decision-maker/Board member had a conflict of interest or bias for or against an individual party, or for or against complainants or respondents in general, that affected the outcome of the matter.
- Sanction Severity: A sanction imposed as a result of the original conduct hearing that is significantly outside of the parameters of the "Sanction Guidelines" may be appealed. Please see Section (VI) of the Student Conduct Manual for more information.

The submission of appeal stays any sanctions for the pendency of an appeal. Supportive measures and remote learning opportunities remain available during the pendency of the appeal.

If a party appeals, the institution will as soon as practicable notify the other party in writing of the appeal, however the time for appeal shall be offered equitably to all parties and shall not be extended for any party solely because the other party filed an appeal.

Appeals may be no longer than (2,500) words or (10) pages (including attachments). Appeals should be submitted in electronic form using ARIAL or TIMES NEW ROMAN, 12 point font, and double-spaced. Appeals should use footnotes, not endnotes. Appeals that do not meet these standards may be returned to the party for correction, but the time for appeal will not be extended unless there is evidence that technical malfunction caused the appeal document not to meet these standards.

Appeals will be facilitated by an Appeal Board Officer and will be decided by an Appeal Board that will consist of a panel of three (3) decision-makers who will be free of conflict of interest and bias, and will not serve as investigator, Title IX Coordinator, or hearing decision-maker in the same matter.

Outcome of appeal will be provided in writing simultaneously to both parties, and include rationale for the decision.



### **Retaliation**

SUNY Plattsburgh will keep the identity of any individual who has made a report or complaint of sex discrimination confidential, including the identity of any individual who has made a report or filed a Formal Complaint of sexual harassment under this Title IX Grievance Policy, any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, and any witness, except as permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding under this Title IX Grievance Policy.

No person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX of the Education Amendments of 1972 or its implementing regulations.

No person may intimidate, threaten, coerce, or discriminate against any individual because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing under this Title IX Grievance Policy.

Any intimidation, threats, coercion, or discrimination, for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations constitutes retaliation. This includes any charges filed against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but that arise from the same facts or circumstances as a report or complaint of sex discrimination or a report or Formal Complaint of sexual harassment.

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 Plattsburgh recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct.

SUNY Plattsburgh strongly encourages students to report incidents of domestic violence, dating violence, stalking, or sexual assault to institution officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to SUNY Plattsburgh officials or law enforcement will not be subject to SUNY Plattsburgh 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. This is covered under SUNY Plattsburgh's Drug & Alcohol Use Amnesty Policy as outlined in the Student Code of Conduct, Sexual Harassment and Sexual Violence Policy, Interpersonal Violence Policy.

The Non-Title IX Sexual Harassment and Sexual Violence Policy can be found here:

<https://www.plattsburgh.edu/about/offices-divisions/administration-finance/management-services/campus-handbook/section-ii-affirmative-action-equal-opportunity/sexual-violence-policy.html>.

The Non-Title IX Interpersonal Violence Policy can be found here:

<https://www.plattsburgh.edu/about/offices-divisions/administration-finance/management-services/campus-handbook/section-ii-affirmative-action-equal-opportunity/interpersonal-violence-policy.html>].

Complaints alleging retaliation may be filed according to the Complaint Procedure for Review of Allegations of Unlawful Discrimination/Harassment Policy which can be found here:

<https://www.plattsburgh.edu/about/offices-divisions/administration-finance/management-services/campus-handbook/section-ii-affirmative-action-equal-opportunity/complaint-of-discrimination-procedure-policy.html>.

## Appendix F

The following College policy and procedures will be applied to all Title IX cases that fall under the Final Rule as outlined in Appendix E of the Student Conduct Manual.

Language within this policy that applies to the adjudication process facilitated by the Student Conduct Office is in red. A link to the official policy in full from the campus website can be [found here](#).

### **Informal Resolution Policy**

#### **1.0 Purpose**

On May 19, 2020, the U.S. Department of Education issued a Final Rule governing the Title IX grievance process, effective August 14, 2020. The Final Rule requires that all colleges and universities hold a live hearing before making any determination regarding responsibility for covered reports of Title IX sexual harassment, including sexual violence. This hearing must provide for live cross-examination by the parties' advisors.

However, under § 106.45(b)(9) of the Final Rule, colleges and universities may offer and facilitate informal resolution processes, as long as each party voluntarily agrees to the process through an informed, written consent. This option is a change from long-standing Departmental guidance discouraging the use of informal procedures to address sexual harassment and prohibiting the use of mediation to address sexual assault. In the Preamble to the Final Rule, the Department states that it views informal resolutions as a way to resolve sexual harassment allegations in a less adversarial manner than the investigation and adjudication procedures that comprise the § 106.45 grievance process.

#### **3.0 Units and Persons Affected**

*All college students and college employees, as well as contractors/vendors and visitors to the campus.*

#### **4.0 Policy Statement**

##### **How does the Title IX Informal Resolution Policy impact other campus disciplinary policies?**

In recent years, "Title IX" cases have become a short-hand for any campus disciplinary process involving sex discrimination, including those arising from sexual harassment and sexual assault. But under the Final Rule, SUNY Plattsburgh 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 defined below.

SUNY Plattsburgh remains committed to addressing any violations of its policies, even those not meeting the narrow standards defined under the Title IX Final Rule.

Specifically, our campus has:

A **Code of Conduct** that defines certain behavior as a violation of campus policy, and a separate **Sexual Misconduct Policy** that addresses the types of sex-based offenses constituting a violation of campus policy, and the procedures for investigating and adjudicating those sex-based offenses. *[Note: Any Sexual Misconduct Policy that runs parallel to the Title IX Grievance Policy, such as a policy implementing New York Education Law 129-B or other state laws or policies, can only fully govern how the institution responds to violations falling outside their Title IX jurisdiction]*

To the extent that alleged misconduct falls outside the Title IX Grievance Policy, or misconduct falling outside the Title IX Grievance Policy is discovered in the course of investigating covered Title IX misconduct, the institution retains authority to investigate and adjudicate the allegations under the policies and procedures defined within the The Student Code of Conduct/ Non-Title IX Sexual Harassment and Sexual Violence Policy and/or the Non-Title IX Interpersonal Violence Policy through a separate grievance proceeding. The Non-Title IX Sexual Harassment and Sexual Violence Policy can be found here: <https://www.plattsburgh.edu/about/offices-divisions/administrationfinance/management-services/campus-handbook/section-ii-affirmative-action-equal-opportunity/sexual-violencepolicy.html>. The Non-Title IX Interpersonal Violence Policy can be found here: <https://www.plattsburgh.edu/about/offices-divisions/administration-finance/management-services/campus handbook/section-ii-affirmative-action-equal-opportunity/interpersonal-violence-policy.html>.

The elements established in the Title IX Informal Resolution Policy under the Final Rule have no effect and are not transferable to any other policy of the College for any violation of the Code of Conduct, employment policies, or any civil rights violation except as narrowly defined in this Policy. This Policy does not set a precedent for other policies or processes of the College and may not be cited for or against any right or aspect of any other policy or process.

## **5.0 Definitions**

*Defines abbreviations, acronyms, forms, words infrequently used and technical terms. This is an important heading and should contain an explanation of the title, keywords, forms, references, and any exhibits.*

## **6.0 Responsibilities**

### **Role of the Facilitator**

Informal resolution processes are managed by facilitators, who may not have a conflict of interest or bias in favor of or against complainants or respondents generally or regarding the specific Parties in the matter. The Title IX Coordinator may serve as the facilitator, subject to these restrictions.

All facilitators must have training in the definition of sexual harassment under 34 C.F.R. § 106.30(a), the scope of the institution's education program or activity, how to conduct informal resolution processes, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, or bias.

### **Confidentiality:**

In entering the informal resolution process, the Parties agree that any testimony and evidence (including admissions of responsibility) they share or receive during the informal resolution process concerning the allegations of the Formal Complaint is confidential. No evidence concerning the allegations obtained within the informal resolution process may be disseminated to any person, provided that any Party to the informal resolution process may generally discuss the allegations under investigation with a parent, friend, advisor, or other source of emotional support, or with an advocacy organization. As a condition of entering the informal resolution process, any evidence shared or received during the informal resolution process may not be used in any subsequent formal resolution process or institutional appeal.

## **7.0 Related Procedures**

### **Procedures for Entering and Exiting Informal Resolution Process**

Parties who do not wish to proceed with an investigation and live hearing, and instead seek the SUNY Plattsburgh's assistance to resolve allegations of Title IX-covered misconduct, may elect to enter the informal resolution process. Generally speaking, these resolution options are less time intensive than an investigation and live hearing, while still affording students an opportunity to actively participate in a process led by the SUNY Plattsburgh for resolution of their complaints.

The Parties may elect to enter the SUNY Plattsburgh's informal resolution process at any time after the filing of the Formal Complaint through an informed written consent. This informed written consent will include all terms of the elected informal process, including a statement that any agreement reached through the process is binding on the Parties.

No Party may be required to participate in informal resolution, and the SUNY Plattsburgh may never condition enrollment, employment, or enjoyment of any other right or privilege upon agreeing to informal resolution.

The Parties may elect to leave the informal resolution process at any point until the informal resolution process is concluded. If a Party elects to leave the informal resolution process, the formal resolution process recommences. In participating in the informal resolution process, the Parties understand that the timeframes governing the formal process temporarily cease, and only recommence upon reentry into the formal process.

#### **Determination to Approve Entry into Informal Resolution Process**

Even where the Parties agree to submit a matter to informal resolution, the Title IX Coordinator or designee must approve the decision to move the matter to the informal resolution process and may determine that informal resolution is not appropriate under the circumstances.

Factors that the Title IX Coordinator or designee may weigh in considering the appropriateness of the informal resolution process include, but are not limited to, the gravity of the allegations, whether there is an ongoing threat of harm or safety to the campus, whether the respondent is a repeat offender, and whether the Parties are participating in good faith. This determination is not subject to appeal.

Informal resolution processes may never be applied where the allegations include sexual violence: rape with penetration and/or domestic or dating violence.

Informal resolution is only permitted to address allegations of student-on-student sexual harassment, and is never allowed as an option to resolve allegations that an employee sexually harassed a student. See, 85 Fed. Reg. 30026, 30054 (May 19, 2020).

At any time after the commencement of the informal resolution process, the Title IX Coordinator or designee may determine that the informal resolution process is not an appropriate method for resolving the matter, and may require that the matter be resolved through the formal process. This determination is not subject to appeal.

#### **Informal Resolution Options**

SUNY Plattsburgh offers the following informal resolution procedures for addressing Formal Complaints of sexual harassment covered under this Policy:

##### Administrative Resolution – (via the Student Conduct Office)

Should the Parties mutually determine to enter the informal resolution process, and the respondent elects to accept responsibility for the allegations of the Formal Complaint at any point during the informal resolution process, the institution may administratively resolve the Formal Complaint.

Where the respondent admits responsibility, the Parties will receive simultaneous written notification of the acceptance of responsibility, and hearing body/Board will convene to determine the respondent's sanction and other remedies, as appropriate and consistent with institutional policy. The Parties will be given an opportunity to be heard at the sanctions hearing, including but not limited to the submission of impact statements. The Parties may be accompanied by their Advisor, but questioning of Parties or witnesses will not be permitted. The Parties will receive simultaneous written notification of the decision regarding sanctions and remedies, which may be appealed according to the process outlined in this policy and the Student Conduct Manual.

Mediation – (via the TIX Office or designee)

The purpose of mediation is for the parties who are in conflict to identify the implications of a student's actions and, with the assistance of a trained facilitator, identify points of agreement and appropriate remedies to address them. Either party can request mediation to seek resolution; mediation will be used only with the consent of both parties, who will be asked not to contact one another during the process. The Title IX Office will also review any request for mediation, and may decline to mediate based on the facts and circumstances of the particular case. Either party has the right to terminate the mediation process and choose or resume another option for resolution at any time.

The mediation process will typically commence within 14 days after the Title IX Office receives consent to mediate from both parties, and will continue until concluded or terminated by either party or the Title IX Office. During mediation, any potential investigation will halt, and calculations for time frames will be stayed. If the mediation results in a resolution, the disciplinary process will be concluded and the matter will be closed. If a resolution cannot be reached, the matter will be referred to the Title IX Coordinator to re-evaluate other options for resolution, including investigation.

During mediation, a facilitator will guide a discussion between the parties. In circumstances where the parties do not wish to meet face to face, either party can request "caucus" mediation, and the facilitator will conduct separate meetings. Whether or not the parties agree to meet face to face, each party will be permitted to bring an advisor of their choice to any meetings who may be, but is not required to be, an attorney.

At the conclusion of the mediation, the facilitator will memorialize the agreement that was reached between the parties. The Title IX Office will monitor adherence to the proposed solution and close the matter when compliance is satisfactory.

END OF STUDENT CONDUCT MANUAL

## INTERIM MEASURES

The College President or designee may place a student on Interim Suspension (including but not limited to, students charged with a felony, students involved in acts of violence) upon deciding that such action is necessary as the student in question poses a threat to the health and safety of any member of the campus community. A student placed on Interim Suspension will as soon as possible be afforded an appropriate hearing. The campus will promptly review existing Interim Suspensions at a party's request, including requests to modify the terms or discontinue it. Parties can submit evidence to support their request.

## PROCEDURES FOR EMPLOYEE DISCIPLINE AND SANCTIONS

When the respondent is an employee, a reporting individual may report to the Title IX Office, University Police, and/or Human Resources Services. The disciplinary process and any applicable sanctions will be conducted in accordance with applicable collective bargaining agreements as detailed in **Appendix G** of this document.

When the accused (respondent) is an employee of an affiliated entity or vendor of the college, college officials will, at the request of the reporting individual, assist in reporting to the appropriate office of the vendor or affiliated entity and, if the response of the vendor or affiliated entity is not sufficient, assist in obtaining a persona non grata letter, subject to legal requirements and college policy.

### Sex Offender Registry

If registered sex offenders are employed at the College or enrolled as a student at the College, information regarding these sex offenders will be made available to the public, according to the sex offender registry guidelines. The public should contact a University Police supervisor at (518) 564-2022 or in person at University Police located in the Health Center Building during normal business hours (Monday- Friday, 8 AM – 5 PM) to request sex offender information. *Please note: The New York State Sex Offenders Registry can be accessed by calling 1 (800) 262-3257 or at <http://criminaljustice.ny.gov/nsor/>.*

## OTHER SEX OFFENSE REQUIREMENTS

### Disclosure of Results of Disciplinary Proceedings

The College will, upon written request, disclose to the alleged victim of a crime of violence<sup>1</sup>, or a sex offense, the results of any disciplinary proceeding conducted by the College against the alleged perpetrator of such crime or offense. If the alleged victim is deceased as a result of such crime or offense, the next of kin of the victim shall be treated as the alleged victim for purposes of this paragraph.

<sup>1</sup> "Crime of violence"—defined in section 16 of title 18 in the United States Code—means:

- (a) an offense that has an element of the use, attempted use, or threatened use of physical force against the person or property of another, or
- (b) any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

## MISSING STUDENTS

All missing student reports must immediately be referred to University Police Dispatch at (518) 564-2022 for investigation. Upon notification of the missing person, University Police Patrol Officers will generate a police report and attempt to locate the student to determine his or her state of health and well-being. Within 24 hours, any reports of missing students who have not been located will be shared with the City of Plattsburgh Police Department or other law enforcement agencies as necessary.

If the student has provided the College with a missing person confidential contact (see below), University Police will notify that person within 24 hours of a determination that the student is missing. Only authorized campus officials and law enforcement officers in furtherance of a missing person investigation will have access to this information. Any other disclosure of this information is prohibited.

In addition, parents may be notified as part of the investigative process. If any student reported missing is less than 18 years of age and not emancipated, a custodial parent or guardian will be notified within 24 hours of a determination that the student is missing.

If the student reported missing is an off- campus student the appropriate law enforcement agency will be contacted. Investigative and crime reporting procedures will be coordinated by that agency or the agency in the jurisdiction where the student was last reported. University Police will assist as appropriate.

### How to Identify a Missing Person Confidential contact

Students may enter the contact information of a missing person confidential contact to be used if they are reported missing. Students who wish to identify a **missing person confidential contact** for police to utilize may do so within their web account at <https://mycampus.plattsburgh.edu/web/mycampus/home> on the home page of their account, by clicking on the “**View/Update Emergency Contact**” link. From here, click on the “**New Contact**” link to add information for an emergency contact. Be sure to select “**Missing- Person Confidential Contact**” from the list of options under **Relationship**. This contact will **Person Confidential Contact** from the list of only be utilized for locating a missing person.

## WEAPONS ON CAMPUS

Firearms and dangerous weapons of any type are not permitted on campus. Use, possession, or sale of firearms or other dangerous weapons by anyone on campus is strictly forbidden and is a violation of state and federal law as well as a violation of Section 12 of the Student Conduct Manual. The College President may grant exceptions only if such possession is required (i.e., sworn University Police personnel) or permitted for specifically authorized activities such as scientific research or educational programs. If authorization is granted it shall be in writing and is able to be rescinded at the College President’s discretion.

## CLERY CRIME STATISTICS FOR 2018, 2019, AND 2020

Table III: Criminal Offenses

<i>Crime Classification</i>	<i>Year</i>	<i>On-Campus Student Housing</i>	<i>On Campus Total</i>	<i>Non- Campus</i>	<i>Public Property</i>	<i>Unfounded</i>
<b><i>Criminal Homicide</i></b>						
Murder and Non-negligent Manslaughter	2018	0	0	0	0	0
	2019	0	0	0	0	0
	2020	0	0	0	0	0
Manslaughter by Negligence	2018	0	0	0	0	0
	2019	0	0	0	0	0
	2020	0	0	0	0	0
<b><i>Sexual Assault (Sex Offenses)</i></b>						
Rape	2018	11	11	0	0	1
	2019	7	7	0	1	1
	2020	6	6	0	0	1
Fondling	2018	0	0	0	0	0
	2019	2	3	0	0	1
	2020	1	1	0	0	0
Incest	2018	0	0	0	0	0
	2019	0	0	0	0	0
	2020	0	0	0	0	0
Statutory Rape	2018	0	0	0	0	0
	2019	3	3	0	0	0
	2020	0	0	0	0	0
<b><i>Robbery</i></b>	2018	0	0	0	1	0
	2019	0	0	0	0	0
	2020	0	0	0	0	0
<b><i>Aggravated Assault</i></b>	2018	1	2	0	0	0
	2019	4	4	0	1	0
	2020	2	2	0	0	0
<b><i>Burglary</i></b>	2018	2	4	0	0	0
	2019	1	2	0	0	0
	2020	5	6	0	0	0
<b><i>Motor Vehicle Theft</i></b>	2018	0	0	0	0	0
	2019	0	0	0	0	1
	2020	0	0	0	0	0
<b><i>Arson</i></b>	2018	0	0	0	0	0
	2019	0	0	0	0	0
	2020	0	2	0	0	0



### Hate Crimes

Hate crime statistics are reported for the following categories: Murder and Non-negligent Manslaughter, Manslaughter by Negligence, Sexual Assault / Sex Offenses (Rape, Fondling, Incest, Statutory Rape), Robbery, Aggravated Assault, Burglary, Motor Vehicle Theft, and Arson, as well as Larceny/Theft, Simple Assault, Intimidation, and Destruction/Damage/Vandalism of property that were motivated by bias.

- There was one hate crime reported in 2020.
  - One in the category of intimidation, characterized by race (on-campus).
- There were four hate crimes reported in 2019.
  - Two in the category of intimidation, characterized by race (on-campus residence hall).
  - One in the category of intimidation, characterized by religion (on-campus).
  - One in the category of destruction/damage/vandalism, characterized by race (on-campus residence hall).
- There was one hate crime reported in 2018.
  - One in the category of intimidation, characterized by race (on-campus).

**Table IV: Violence Against Women Act (VAWA) Offenses**

VAWA Offenses Classification	Year	On-Campus Student Housing	On-Campus Total	Non-Campus	Public Property	Unfounded
<i>Dating Violence</i>	2018	7	12	0	0	0
	2019	1	1	0	0	0
	2020	3	3	0	0	0
<i>Domestic Violence</i>	2018	1	3	0	1	0
	2019	2	2	1	0	0
	2020	1	1	0	0	0
<i>Stalking</i>	2018	3	6	0	0	0
	2019	3	5	0	0	0
	2020	8	10	0	0	0

**Table V: Arrests and Referrals for Disciplinary Actions**

Classification	Year	Arrests				Referrals for Disciplinary Action			
		On-Campus Student Housing	On-Campus	Non-Campus	Public Property	On-Campus Student Housing	On-Campus	Non-Campus	Public Property
<i>Weapons Law Violations</i>	2018	0	0	0	0	1	1	0	0
	2019	1	1	0	0	0	0	0	0
	2020	0	0	0	0	0	0	0	0
<i>Drug Law Violations</i>	2018	12	34	0	18	92	116	0	8
	2019	5	9	0	3	77	81	0	2
	2020	2	3	0	1	64	65	0	0
<i>Liquor Law Violations</i>	2018	0	0	0	12	175	181	0	2
	2019	0	3	0	11	287	289	0	2
	2020	0	0	0	0	207	216	0	0

## FIRE SAFETY REPORT

Under the Clery Act, institutions with on-campus student housing facilities must publish annually a fire safety report that provides information on campus fire safety practices and standards. SUNY Plattsburgh complies with this regulation by including all fire-related incidents at on-campus student housing facilities as part of a combined Annual Security and Fire Safety Report.

Information contained in this annual fire safety report includes number and cause of fires at all on-campus student housing facilities; number of fire-related deaths; related injuries; value of fire-related property damage; information on evacuation procedures; fire safety education and training programs; fire safety systems in each student housing facility; number of regular mandatory supervised fire drills; and policies on portable electrical appliances, smoking, and open flames. The Annual Security and Fire Safety Report includes three years of data.

### FIRE LOG

The campus Fire Log is maintained and updated by the Environment Health and Safety (EH&S) Office. You can view the log by visiting EH&S, located in room 136A of the Maintenance Building, on Sanborn Ave. The Fire Log is posted in a glass display case outside room 136A. You can get additional information about fire safety and EH&S at the website, <https://www.plattsburgh.edu/about/offices-divisions/administration-finance/administrative-services/business-solutions/environmental-health-safety/fire-prevention-safety.html>

### FIRE STATISTICS FOR 2018, 2019, AND 2020

**Table VI: 2018 Fire Statistics**

<i>Residential Building</i>	<i>Building Address</i>	<i>Total Fires in Each Building</i>	<i>Fire Number</i>	<i>Cause of Fire</i>	<i>Number of Injuries that Required Treatment at a Medical Facility</i>	<i>Number of Deaths Related to a Fire</i>	<i>Value of Property Damage Caused by Fire</i>
<i>Adirondack</i>	51 Sanborn Ave.	0	0	n/a	0	0	\$0.00
<i>Banks</i>	39 Sanborn Ave.	0	0	n/a	0	0	\$0.00
<i>deFredenburgh</i>	83 Rugar St.	0	0	n/a	0	0	\$0.00
<i>Harrington</i>	7 Rugar St.	1	1	Battery from electronic smoking device	0	0	\$20.00
<i>Hood</i>	79 Rugar St.	0	0	n/a	0	0	\$0.00
<i>Kent</i>	61 Rugar St.	0	0	n/a	0	0	\$0.00
<i>Macdonough</i>	73 Broad St.	0	0	n/a	0	0	\$0.00
<i>Macomb</i>	49 Rugar St.	0	0	n/a	0	0	\$0.00

## 2021 Annual Security and Fire Safety Report

Mason	73 Rugar St.	0	0	n/a	0	0	\$0.00
Moffitt	87 Rugar St.	0	0	n/a	0	0	\$0.00
Whiteface	64 Rugar St.	0	0	n/a	0	0	\$0.00
Wilson	85 Rugar St.	0	0	n/a	0	0	\$0.00

**Table VII: 2019 Fire Statistics**

<i>Residential Building</i>	<i>Building Address</i>	<i>Total Fires in Each Building</i>	<i>Fire Number</i>	<i>Cause of Fire</i>	<i>Number of Injuries that Required Treatment at a Medical Facility</i>	<i>Number of Deaths Related to a Fire</i>	<i>Value of Property Damage Caused by Fire</i>
Adirondack	51 Sanborn Ave.	1	1	Food caught fire in oven	0	0	\$0.00
Banks	39 Sanborn Ave.	0	0	n/a	0	0	\$0.00
deFredenburgh	83 Rugar St.	1	1	Smoking hookah	0	0	\$0.00
Harrington	7 Rugar St.	0	0	n/a	0	0	\$0.00
Hood	79 Rugar St.	0	0	n/a	0	0	\$0.00
Kent	61 Rugar St.	0	0	n/a	0	0	\$0.00
Macdonough	73 Broad St.	0	0	n/a	0	0	\$0.00
Macomb	49 Rugar St.	0	0	n/a	0	0	\$0.00
Mason	73 Rugar St.	0	0	n/a	0	0	\$0.00
Moffitt	87 Rugar St.	0	0	n/a	0	0	\$0.00
Whiteface	64 Rugar St.	0	0	n/a	0	0	\$0.00
Wilson	85 Rugar St.	0	0	n/a	0	0	\$0.00

**Table VIII: 2020 Fire Statistics**

<i>Residential Building</i>	<i>Building Address</i>	<i>Total Fires in Each Building</i>	<i>Fire Number</i>	<i>Cause of Fire</i>	<i>Number of Injuries that Required Treatment at a Medical Facility</i>	<i>Number of Deaths Related to a Fire</i>	<i>Value of Property Damage Caused by Fire</i>
Adirondack	51 Sanborn Ave.	0	0	n/a	0	0	\$0.00
Banks	39 Sanborn Ave.	0	0	n/a	0	0	\$0.00
deFredenburgh	83 Rugar St.	0	0	n/a	0	0	\$0.00
Harrington	7 Rugar St.	0	0	n/a	0	0	\$0.00
Hood	79 Rugar St.	0	0	n/a	0	0	\$0.00
Kent	61 Rugar St.	0	0	n/a	0	0	\$0.00
Macdonough	73 Broad St.	0	0	n/a	0	0	\$0.00
Macomb	49 Rugar St.	0	0	n/a	0	0	\$0.00
Mason	73 Rugar St.	0	0	n/a	0	0	\$0.00
Moffitt	87 Rugar St.	0	0	n/a	0	0	\$0.00
Whiteface	64 Rugar St.	1	1	Burnt EasyMac Container	0	0	\$0.00
Wilson	85 Rugar St.	0	0	n/a	0	0	\$0.00

FIRE SAFETY SYSTEMS FOR ON-CAMPUS STUDENT RESIDENCE FACILITIES
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**Table IX: Overview of the Fire Safety System for Each On-campus Student Housing Facility**

<i>Building Name</i>	<i>Fire Alarm</i>	<i>Fire Detection</i>	<i>Detector Types</i>	<i>Sprinklers</i>	<i>Sprinkler Type</i>	<i>Remarks</i>
<i>Adirondack</i>	Full	Full	Smoke and Heat	Partial	Wet	Onan 30 KW Emergency Generator
<i>Banks</i>	Full	Full	Smoke and Heat	Partial	Wet	Onan 150 KW Emergency Generator
<i>deFredenburgh</i>	Full	Full	Smoke and Heat	Full	Wet	Kohler 900DSEC Emergency Generator
<i>Harrington</i>	Full	Full	Smoke and Heat	Full	Wet	Building Emergency UPS for fire alarm/life safety
<i>Hood</i>	Full	Full	Smoke and Heat	Full	Wet	Kohler 900DSEC Emergency Generator
<i>Kent</i>	Full	Full	Smoke and Heat	Partial	Wet	Battery Backup for fire alarm/life safety
<i>Macdonough</i>	Full	Full	Smoke and Heat	Full	Dry/Wet	Battery Backup for fire alarm/life safety
<i>Macomb</i>	Full	Full	Smoke and Heat	Partial	Wet	Battery Backup for fire alarm/life safety
<i>Mason</i>	Full	Full	Smoke and Heat	Full	Wet	Kohler 900DSEC Emergency Generator
<i>Moffitt</i>	Full	Full	Smoke and Heat	Full	Wet	Kohler 900DSEC Emergency Generator
<i>Whiteface</i>	Full	Full	Smoke and Heat	Partial	Wet	Onan 180 KW Emergency Generator
<i>Wilson</i>	Full	Full	Smoke and Heat	Full	Wet	Kohler 900DSEC Emergency Generator

### Residence Hall Fire Safety System Status Report

The campus upgraded residence hall fire alarm systems to meet SUNY mandates over a four- year period starting in summer 2002 and finishing in summer 2005.

- Installing full sprinkler coverage in the remaining residence halls is included in the college's Residence Hall Master Plan.
- The campus installed full sprinkler coverage in Macdonough Hall, Hood Hall, Harrington Hall, and deFredenburgh Hall, Mason Hall, Moffitt Hall and Wilson Hall, Macomb Hall, Whiteface Hall, and Kent Hall during renovation projects.
- Fire alarm systems have generator support and are fully operational during a power outage.



FIRE SAFETY POLICIES AND PROCEDURES
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**Table X: Fire Evacuation Drills in 2020**

<i>Building</i>	<i>Drill #1</i>	<i>Drill #2</i>	<i>Drill #3</i>	<i>Drill #4</i>	<i>Drill #5</i>	<i>Drill #6</i>
<i>Adirondack</i>	26-Feb	18-Sep	<u>23-Sep</u>	11-Dec		
<i>Banks</i>	26-Feb	N/A				
<i>deFredenburgh</i>	25-Feb	17-Sep	<u>22-Sep</u>	11-Dec		
<i>Harrington</i>	26-Feb	N/A				
<i>Hood</i>	25-Feb	17-Sep	<u>22-Sep</u>	11-Dec		
<i>Kent</i>	Offline	N/A	<u>18-Sep</u>	23-Sep	8-Dec	
<i>Macdonough</i>	26-Feb	18-Sep	<u>23-Sep</u>	11-Dec		
<i>Macomb</i>	26-Feb	18-Sep	<u>23-Sep</u>	11-Dec		
<i>Mason</i>	25-Feb	17-Sep	<u>23-Sep</u>	11-Dec		
<i>Moffitt</i>	25-Feb	17-Sep	<u>22-Sep</u>	11-Dec		
<i>Whiteface</i>	26-Feb	18-Sep	<u>23-Sep</u>	11-Dec		
<i>Wilson</i>	25-Feb	17-Sep	<u>23-Sep</u>	11-Dec		

Note: Shaded column denotes testing in Darkness

### If a Fire Occurs

If a fire occurs in your room or office, do the following:

- Do not fight the fire.
- Exit the room and close the door behind you to see if building occupants evacuated and are to assess how many students are present in case University Police or the fire department requests that information.

Based on the number of CAs available, CAs should walk the perimeter of the building

- Activate a fire alarm pull box if the building alarm has not sounded
- Do not use elevators. Exit the building using emergency exits and stairwells
- Once outside, move to a safe area at least 50 feet from the building.
- Dial 911 or University Police at 564-2022
- Do not return to an evacuated building until notified that it is safe by University Police.
- If you are unable to evacuate the building, Dial 911 with your location, remain in the room, close the door to the room, and block the bottom of the door with a wet towel if possible to prevent smoke from entering.
- If possible, identify your location by hanging clothing outside a window.
- Keep low, where air is less toxic

## Fire Alarm Activation in a Residence Hall

When a residential fire alarm is activated, building occupants must evacuate the building according to the procedures described above. Once outside, dial 911 or call University Police at (518) 564-2022. The reporting individual should identify him- or herself, and inform University Police or 911 if they see smoke and/or fire and its location.

CAs that are on duty should, if possible, remember to take the duty keys with them when exiting the building. CAs are expected to respond to any requests from University Police and the fire department personnel. CAs are not expected to fight the fire or linger in the building. They are to evacuate the building immediately.

Once outside, in the predetermined assembly area, CAs are required to check and notify University Police or the fire department of any students that are in the building.

## Evacuation

Campus building evacuations are initiated when it is no longer safe for occupants to remain within the building. The campus fire alarm systems are a very important and effective means of alerting people to safely evacuate residence halls, administrative and academic buildings during an emergency.



When a fire alarm sounds, building occupants must quickly proceed to the nearest exit designated by an exit sign without panicking or running. If possible, occupants should close doors and windows and turn off lights as the last person leaves a room or area.

If exits/stairwells are not clear or safe, occupants must go to the next closest exit/stairway. Stairwells are an important means of exiting multi-story buildings therefore, their fire doors should be kept closed. Elevators should not be used. Many elevators are programmed to shut down during a fire alarm. People who walk slowly or need assistance should walk on the right side of stairwells to prevent impeding others exiting. Once outside, gather at the predetermined safe assembly area at least 150 feet away so emergency personnel have clear access to the building. These designated areas can be found at <https://www.plattsburgh.edu/about/offices-divisions/student-affairs/emergency-management/evacuation-assembly-points.html>. The designated areas should be communicated by the faculty instructor, staff member, and/or building contacts. Try to account for the people in your work/class areas to ensure all occupants have left the building. Never re-enter a building without instructions from University Police or a designated building contact.

## Procedures for Reporting Fires for Statistics Purposes

To report a fire that has occurred, contact University Police or Environmental health and Safety to make such report. If University Police receive the report, they will provide a copy of the police report documenting the circumstances of the fire to EH&S for inclusion in the Annual Security and Fire Safety Report and state reporting if appropriate.

## Fire Safety Education and Training Programs for Students, Faculty and Staff

The College conducts emergency preparedness training for its administration and those that would be assisting and/or responding to an incident. EH&S educational efforts include distribution of a fire safety brochure entitled "Faculty and Staff Fire Safety Information" and posting of the "Campus Fire Safety Bulletin" on bulletin boards. Locked glass cabinets in the residence hall laundry rooms have fire safety posters which are periodically updated. RAs and RDs receive fire safety training during their annual training week prior to the beginning of the fall semester. Rules and regulations regarding fire safety are discussed with students at mandatory floor meetings the first week of each semester.

Fire safety programs are held for the entire campus community intermittently. In the event of a fire, contact 911 or University Police at (518) 564-2022.

EH&S has prepared a brochure about campus fire safety. The brochure is distributed around campus and is available at the following address: [http://web.plattsburgh.edu/files/156/files/Fire%20Safety%20Broch%202013\(1\).pdf](http://web.plattsburgh.edu/files/156/files/Fire%20Safety%20Broch%202013(1).pdf)

### Prohibited items

The following items are prohibited in and around college-operated residence halls:

- Burning Candles, incense, or any flame emitting articles
- Wax/candle warmers
- Any fire hazard as determined by the Fire Department or Fire Inspectors this includes natural Holiday Trees
- Fireworks, firearms, ammunition, air operated guns, paintballs guns, guns of any kind, knives or other weapons
- Explosives or dangerous chemicals
- Cooking except in designated kitchenettes
- Microwave ovens
- Halogen lights
- Air conditioning equipment (except those provided by the College)
- Ironing and washing, other than in designated areas of the residence hall.
- Hoverboards, Smoking, E-cigarettes and all of their accessories (*Please note: Tobacco use is prohibited in all SUNY Plattsburgh buildings, vehicles, and grounds except for a limited number of designated areas. For a full list of the designated areas, see the College's Tobacco- Restricted Campus Policy which can be found in Appendix C).*
- "Piggy-backed" extension cords (one plugged into another)
- Extension cords that lack all 3 prongs and an internal circuit breaker rated under 15 amps
- Giving false alarm of fire, tampering with fire equipment or fire alarm device, willful or careless use of any product or equipment that has potential to initiate a fire alarm.

# APPENDICES

The information contained in these appendices are included as we believe that they include helpful information for members of our community.

## APPENDIX A: UNIVERSITY POLICE CONTACT INFORMATION

### Phone and Fax:

Phone: (518) 564-2022

Fax: (518) 564-4025

Hazing Hotline: (518) 564-5555

Vandalism Hotline: (518) 564-2677

Email: [universitypolice@plattsburgh.edu](mailto:universitypolice@plattsburgh.edu)

Silent Witness (Anonymous Reporting) Website:

<https://www.plattsburgh.edu/plattslife/health-safety/university-police/silent-witness.html>

### Mailing Address:

University Police

SUNY Plattsburgh

101 Broad Street

Plattsburgh, New York 12901

### Physical Address:

University Police

45 Rugar Street

Health Center Building

Plattsburgh, New York 12901

In case of an **EMERGENCY** dial 911

## APPENDIX B: DEFINITIONS

### Crime Definitions

The definitions for murder, robbery, aggravated assault, burglary, motor vehicle theft, weapon law violations, drug abuse violations and liquor law violations are excerpted from the Federal Bureau of Investigation's (FBI's) Uniform Crime Reporting Handbook (UCR). Hate crimes are classified according to the FBI's Uniform Crime Reporting Hate Crime Data Collection Guidelines and Training Guide for Hate Crime Data Collection. The definitions of sex offenses (unless otherwise stated), dating violence, domestic violence, and stalking are excerpted from the Violence Against Women Act.

### Clery Crimes

**Murder and Non-negligent Manslaughter** The willful (non-negligent) killing of one human

being by another.

### Manslaughter by Negligence

The killing of another person through gross negligence. (Gross negligence is the intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or property of another.)

### Sexual Assault (Sex Offenses)

Any sexual act directed against another person, without the consent of the victim, including instances where the victim is incapable of giving consent.

Clery Act **sex offenses** include:

1. **Rape** is the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of



the victim.

2. **Fondling** ("Forcible Touching" in the NYS Penal Law) is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
3. **Incest** is sexual intercourse between persons who are related to each other within degrees wherein marriage is prohibited by law.
4. **Statutory Rape** is sexual intercourse with a person who is under the statutory age of consent.

**Robbery**

The taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or by putting the victim in fear.

**Aggravated Assault**

An unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault usually is accompanied by the use of a weapon or by means likely to produce death or great bodily harm. (It is not necessary that injury result from an aggravated assault when a gun, knife, or other weapon is used which could and probably would result in serious personal injury if the crime were successfully completed.)

**Burglary**

The unlawful entry of a structure to commit a felony or a theft (For reporting purposes, this definition includes: unlawful entry with intent to commit a larceny or felony; breaking and entering with intent to commit a larceny; housebreaking; safecracking; and all attempts to commit any of the aforementioned.)

**Motor Vehicle Theft**

The theft or attempted theft of a motor vehicle. Classify as motor vehicle theft: Theft of any self-propelled vehicle that runs on land surface and not on rails, such as sport utility vehicles, automobiles, trucks, buses, motorcycles, motor scooters, trail bikes, mopeds, all-terrain vehicles, self-propelled motor homes, snowmobiles, golf carts and motorized wheelchairs. All cases where automobiles are taken by persons not having lawful access even though the vehicles are later abandoned, including joyriding.

<b>Arson</b>	Any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling house, public building, motor vehicle or aircraft, personal property of another, etc.
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## HATE CRIMES

A **hate crime** is a criminal offense that manifests evidence that the victim was intentionally selected because of the perpetrator's bias against the victim. **Bias** is a preformed negative opinion or attitude toward a group of persons based on their race, gender, gender identity, religion, disability, sexual orientation, ethnicity, or national origin. Although there are many possible categories of bias, under Clery, only the following eight categories are reported:

1. **Race.** A preformed negative attitude toward a group of persons who possess common physical characteristics (e.g., color of skin, eyes, and/or hair; facial features, etc.) genetically transmitted by descent and heredity, which distinguish them as a distinct division of humankind (e.g., Asians, blacks or African Americans, whites).
2. **Religion.** A preformed negative opinion or attitude toward a group of persons who share the same religious beliefs regarding the origin and purpose of the universe and the existence or nonexistence of a supreme being (e.g., Catholics, Jews, Protestants, atheists).
3. **Sexual orientation.** A preformed negative opinion or attitude toward a group of persons based on their actual or perceived sexual orientation.
4. **Gender.** A preformed negative opinion or attitude toward a person or group of persons based on their actual or perceived gender, e.g., male or female.
5. **Gender identity.** A preformed negative opinion or attitude toward a person or group of persons based on their actual or perceived gender identity, e.g., bias against transgender or gender non-conforming individuals.
6. **Ethnicity.** A preformed negative opinion or attitude toward a group of people whose members identify with each other, through a common heritage, often consisting of a common language, common culture (often including a shared religion) and/or ideology that stresses common ancestry.
7. **National Origin.** A preformed negative opinion or attitude toward a group of people based on their actual or perceived country of birth.
8. **Disability.** A preformed negative opinion or attitude toward a group of persons based on their physical or mental impairments, whether such disability is temporary or permanent, congenital or acquired by heredity, accident, injury, advanced age or illness.

For Clery purposes, hate crimes include any previously listed as well as the following offenses if they include an element of bias/hate:

<b>Larceny-Theft</b>	The unlawful taking, carrying, leading, or riding away of property from the possession or constructive possession of another. Constructive possession is the condition in which a person does not have physical custody or possession, but is in a position to exercise dominion or control over a thing.
<b>Simple Assault</b>	An unlawful physical attack by one person upon another where neither the offender displays a weapon, nor the victim suffers obvious severe or

aggregated bodily injury involving apparent broken bones, loss of teeth, possible internal injury, severe laceration, or loss of consciousness.

**Intimidation** To unlawfully place another person in reasonable fear of bodily harm through the use of threatening words and/or other conduct, but without displaying a weapon or subjecting the victim to actual physical attack. (To be the victim of intimidation, one does not have to be the intended target of the offender.)

**Destruction/Damage/Vandalism** To willfully or maliciously destroy, damage, deface, or of Property otherwise injure real or personal property without the consent of the owner or the person having custody or control of it.

## DATING VIOLENCE, DOMESTIC VIOLENCE AND STALKING

**Dating Violence** 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 the victim’s statement with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. (Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of domestic violence.)

**Domestic Violence** 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 the domestic or family violence laws of the State of New York, 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 the State of New York.

**Stalking** The term “stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to—(a) fear for his or her safety or the safety of others; or (b) suffer substantial emotional distress. (The term course of conduct means two or more acts by which the stalker directly, indirectly, or through third parties follows, monitors, observes, surveils, threatens, or communicates to or about a person or interferes with his or her property).

## LAW VIOLATIONS

In addition to disclosing statistics for the aforementioned offenses, the Clery Act requires institutions to disclose **violations of the law resulting in arrests or persons being referred for disciplinary action** in the following categories:

**Weapons: Carrying, Possessing, Etc.** The violation of laws or ordinances prohibiting the manufacture, sale, purchase, transportation, possession, concealment, or use of firearms, cutting instruments, explosives, incendiary devices or other deadly weapons. This classification encompasses weapons offenses that are regulatory in nature. Include in this classification: manufacture, sale, or possession of deadly weapons; carrying deadly weapons, concealed or openly; using manufacturing, etc., of silencers; furnishing deadly weapons to minors; aliens possessing deadly weapons; and attempts to commit any of the above. "Deadly weapon" means any loaded weapon from which a shot, readily capable of producing death or other serious physical injury, may be discharged, or a switchblade knife, gravity knife, pilum ballistic knife, metal knuckle knife, dagger, billy, blackjack, plastic knuckles, or metal knuckles, as defined by the Penal Law of the State of New York.

**Drug Law Violations** The violation of laws prohibiting the production, distribution and/or use of certain controlled substances and the equipment or devices utilized in their preparation and/or use. The unlawful cultivation, manufacture, distribution, sale, purchase, use, possession, transportation or importation of any controlled drug or narcotic substance. Arrests for violations of state and local laws, specifically those relating to the unlawful possession, sale, use, growing, manufacturing and making of narcotic drugs.

**Liquor Law Violations** The violation of state or local laws or ordinances prohibiting the manufacture, sale, purchase, transportation, possession, or use of alcoholic beverages, not including driving under the influence and drunkenness. Include in this classification: the manufacture, sale, transporting, furnishing, possessing, etc., of intoxicating liquor; maintaining unlawful drinking places; bootlegging; operating a still; furnishing liquor to a minor or intemperate person; underage possession; using a vehicle for illegal transportation of liquor; drinking on train or public conveyance; and attempts to commit any of the above.

## **Building Definitions**

**Academic Buildings** Any building where the main purpose is instruction and faculty office space. (102 Broad Street, Au Sable Hall, Beaumont Hall, Champlain Valley Hall, 133 Court Street, 134 Court Street, Hawkins Hall, Hudson Hall, Hudson Annex, Memorial Hall, Myers Fine Arts Building, Redcay Hall, Sibley Hall, Ward Hall, Yokum Hall).

<b>Administration Buildings</b>	Any building where the main purpose is administration and/or college facility functioning. (Kehoe, Central Heating, Saranac Hall, Service Building, Student Health Center, University Police).
<b>Community Buildings</b>	Any building that serves the campus community as a whole as well as individuals external to the campus. (Angell College Center, College Book Store, Feinberg Library, Memorial Hall, Sibley Hall, Stafford Field House).
<b>Residential Buildings</b>	Any building housing students or attending to the residential needs of students and non-students for whom special arrangements have been made (e.g., conference, special programs with residential component).
<b>Fire Definitions</b>	
<b>Fire</b>	Any instance of open flame or other burning in place not intended to contain the burning or in an uncontrolled manner.
<b>Cause of Fire</b>	The factor or factors that give rise to a fire. The causal factor may be, but is not limited to, the result of an intentional or unintentional action, mechanical failure, or act of nature.
<b>Fire-related Injury</b>	Any instance in which a person is injured as a result of a fire, including an injury sustained from a natural or accidental cause, while involved in fire control, attempting rescue, or escaping from the dangers of the fire. The term "person" may include students, employees, visitors, firefighters, or any other individuals.
<b>Fire-related Death</b>	Any instance in which a person (1) is killed as a result of a fire, including death resulting from a natural or accidental cause while involved in fire control, attempting rescue, or escaping from the dangers of a fire; or (2) dies within one year of injuries sustained as a result of the fire.
<b>Value of Property Damage</b>	The estimated value of the loss of the structure and contents, in terms of the cost of replacement in like kind and quantity. This estimate should include contents damaged by fire, and related damages caused by smoke, water, and overhaul; however, it does not include indirect loss, such as business interruption.
<b>Fire Safety System</b>	Any mechanism or system related to the detection of a fire, the warning resulting from a fire, or the control of a fire. This may include sprinkler systems or other fire extinguishing systems, fire detection devices, stand-alone smoke alarms, devices that alert one to the presence of a fire, such as horns, bells, or strobe lights; smoke-control and reduction mechanisms; and fire doors and walls that reduce the spread of a fire.

**Fire Drill** A supervised practice of a mandatory evacuation of a building for a fire.

**Other Definitions**

**Pastoral Counselor** A person who is associated with a religious order or denomination, is recognized by that religious order or denomination as someone who provides confidential counseling, and is functioning within the scope of that recognition as a pastoral counselor.

**Professional Counselor** A person whose official responsibilities include providing mental health counseling to members of the institution's community and who is functioning within the scope of the counselor's license or certification.

**APPENDIX C: RELATED POLICIES**

- [State University of New York Policy # 5402 – Campus Security Policy and Campus Crime Statistics Reporting \(Clery Act\)](#)
- [State University of New York Policy # 3653 – Rules for the Maintenance of Public Order](#)
- [SUNY Plattsburgh Policy # 2001 – Interpersonal Violence sexual harassment](#)
- [SUNY Plattsburgh Policy # 2004 – Sexual Harassment and Sexual Violence](#)
- [SUNY Plattsburgh Policy # 4009 – Drug and Alcohol Free Workplace](#)
- [SUNY Plattsburgh Policy # 8000 – Campus-wide Electronic Lock \(E-Lock\) System](#)
- [SUNY Plattsburgh Policy # 8001 – E-Lock Access and Authorization](#)
- [SUNY Plattsburgh Policy # 8003 – Key Access and Authorization](#)
- [SUNY Plattsburgh Policy # 8005 – Shelter-in-Place/Evacuation](#)
- [SUNY Plattsburgh Policy # 8007 – E-Lock Video Camera College Wide](#)
- [SUNY Plattsburgh Policy # 8009 – Clery Annual Security Report & Crime Statistics](#)
- [SUNY Plattsburgh Policy # 8011 – Crime Alert & Emergency Notification Policy & Procedure](#)
- [SUNY Plattsburgh Policy # 8023 – No Contact Order](#)
- [SUNY Plattsburgh Policy # 8025 – Tobacco-Restricted Campus](#)
- [SUNY Plattsburgh Policy # 8028 – Fire Alarm Evacuation](#)
- [SUNY Plattsburgh Student Code of Conduct Manual](#)

## APPENDIX D: CLERY GEOGRAPHY

### Campus Map

The map pictured below shows SUNY Plattsburgh's campus. Crimes occurring in any of these buildings or the grounds shaded in green are considered on-campus for Clery Reporting. On-campus student housing facilities are shaded red, crimes occurring in these areas counted in both on-campus and on-campus student housing.



The College is also required to report crimes occurring on public property that is within the campus or immediately adjacent to and accessible from the campus. This includes the Saranac River and city sidewalks and streets and are highlighted in yellow.

Please note that this map also details some additional property that is considered on-campus but is not depicted in the campus map shown above.



### Other On-Campus

Finally, the campus has some other locations that are considered on-campus. A list of these can be found below.

<b>TABLE XI: List of Other On-Campus Locations</b>		
<b>LOCATION NAME</b>	<b>SPACE UTILIZED</b>	<b>ADDRESS</b>
Bailey Avenue Elementary School	Cafeteria, Teacher's Lounge, Art Room, Gymnasium, Computer Lab, playground	50 Bailey Avenue Plattsburgh, NY 12901

Momot Elementary School	Cafeteria, gymnasium, room 47, room 16, Library, Computer lab, playground	60 Monty Street Plattsburgh, NY 12901
Oak Street Elementary School	Cafeteria, Library, Computer lab, Gymnasium, Teacher's Lounge, Room 19, playground	108 Oak Street Plattsburgh, NY 12901
Stafford Middle School	Home and Careers Classroom 100, Computer lab, Gymnasium (occasionally), athletic field behind school (occasionally)	15 Broad Street Plattsburgh, NY 12901
University of Vermont – CVPH Hospital	Room 302B	75 Beekman Street Plattsburgh, NY 12901

Note: These locations are 1) owned or controlled by the institution; 2) support or are used for the College's educational purposes; 3) frequently used by students; and 4) reasonably contiguous with the campus (less than one mile distance from the campus).

### Non-campus

The locations listed below are considered non-campus locations.

<b>TABLE XII: List of Non-Campus Locations</b>		
<b>LOCATION NAME</b>	<b>SPACE UTILIZED</b>	<b>ADDRESS</b>
Miner Institute and Miner Center Educational Building	Entire Facility	1034 Miner Farm Road   586 Ridge Road Chazy, NY 12921
Twin Valley Education Center	Entire Facility	95 Twin Valley Lane Lewis, NY 12950
Valcour Inn and Lodge	Entire Facility	3712 Lake Shore Rd Route 9 South Peru, NY 12972

Note: These locations are 1) owned or controlled by the institution; 2) support or are used for the College's educational purposes; 3) frequently used by students; and 4) not reasonably contiguous with the campus (more than one-mile distance from the campus).



## APPENDIX E: RESOURCES

### Crisis Intervention/Counseling/ Medical

- **911** (for all emergency calls including ambulance service)
- **Student Health & Counseling Center**  
Health Center Building Counseling Center Phone: (518) 564-3086 After hours call (518) 564-2022  
Health Center Phone: (518) 564-218
- **Planned Parenthood of the North Country New York, Inc. Sexual Assault Services – Off-Campus**  
66 Brinkerhoff Street  
Phone: (518) 561-4430 or 1-(877)-212-2323 (24-hour hotline)
- **STOP Domestic Violence, Behavioral Health Services North – Off-Campus** 22 US Oval- Suite 218  
Phone: (518) 563-6904 (24-hour hotline and office phone)
- **Champlain Valley Physicians Hospital (CVPH) – Off-Campus**  
Beekman Street Phone: (518) 561-2000

### Law Enforcement Assistance

- **911** (for all emergency calls)
- **University Police – On-Campus**  
Health Center Building  
Phone: (518) 564-2022 (24-hour service)
- **City of Plattsburgh Police Department – Off-Campus**  
45 Pine Street  
Phone: (518) 563-3411 (24-hour service)
- **New York State Police – Off-Campus**  
9 Dunning Way, Plattsburgh  
Phone: (518) 563-3761 (24-hour service)  
Toll free 1-(844)-845-7269
- **New York State Police Campus Sexual Assault Victim's Unit – Off Campus** Phone: 1-(844)-845-7269
- **Clinton County District Attorney – Off- Campus**  
137 Margaret Street # 201  
Phone: (518) 565-4770
- **Clinton County Sheriff's Department – Off-Campus**  
25 McCarthy Drive, Plattsburgh Phone: (518) 565-4300

### Other On-Campus Resources

- **Title IX Coordinator**  
Title.ix@plattsburgh.edu, Phone: (518) 564-3281
- **Office of Student Conduct** Kehoe Building, 6<sup>th</sup> Floor Phone: (518) 564-3282
- **Affirmative Action Officer** Angell College Center 110 Phone: (518) 564-3281
- **Violence Prevention Educator and Outreach Coordinator**  
Angell College Center 110 Phone: (518) 564-2098
- **Confidential Advocate – Planned Parenthood NCNY Sexual Assault Services**  
Phone: (518) 564-2098  
Phone: (518) 561-0605, ext. 142  
Beaumont Hall, Room 302A (Note: Please call for hours of operation or to make an appointment)
- **Hazing Hotline**  
Phone: (518) 564-5555
- **Vandalism Hotline**  
Phone: (518) 564-2677

### Other Off-Campus

- **Clinton County Child Advocacy Center**  
46 Arizona Avenue  
Phone: (518) 565-4484
- **New York State Crime Victims Board**  
Phone: 1-(800)-247-8035
- **Poison Control**  
Phone: 1-(800)-222-1222
- **Clinton County Suicide Prevention Hotline**  
Phone: 1-(866)-577-3836

### APPENDIX F: DOCUMENT REVISION HISTORY

Date	Section	Change	Author
September 21, 2017	Entire Document	New Document	Sean Dermody
September 24, 2018	Entire Document	Edits, Additions	Patrick Rascoe
September 15, 2019	Entire Document	Edits, Additions	Joshua Coons
September 27, 2019	Entire Document	Edits, Additions	Patrick Rascoe
December 1, 2020	Entire Document	Edits, Additions	Joshua Coons
December 17, 2020	Entire Document	Edits, Additions	Patrick Rascoe
August 8, 2021	Entire Document	Edits, Additions	PR/Joshua Coons

## APPENDIX G: EMPLOYEE DISCIPLINARY PROCEDURES

### United University Professions Disciplinary procedures:

#### **Discipline**

##### **§19.1 Purpose**

The purpose of this Article is to provide a prompt, equitable and efficient procedure for the imposition of discipline for just cause. Both parties to this Agreement recognize the importance of counseling and the principle of corrective discipline. Prior to initiating formal disciplinary action pursuant to this Article, the College President, or designee, is encouraged to resolve matters of discipline informally; provided, however, such informal action shall not be construed to be a part of the disciplinary procedure contained in this Article and shall not restrict the right of the College President, or designee, to consult with or otherwise counsel employees regarding their conduct or to initiate disciplinary action.

##### **§19.2 Definitions**

- a. "Discipline" shall be defined as the imposition of a penalty by means of the procedure specified in Section 19.4.
- b. "Days" shall mean working days, Monday through Friday, excluding holidays.
- c. "Service" shall mean the act of delivering, in accordance with provisions of this Article, a notice of discipline. For purposes of determining time limits for the service of a notice of discipline, service shall be effective on the date of personal service or mailing by certified or registered mail, return receipt requested, as evidenced by the official postmark appearing on the receipt for certified or registered mail. For purposes of determining time limits for the filing of a disciplinary grievance, service shall be effective three days from the time of personal service or, in the event of mailing, which shall be by certified or registered mail, return receipt requested, three days from the date the employee or any other person accepting delivery has signed the return receipt or the date the notice is returned to the College President, or designee, undelivered.
- d. "Party" shall mean the State and either the employee upon whom discipline is sought to be imposed or the employee's representative selected pursuant to Section 19.8 of this Article.

##### **§19.3 Applicability**

Discipline shall be imposed upon employees only pursuant to this Article; provided, however, that provisions of this Article shall not apply to the termination of employees serving on temporary or probationary appointments, which may be terminated at any time in accordance with provisions of Article XI of the Policies, and provided further that provisions of this Article shall not apply to non-renewal of term appointments pursuant to Article XI of the Policies, terminations of employees due to mental or physical incapacity pursuant to Article XV of the Policies or terminations of employees pursuant to Article 35, Retrenchment, of this Agreement.

##### **§19.4 Disciplinary Procedure**

Discipline shall be imposed only for just cause. Where the College President, or designee, seeks to impose discipline, notice of such discipline shall be made in writing and served upon the employee in person or by registered or certified mail, return receipt requested, to the employee's address of record. The conduct for which discipline is being imposed and the penalty proposed shall be specified in the notice. The notice served on the employee shall contain a detailed description of the alleged acts and conduct including reference to dates, times and places.

a. The penalty proposed may not be implemented until the employee (1) fails to file a disciplinary grievance within 10 days of service of the notice of discipline, or (2) having filed a disciplinary grievance, fails to file a timely appeal to disciplinary arbitration, or (3) having appealed to disciplinary arbitration, until and to the extent that it is upheld by the disciplinary arbitrator, or (4) until the matter is settled.

b. The notice of discipline may be the subject of a disciplinary grievance which shall be filed with the Chancellor, or designee, in person or by registered or certified mail, return receipt requested, by the employee, or the employee's representative, on a disciplinary grievance form to be provided by the State, within 10 days of the date of service of notice of discipline. The employee's selection of a representative as indicated on the Disciplinary Grievance Form when filed is final and not subject to change. A copy of the notice of discipline must be attached to the disciplinary grievance form. A disciplinary grievance shall be regarded as filed even if it does not contain a copy of the Notice of Discipline, required by subdivision 19.4(c). However, such grievance shall not be reviewed unless all of the information required by the grievance form or otherwise required by grievance steps of Article 19 has been provided. The employee,

or the employee's representative, shall be entitled to a meeting to present the employee's position to the Chancellor, or designee, within 10 days of the date of filing of the disciplinary grievance. The purpose of the meeting shall be the possible adjustment of the matter and need not involve the presentation of evidence or specification of particulars by either party. The meeting provided for herein may be waived by the employee, in writing, on the grievance form, only in accordance with provisions of Section 19.7(b). If the meeting has not been waived but cannot be held within 10 working days of the date of filing of the disciplinary grievance by reason of the unavailability of the employee, or the employee's representative, or on such other date as may be mutually agreed upon, the Chancellor, or designee, may, at the option of the Chancellor, or designee, review the disciplinary grievance on the basis of the existing record. The Chancellor, or designee, shall provide the employee, or the employee's representative, with a response in writing by registered or certified mail, return receipt requested, or by personal service within twenty days of the meeting or review, or within five days of the meeting or review if the employee has been suspended without pay under Section 19.7 of this Article.

c. If the disciplinary grievance is not settled or otherwise resolved, it may be appealed to disciplinary arbitration by the employee, or the employee's representative, within 10 days of receipt of the response of the Chancellor, or designee. Notice of appeal to disciplinary arbitration shall be filed by registered or certified mail, return receipt requested, or by personal service upon the Director of the Governor's Office of Employee Relations, or designee. A copy of the appeal shall be sent simultaneously to the College President and the Chancellor's designee.

d. The State and UUP shall jointly agree, within 15 days of the execution of this Agreement, on a 25-member panel of disciplinary arbitrators. Each member of the panel shall be assigned a number in rotation. In the event of a disciplinary arbitration, each party shall rank the next five members of the panel in rotation and the member with the highest ranking shall serve as the arbitrator. In the event of a tie, selection shall be by lot. The State agrees to perform activities necessary to appropriate administration of the panel including, but not limited to, identifying arbitrators' availability, notifying them of their appointment and assisting in arranging for hearing rooms.

e. The disciplinary arbitrator shall hold a hearing within 10 days of appointment, or as soon thereafter as practical, or within such other period as may be mutually agreed upon by the parties, recognizing, however, that except in unusual circumstances a hearing should be concluded within 30 days of the appointment of the arbitrator. The disciplinary arbitrator shall render a decision within five days of the close of the hearing, or within five days after receipt of the transcript, if either party elects a transcript, or within such other time as may be mutually agreed

upon by the parties.

f. Either party wishing a transcript of a disciplinary arbitration hearing may provide for one at its expense and shall provide a copy to the arbitrator and the other party; provided, however, the decision to make a transcript must be announced at the beginning of the hearing and the transcript must cover the entire hearing, not just a portion thereof. Delays in the preparation of a transcript shall not constitute a basis for delays in scheduling hearing dates.

g. The disciplinary arbitrator shall be confined to determinations of guilt or innocence, the appropriateness of proposed penalties, and shall have exclusive jurisdiction over issues of timeliness arising under the procedures of this Article including those arising pursuant to Section 19.9, but shall not consider alleged violations of other provisions of this Agreement, which shall be subject only to the provisions of Article 7, Grievance Procedure, of this Agreement. The disciplinary arbitrator shall neither add to, subtract from nor modify the provisions of this Agreement. The disciplinary

arbitrator's decision with respect to guilt or innocence, penalty, timeliness or probable cause for suspension, or temporary reassignment, pursuant to Section 19.7 of this Article, shall be final and binding upon the parties, and the disciplinary arbitrator may approve, disapprove or take any other appropriate action warranted under the circumstances, including ordering reinstatement and back pay for all or part of the period of suspension, or return to the employee's assignment if temporarily reassigned. If the disciplinary arbitrator, upon review, finds probable cause for the suspension,

the arbitrator may consider such suspension in determining the penalty to be imposed.

h. All fees and expenses of the arbitrator, if any, shall be divided equally between the State and UUP or the employee if not represented by UUP. Each party shall bear the cost of preparing and presenting its own case. The estimated arbitrator's fee and expenses and estimated expenses of the arbitration may be collected in advance of the hearing.

#### §19.5 Settlements

A disciplinary grievance may be settled at any time following the service of a notice of discipline.

The terms of the settlement shall be reduced to writing on the disciplinary grievance form to be provided by the State. An employee offered such a settlement shall be offered a reasonable opportunity to have a representative present before the employee is required to execute it.

#### §19.6 Effect of Settlement and Arbitrator's Award

All settlements and arbitrators' awards shall be final and binding upon the State, UUP, the employee and the employee's representative if other than UUP.

#### §19.7 Suspension Before Notice of Discipline

a. Prior to issuing a notice of discipline or the completion of the disciplinary grievance procedure provided for in this Article, an employee may be suspended, without pay, by the appointing authority only pursuant to paragraphs (1) or (2) of this Section. As an alternative to such suspension, the employee may be temporarily reassigned.

1. The appointing authority, or its designee, may suspend without pay or temporarily reassign an employee when the appointing authority, or its designee, determines that there is probable cause that such employee's continued presence on the job represents a potential danger to persons

or property or would severely interfere with its operations. Such determination shall be reviewable by the disciplinary arbitrator. A notice of discipline shall be served no later than five days following any such suspension or temporary reassignment.

2. The appointing authority, or its designee, may suspend without pay or temporarily reassign an employee charged with the commission of a crime. Such employee shall notify the appointing authority in writing of the disposition of any criminal charge including a certified copy of such disposition within five days thereof. Within 30 calendar days following such suspension under this paragraph, or within five days from receipt by the appointing authority of notice of disposition of the charge from the employee, whichever occurs first, a notice of discipline shall be served on such employee or the employee shall be reinstated with back pay if suspended or returned to the employee's assignment if temporarily reassigned. Nothing in this paragraph shall

limit the right of the appointing authority, or its designee, to take disciplinary action during the pendency of criminal proceedings.

3. Where the appointing authority, or its designee, elects to temporarily reassign an employee pursuant to this Article, the employee shall be notified in writing of the location, the effective date and nature of such temporary reassignment and that the employee may elect in writing to refuse such temporary reassignment and may be suspended without pay. The employee's election must be made in writing before commencement of the temporary reassignment. An election by the employee to refuse such temporary reassignment is final and may not thereafter be withdrawn. No election by the employee is permitted once the employee commences the temporary reassignment.

4. The State may rescind a notice of discipline and issue a revised notice of discipline no later than 20 working days prior to the commencement of a disciplinary arbitration. Such action shall not affect a suspension without pay or a temporary reassignment.

5. The fact that the appointing authority, or its designee, has temporarily reassigned an employee rather than suspending the employee without pay shall not be considered by the disciplinary arbitrator for any purpose.

b. During the period of any suspension without pay pursuant to this Article, the State shall continue the employee's and eligible dependents' health insurance coverage which is otherwise available to unit employees, and the State shall pay the employer's share of any premiums to maintain such coverage. Any such suspended employee shall be responsible for paying the employee's share of premium for such health insurance coverage. The State shall not be liable for payment of the employer's share of the health insurance premium for any period of time during which the suspended employee fails to pay the employee's share of the health insurance premium. Also, an employee suspended pursuant to the provisions of this Article shall be counted for the purpose of calculating the amount of any periodic deposit to the UUP Benefit Trust Fund.

c. Where an employee has been suspended without pay pursuant to this Article, an employee's absence(s) shall, upon the employee's written request, be charged against vacation leave, holiday leave, or FLSA compensatory leave provided sufficient accruals exist in such leave categories.

d. Suspension without pay or temporary reassignment:

1. Where an employee has been suspended without pay or temporarily reassigned pursuant to this Article, the employee may, in writing, waive the meeting with the Chancellor, or designee, at the time of filing a disciplinary grievance. In the event of such waiver, the employee shall file the disciplinary grievance form, within the prescribed time limits for filing a grievance with the Chancellor, or designee, directly with the Director of the Governor's Office of Employee Relations, or designee, in accordance with the provisions of Section 19.4(d).

2. Where an employee has been suspended without pay pursuant to this Article, the employee may file the disciplinary grievance form, within the prescribed time limits for filing a grievance with the Chancellor, or designee, directly with the Director of the Governor's Office of Employee Relations, or designee, in accordance with the provisions of Section 19.4(d) and concurrently

file a copy of such grievance with the Chancellor, or designee, in accordance with the provisions of Section 19.4(c).

e. Where a disciplinary arbitration proceeding does not commence within 60 calendar days of an appeal made pursuant to Section 19.4(d) or Section 19.7(d) due solely to the unavailability of the State, an employee suspended without pay shall be returned to the payroll, or temporarily reassigned, until such time that the disciplinary arbitrator renders a decision in the matter, or the matter is otherwise resolved.

#### §19.8 Representation

Employees may represent themselves or be accompanied for purposes of representation by UUP or counsel, consistent with their selection of a representative pursuant to subsection 19.4(c), at any stage of the disciplinary procedure contained in this Article; provided, however, an employee's representative may only act on the employee's behalf, in the absence of the

employee, upon mutual agreement of the parties.

An employee shall be provided the opportunity to have representation at an interrogation if at the time such interrogation is commenced it is contemplated by management that such employee will be served a Notice of Discipline pursuant to Article 19 of this Agreement. The employee shall be provided with notification of such opportunity prior to the commencement of such interrogation. In the event such interrogation were to be conducted without having provided the employee with such notification, any statements or admissions made by the employee during such an interrogation may not be subsequently used in a disciplinary proceeding against that employee. If representation is requested by the employee, and such representation is not available within six hours' time following such request, the State may proceed with the interrogation and there shall be no limitation on the use of statements or admissions made by the employee.

#### §19.9 Limitation

An employee shall not be disciplined for acts, except those which would constitute a crime, which occurred more than one year prior to the service of the notice of discipline. The employee's whole record of employment, however, may be considered with respect to the appropriateness of the penalty to be imposed, if any.

#### §19.10 Miscellaneous Provisions

a. All grievances, grievance appeals and responses shall be transmitted by certified or registered mail, return receipt requested, or by personal service on the grievant or grievant's representative or on the individual responsible for conducting the review. Upon personal service the recipient of such documents, upon request, shall acknowledge, in writing, the receipt thereof. Proof of personal service shall specify the person who was served and the date, place and manner of service.

b. The time limits for the service of a notice of discipline or the submission of a grievance or the filing of an appeal or demand for arbitration or issuance of a step response shall be determined from the date of personal service or mailing by certified or registered mail, return receipt requested, as evidenced by the official postmark appearing on the receipt for certified or registered

mail. All other time limits set forth in this Article, except as otherwise described in subsection 19.2(c), shall be measured from the date of receipt. Where service is by registered or certified mail, the date of receipt shall be that date appearing on the return receipt.

c. Prior to an interrogation pursuant to Section 19.8, the College President or designee may direct the employee to perform an alternate assignment, which may be at an alternate work location.

Such alternate assignment shall not be regarded as discipline nor a temporary reassignment as referred to in this Article.

d. The College President or designee shall provide written notification to the campus UUP Chapter President that a Notice of Discipline has been issued to a specific employee at that campus.

Such written notification shall be sent within 5 days of the issuance of such Notice of Discipline.

PEF, AFL-CIO and the State of New York Professional, Scientific and Technical Services Unit A33  
Disciplinary procedures:

### 33.1 Applicability

#### **DISCIPLINE**

The disciplinary procedure set forth in this Article shall be in lieu of the procedure specified in Sections 75 and 76 of the Civil Service Law and shall apply to all persons currently subject to Sections 75 and 76 of the Civil Service Law. In addition, it shall apply to those non- competitive class employees described in Section 75(1)(c) of the Civil Service Law who, since last entry into State service, have completed at least two years of continuous service in the non- competitive class, or who were appointed to a non-competitive class position as

described in Section 75(1)(c) of the Civil Service Law on or after April 1, 1979, and have completed at least one year of continuous service in such position.

### 33.2 Purpose

The purpose of this Article is to provide a prompt, equitable and efficient procedure for the imposition of discipline for just cause. Both parties to this Agreement recognize the importance of counseling and the principle of corrective discipline. Prior to initiating formal disciplinary action pursuant to this Article, the appointing authority, or the authority's designee, is encouraged to resolve matters informally: provided, however, such informal action shall not be construed to be a part of the disciplinary procedure contained in this Article and shall not restrict the right of the appointing authority, or the designee, to consult with or otherwise counsel employees regarding their conduct or to initiate disciplinary action.

### 33.3 Employee Rights

(a) Employees may represent themselves or be accompanied for purposes of representation by PEF or an attorney, at meetings or hearings held pursuant to the disciplinary procedure set forth in Section 33.5, and when, as provided in subdivision (b) or (c) below, the employee is required to submit to an interrogation or requested to sign a statement. Unless the employee declines representation, a reasonable period of time shall be given to obtain a representative. If the employee requests representation and the employee or PEF fails to provide a representative within a reasonable period of time, the meetings or hearings under the disciplinary procedure may proceed, an interrogation as provided in subdivision (b) below may proceed, or, the employee may be requested to sign a statement as provided in subdivision (c) below. An arbitrator under this Article shall have the power to find that a delay in providing a representative may have been unreasonable. Where an employee elects to be represented by PEF exclusively, the PEF representative assigned by PEF, if a State employee, shall not suffer any loss of earnings or be required to charge leave credits for absence from work as a result of accompanying an employee for purposes of representation as provided in this subdivision.

(b) An "interrogation" shall be defined to mean the questioning of an employee who, at the time of the questioning, has been determined to be a likely subject for disciplinary action. The routine questioning of an employee by a supervisor or other representative of management to obtain factual information about an occurrence, incident or situation or the requirement that an employee submit an oral or written report describing an occurrence, incident or situation, shall not be considered an interrogation. If during the course of such routine questioning or review of such oral or written report, the questioner or reviewer determines that the employee is a likely subject for disciplinary action, the employee shall be so advised. An employee shall be required to submit to an interrogation by a department or agency (1) if the information sought is for use against such employee in a disciplinary proceeding pursuant to this Article, or (2) after a notice of discipline has been served on such employee, only if the employee has been notified, in

advance of the interrogation, of the rights to representation as provided in subdivision (a) above. If an employee is improperly subjected to interrogation in violation of the provisions of this subdivision (b), no information obtained solely through such interrogation shall be used against the employee in any disciplinary action. No recording device shall be used nor shall any stenographic record be taken during an interrogation unless the employee is advised in advance that a record is being made. A copy of any formal record shall be supplied to the employee upon request.

(c) No employee who has been served with a notice of discipline pursuant to Section 33.5, or who has been determined to be a likely subject for disciplinary action, shall be requested to sign any statement regarding a matter which is the subject of a disciplinary action under Section 33.5 of this Article unless offered the right to have a representative of PEF or an attorney present and, if he or she requests such representation, is afforded a reasonable period of time to obtain a representative. A copy of any statement signed by an employee shall be



supplied to him/her. Any statements signed by an employee without having been so supplied to him/her may not subsequently be used in a disciplinary proceeding.

(d) In all disciplinary proceedings under Section 33.5, the burden of proof that discipline is for just cause shall rest with the employer. Such burden of proof, even in serious matters which might constitute a crime, shall be preponderance of the evidence on the record and shall in no case be proof beyond a reasonable doubt.

(e) An employee shall not be coerced, intimidated or caused to suffer any reprisals, either directly or indirectly, that may adversely affect wages or working conditions as the result of the exercise of the rights under this Article.

#### 33.4 Suspension or Temporary Reassignment Before Notice of Discipline

(a) Prior to the service of a notice of discipline or the completion of the disciplinary procedure set forth in Section 33.5, an employee may be suspended without pay or temporarily reassigned by the appointing authority, or the authority's designee, in his/her discretion, only pursuant to paragraphs (1) and (2) of this subdivision.

(1) The appointing authority or his/her designee may, in his/her discretion, suspend an employee without pay or temporarily reassign him/her when a determination is made that there is probable cause that such employee's continued presence on the job represents a potential danger to persons or property or would severely interfere with operations. A notice of discipline shall be served no later than five (5) calendar days following any such suspension or temporary reassignment.

(2) The appointing authority or his/her designee, in his/her discretion, may suspend without pay or temporarily reassign an employee charged with the commission of a crime. Within thirty (30) calendar days following a suspension under this paragraph, a notice of discipline shall be served on such employee or such employee shall be reinstated with back pay. Where the employee, who is charged with the commission of a crime is temporarily reassigned, the notice of discipline shall be served on such employee within seven (7) days after the disposition of the criminal charges as provided in the Criminal Procedure Law of the State of New York or the employee shall be returned to his/her regular assignment. Nothing in this paragraph shall limit the right of the appointing authority or his/her designee from taking disciplinary action while criminal proceedings are pending. Nothing in this paragraph shall preclude the application of the provisions in Article 33.4(b)(1).

(3) During the period of any suspension without pay pursuant to the provisions of this Section 33.4, the State shall continue the employee's and dependents' health insurance coverage that was in effect on the day prior to the first day of the suspension, and shall pay the employer's share of any premium to maintain such coverage. Any such suspended employee shall be responsible for paying the employee's share of premium for such health insurance coverage. The State shall not be liable for payment of the employer's share of the health insurance premium for any period of time during which the suspended employee fails to pay the employee's share of the health insurance premium.

(4) In the case of any suspension without pay, the employee may be allowed to draw from accrued annual or personal leave credits, holiday leave or compensatory leave which shall be reinstated in the event that, in accordance with this Article, the suspension is deemed improper or the employee is found innocent of all allegations contained in the notice of discipline. The use of such credits shall be at the option of the employee. Such use of leave credits during suspension will not be available if the employee is offered a reassignment and declines.

#### (b) Temporary Reassignment

(1) Where the appointing authority has determined that an employee is to be temporarily reassigned pursuant to this Article, the employee shall be notified in writing of the location of such temporary reassignments and the fact that such reassignment may involve the

(2) performance of out-of-title work. The employee may elect in writing to refuse such temporary reassignment and be suspended without pay. Such election must be made in writing before the commencement of the temporary assignment. An election by the employee to be placed on a suspension without pay is final and may not thereafter be withdrawn. Once the employee commences the temporary assignment, no election is permitted.

(3) The fact that the State has temporarily reassigned an employee rather than suspending him/her without pay or the election by an employee to be suspended without pay rather than be temporarily reassigned shall not be considered by the disciplinary arbitrator for any purpose.

(4) Temporary reassignments under this Section shall not involve a change in the employee's rate of pay.

(c)(1) Suspensions without pay and temporary reassignments made pursuant to this Section shall be reviewable by a disciplinary arbitrator in accordance with provisions of Section 33.5 to determine whether the appointing authority had probable cause.

(2) Where an employee has been suspended without pay or temporarily reassigned he/she may, in writing, waive the agency or department level meeting at the time of filing a disciplinary grievance. In the event of such waiver, the employee shall file the grievance form within the prescribed time limits for filing a department or agency level grievance directly with the American Arbitration Association (AAA) in accordance with Section 33.5. The AAA shall give the case priority assignment and shall forthwith set the matter down for hearing to be held within 14 calendar days of the filing of the demand for arbitration. The time limits may not be extended.

(3) Where an employee is suspended without pay or temporarily reassigned, and the hearing will extend beyond one day, either party may authorize the arbitrator to issue an interim decision and award solely with respect to the issue of whether there was probable cause for the suspension or temporary reassignment, such request to be permitted at any time after the completion of the State's direct case.

(4) Within five (5) calendar days of any suspension without pay or temporary reassignment pursuant to this Section, the President of PEF or the President's designee shall be sent a notice advising him/her, in writing, of such suspension without pay or temporary reassignment. Such notice shall be sent by certified mail, return receipt requested.

(d) In the event of a failure to serve a notice of discipline within the time limits established in Section 33.4(a), the employee shall be deemed to have been suspended without pay as of the date of service of the notice of discipline or, in the event of a temporary reassignment, may return to his/her actual assignment until such notice is served. In the event of failure to notify the President of PEF or the President's designee of the suspension within the time period established in Section 33.4(c)(4), the employee shall be deemed to have been suspended without pay as of the date the notice is sent to the President of PEF or the President's designee.

#### 33.5 Disciplinary Procedure

(a) Where the appointing authority or the authority's designee seeks to impose discipline, notice of such discipline shall be made in writing and served upon the employee. Discipline shall be imposed only for just cause. Disciplinary penalties may include a written reprimand, a fine not to exceed two weeks' pay, suspension without pay, demotion, restitution, dismissal from service, loss of leave credits or other privileges, or such other penalties as may be appropriate. The specific acts for which discipline is being imposed and the penalty or penalties proposed shall be specified in the notice. The notice shall contain a description of the alleged acts and conduct, including reference to dates, times and places. Two copies of the notice shall be served on the employee. Service of the notice of discipline shall be made by personal service

or by certified mail, return receipt requested.

(b) The President of PEF or the President's designee shall be advised by certified mail, return receipt requested, of the name and work location of an employee against whom a notice of discipline has been served.

(c) The notice of discipline served on the employee shall be accompanied by a copy of this Article and a written statement<sup>1</sup> that:

(1) the employee has a right to object by filing a disciplinary grievance within 14 calendar days;

(2) he/she has the right to have the disciplinary action reviewed by an independent arbitrator;

(3) the employee is entitled to be accompanied for the purposes of representation by PEF or an attorney at every step of the disciplinary proceeding;

(4) if a disciplinary grievance is filed, no penalty can be implemented unless the employee fails to follow the procedural requirements, or until the matter is settled, or until the arbitration procedure specified in subdivision (f) below, is completed.

(d) The penalty proposed by the appointing authority may not be implemented until (1) the employee fails to file a disciplinary grievance within 14 calendar days of the service of the notice of discipline, or (2) having filed a grievance, the employee fails to file a timely appeal as provided in subdivision (f) below or (3) the penalty is upheld or a different penalty is determined by the arbitrator to be appropriate, or (4) the matter is settled.

(e) If not settled or otherwise resolved, the notice of discipline may be the subject of a grievance before the department or agency head, or a designee, and shall be filed either in person or by certified mail, return receipt requested, by the employee or by the representative with the employee's consent, within 14 calendar days of service of the notice of discipline. If the disciplinary grievance is signed by the employee's representative, and the appointing authority or the designee of the appointing authority requests written confirmation of the employee's consent to the filing of the grievance, such written consent must be provided to the appointing authority or the designee of the appointing authority no later than three (3) days prior to the meeting. The employee shall be entitled to a meeting with the department or agency head, or a designee. The

meeting shall include an informal presentation by the department or agency head, or a designee, and by the employee, or a union representative, of relevant information concerning the acts or omissions specified in the notice of discipline, a general review of the evidence and defenses that will be presented if the matter proceeds to the next level, and a discussion of the appropriateness of the proposed penalty. The meeting need not involve the identification or presentation of prospective witnesses, the identification or specific description of documents, or other formal disclosure of evidence by either party. The meeting provided for herein may be waived, in writing, on the grievance form, only in accordance with Section 33.4(c)(2). A written response shall be rendered in person, or by certified mail, return receipt requested, no later than seven (7) calendar days after such meeting. If possible, the department or agency head, or a designee, should render the written response at the close of such meeting. When the department or agency head, or a designee, fails to issue a written response within seven (7) calendar days from such meeting, the grievant or the grievant's representative has the right to proceed directly to the next appropriate level by filing an appeal in accordance with subdivision (f).

(f) Disciplinary Arbitration

(1) If a disciplinary grievance is not settled or otherwise resolved, it may be appealed to independent arbitration. Such appeal must be filed with the American Arbitration Association by certified mail, return receipt requested, on a disciplinary grievance form, with a copy to the appointing authority, within 14 calendar days of service of the department or agency response. If

there is no department or agency response received within 10 calendar days after the department or agency meeting, the appeal to arbitration must be filed within 24 calendar days of such meeting. If the appeal to arbitration is filed by the employee's representative, and the employee or employee's representative has not already furnished the employee's written consent, the appointing authority or the designee of the appointing authority may request written confirmation of the employee's consent to the filing of such appeal. Such written consent must be provided to the appointing authority or the designee of the appointing authority no later than five (5) days prior to the first day of the arbitration hearing.

(2) The disciplinary arbitrator shall hold a hearing within 14 calendar days after his/her selection. A decision shall be rendered within seven (7) calendar days of the close of the hearing or within seven (7) calendar days after receipt of the transcript, if either party elects a transcript as provided in paragraph (8), or within such other period of time as may have been mutually agreed to by the department or agency and the grievant or his/her representative.

(3) Protection of Patient or Client Witnesses

(i) A patient or client witness will be protected, when giving testimony in a disciplinary arbitration hearing, by shielding the employee from view, in one of the following ways:

- use of a portable screen or partition consisting of one-way glass; or
- use of a closed circuit television in a live transmission with the employee in a separate room and the arbitrator, the representatives and the witness(es) in another room; or
- use of a one-way mirrored room with the employee in a separate room with the ability to view and hear the proceedings; or
- in a manner comparable and as effective as one of the above-stated.

A patient or client witness will be shielded in one of the described ways when a certified or licensed professional determines that there is a need for such protection for the patient or client witness. A determination that there is a need for such protection is not subject to review.

(ii) Additionally, where the employee is in a separate room during the arbitration hearing, a method of communication will be provided for the employee to communicate with his/her representative.

(4) Disciplinary arbitrators shall render determinations of guilt or innocence and the appropriateness of proposed penalties, and shall have the authority to resolve a claimed failure to follow the procedural provisions of this Article. Disciplinary arbitrators shall neither add to, subtract from nor modify the provisions of this Agreement.

(5) The disciplinary arbitrator's decision with respect to guilt or innocence, penalty, probable cause for suspension, or temporary reassignment, if any, and a claimed failure to follow the procedural provisions of this Article, shall be final and binding on the parties. If the arbitrator, upon review, finds probable cause for suspension without pay, he/she may consider such suspension in determining the penalty to be imposed. Upon a finding of guilt the disciplinary arbitrator has full authority, if he/she finds the penalty or penalties proposed by the State to be inappropriate, to devise an appropriate penalty including, but not limited to, ordering reinstatement and back pay for all or part of any period of suspension. The amount of any back pay award shall be reduced by the amount of any unemployment compensation benefits and any outside earnings paid to the employee during the time period for which back pay is awarded. For the purpose of this paragraph, "outside earnings" shall mean monies paid for work performed during those hours the employee would have been scheduled to work for the appointing authority had no suspension occurred. Nothing contained in this paragraph shall apply to settlements achieved pursuant to Section 33.6, Settlements. Under any such settlement, the amount of back pay, if any, and any offset thereto shall be determined by the parties as part of the settlement.

(6) The State and PEF agree that the American Arbitration Association (AAA) shall administer the panel of disciplinary arbitrators, unless during the term of this Agreement the parties by mutual agreement develop a procedure for the joint administration of the panel of disciplinary arbitrators. The State and PEF shall jointly develop a statement of special procedures and instructions to be followed by AAA and by disciplinary arbitrators. Pending the development of this statement, the instructions to the arbitrators, dated March 15, 1978, as amended, shall be considered to be in effect in this unit. The composition of the panel of arbitrators shall be agreed to by the State and PEF and such panel shall serve for the term of this Agreement. In those cases involving an allegation of patient, client, resident or similar abuse, the AAA must appoint the disciplinary arbitrator from a Select Panel of Arbitrators jointly agreed to by the State and PEF for the term of this Agreement. Notices of discipline in which the alleged misconduct includes matters that the appointing authority considers to fall within the jurisdiction of the Select Panel of Arbitrators shall state in their text that this disciplinary action, if appealed to arbitration, shall be appealed to an arbitrator appointed from the Select Panel of Arbitrators. Disciplinary arbitrators on the Select Panel shall receive special training regarding patient abuse and the disciplinary process. The special training shall be jointly sponsored by the State and PEF and provided through the AAA.

(7) All fees and expenses of the arbitrator, if any, shall be divided equally between the appointing authority and PEF or the employee if not represented by PEF. Each party shall bear the costs of preparing and presenting its own case. The estimated arbitrator's fees and estimated expenses may be collected in advance of the hearing. When such request for payment is made and not satisfied as required, the grievance shall be deemed withdrawn.

(8) Either party wishing a transcript at a disciplinary arbitration hearing may provide for one at its own expense and shall provide a copy to the arbitrator and the other party without cost.

(g) The agency or department head or a designee has full authority, at any time before or after the notice of discipline is served by an appointing authority or a designee, to review such notice and the proposed penalty and to take such action as he/she deems appropriate under the circumstances in accordance with this Article including, but not limited to, determining whether a notice should be issued, amendment of the notice no later than the issuance of the agency response, withdrawal of the notice or a reduction of the proposed penalty.

(h) An employee shall not be disciplined for acts, except those which would constitute a crime, which occurred more than one year prior to the notice of discipline. The employee's entire record of employment, however, may be considered with respect to the appropriateness of the penalty to be imposed, if any.

(i)

### 33.6 Settlements

A disciplinary matter may be settled at any time following the service of the notice of discipline. The terms of the settlement shall be agreed to in writing. Before executing such settlement, an employee shall be advised of the right to have a PEF representative or an attorney present and, if such representation is requested, shall be afforded a reasonable period of time to obtain representation. A settlement entered into by an employee, the PEF representative or an attorney, on behalf of the employee, shall be final and binding on all parties. Within five (5) calendar days of any settlement, the President of PEF or the President's designee shall be sent a notice advising him/her, in writing, of the settlement. Such notice shall be sent by certified mail, return receipt requested.

### 33.7 Definitions

(a) As used in this Section, "days" shall mean calendar days unless otherwise specified.



(b) "Service" shall be complete upon personal delivery or, if it is made by certified mail, return receipt requested, it shall be complete upon the date the employee or any other person accepting delivery has signed the return receipt or when the letter is returned to the appointing authority undelivered.

(c) "Filing" shall be complete upon actual receipt or, if certified mail, return receipt requested, is used, upon the date of mailing appearing on the postal receipt.

### 33.8 Timeliness

In the event of a question of timeliness of any disciplinary grievance or appeal to arbitration, the date of actual receipt shall be determinative when personal delivery is used and the date of mailing appearing on the postal receipt shall be determinative when certified mail, return receipt requested, is used.

### 33.9 Time Limits

Except as provided in Section 33.4(c)(2), time limits contained in this Article may be waived by mutual agreement of the parties. Any such agreement must be in writing.

33.10 Changes in shift, pass day, job assignment, or transfer or reassignment to another facility, work location or job station may not be made for the sole purpose of imposing discipline unless imposed pursuant to the provisions of Section 33.5, provided, however, that temporary reassignments may be made pursuant to Section 33.4.

## — ARTICLE 34 —

### GRIEVANCE AND ARBITRATION PROCEDURE

#### 34.1 Definition of Grievance

(a) A contract grievance is a dispute concerning the interpretation, application or claimed violation of a specific term or provision of this Agreement. Other disputes which do not involve the interpretation, application, or claimed violation of a specific term or provision of this Agreement including matters as to which other means of resolution are provided or foreclosed by this Agreement, or by statute or administrative procedures applicable to the State, shall not be considered contract grievances. A contract grievance does not include matters involving the interpretation, application or claimed violation of an agreement reached pursuant to any previously authorized departmental negotiations.

(b) Any other dispute or grievance concerning a term or condition of employment which may arise between the parties or which may arise out of an action within the scope of authority of a department or agency head and which is not covered by this Agreement shall be processed up to and including Step 3 of the grievance procedure, except those issues for which there is a review procedure established by law or, pursuant to rules or regulations filed with the Secretary of State.

#### 34.2 Requirements for Filing Contract Grievances

(a) A contract grievance shall be submitted, in writing, on forms to be provided by the State.

(b) Each contract grievance shall identify the specific provision of the Agreement alleged to have been violated, and shall contain a short plain statement of the grievance, the facts surrounding it, and the remedy sought.

(c) If the contract grievance identifies Article 45, Benefits Guaranteed, as the provision allegedly violated, the particular law, rule or regulation at issue shall be specified.

#### 34.3 Representation

(a) PEF shall have the exclusive right to represent any employee or employees, upon their request, at any Step of the grievance procedure, provided, however, individual employees may represent themselves in processing grievances at Steps 1 through 2.

(b) PEF shall have the right to initiate at Step 2 a grievance involving employees: (1) of an entire department or agency; (2) at more than one facility or institution of a department or agency; and/or, (3) at more than one geographically distinct work location (e.g., region) if a separate representative has been designated by the department or agency to hear Step 1 grievances at each of the work locations. PEF shall have the right to initiate at Step 3 a grievance involving employees at more than one department or agency. Any such grievance shall identify the act or omission giving rise to the grievance, shall identify the specific issue in the grievance, shall describe the common characteristic(s) of the employees that cause the employees to have been similarly affected by the act or omission giving rise to the grievance, shall specify the names of such employees if possible or, where the names cannot be specified, shall contain a description of the "class." Such description shall include such information as is appropriate and necessary to identify the employees who have been affected in the same manner by the act or omission giving rise to the grievance including, where relevant, but not limited to, title, occupational category, work location, hours of work, length of service or other characteristics common to the class.

(c) The State shall have the right to initiate grievances against PEF at Step 4.

#### 34.4 Grievance Steps

Prior to initiating a formal written grievance pursuant to this Article, an employee or PEF is encouraged to resolve disputes subject to this Article informally with the appropriate immediate supervisor.

(a) Step One: The employee or PEF shall present the grievance to the facility or institution head or a designated representative not later than 30 calendar days after the date on which the act or omission giving rise to the grievance occurred. The facility or institution head or designated representative shall meet with the employee or PEF and shall issue a short plain written statement of reasons for the decision to the employee or PEF not later than 20 working days following the receipt of the grievance.

(b) Step Two: An appeal from an unsatisfactory decision at Step 1 shall be filed by the employee or PEF, on forms to be provided by the State, with the agency or department head or the designee within 10 working days of the receipt of the Step 1 decision. Such appeal shall be in writing and shall include a copy of the grievance filed at Step 1, a copy of the Step 1 decision and a short plain written statement of the reasons for disagreement with the Step 1 decision. The agency or department head or a designee shall meet with the employee or PEF for a review of the grievance and shall issue a short, plain written statement of reasons for the decision to the employee and to the President of PEF or the President's designee no later than 20 working days following receipt of the Step 1 appeal.

(c) Step Three: An appeal from an unsatisfactory decision at Step 2 shall be filed by PEF through its President or the President's designee, on forms to be provided by the State with the Director of the Governor's Office of Employee Relations, or the Director's designee, within 30 working days of the receipt of the Step 2 decision. Such appeal shall be in writing, and shall include a copy of the grievance filed at Step 1, and a copy of all prior decisions and appeals, and a short, plain written statement of the reasons for disagreement with the Step 2 decision. The Director of the Governor's Office of Employee Relations, or the Director's designee, shall issue a short, plain written statement of reasons for the decision within 30 working days after receipt of the appeal. A copy of said written decision shall be forwarded to the President of PEF, or the President's designee.

(d) Step Four: Arbitration:

(1) Contract grievances which are appealable to arbitration pursuant to the terms of this Article may be appealed to arbitration by PEF, by its President or the President's designee, by filing a demand for arbitration upon the Director of the Governor's Office of Employee Relations within 15 working days of the receipt of the Step 3 decision. If the Step 3 decision has not been issued within the time period for the issuance of such decision, a demand for arbitration may be filed by the President of PEF or the President's designee at any time after

expiration of the time period established for the issuance of the Step 3 decision, except that in no case may a demand for arbitration be filed later than 15 working days after receipt of the Step 3 decision.

(2) The demand for arbitration shall identify the grievance, the department or agency involved, the employee or employees involved, and the specific term or provision of the Agreement alleged to have been violated.

(3) Within a reasonable time after the effective date of this Agreement, the Director of the Governor's Office of Employee Relations and the President of PEF, or their designees, shall meet to agree upon a panel of arbitrators selected from lists submitted by the parties. The composition of the panel of arbitrators shall be agreed to by the State and PEF and such panel shall serve for the term of this Agreement. After receipt of the demand for arbitration, the parties shall meet to select an arbitrator from this panel. The essential method of selection of the arbitrator for a particular case shall be by agreement and, if the parties are unable to agree, the arbitrator shall be assigned from this panel on a rotating basis. Initial assignment for rotation shall be determined by lot.

(4) Arbitrators shall have no power to add to, subtract from or modify the terms or provisions of this Agreement. They shall confine their decision and award solely to the application and/or interpretation of this Agreement. The decision and award of the arbitrator shall be final and binding consistent with the provisions of CPLR Article 75.

(5) Arbitrators shall confine themselves to the precise issue or issues submitted for arbitration and shall have no authority to determine any other issues not so submitted to them nor shall they make observations or declarations of opinion which are not essential in reaching the determination.

(6) All fees and expenses of the arbitrator shall be divided equally between parties. Each party shall bear the cost of preparing and presenting its own case.

(7) Any party requesting a transcript at an arbitration hearing may provide for one at its expense and, in such event, shall provide a copy to the arbitrator and the other party without cost.

(8)(a) The arbitration hearing shall be held within 60 working days after receipt of the demand for arbitration or as soon thereafter as is practicable.

(b) The arbitration decision and award shall be issued within 30 calendar days after the hearing is closed by the arbitrator.

(e) Triage and Expedited Arbitration

To provide a more expeditious alternative to the traditional grievance and arbitration procedure, there shall also be a triage and expedited arbitration procedure. The terms of that procedure, as described in the Memorandum of Understanding regarding Triage and Expedited Arbitration are incorporated herein by reference.

34.5 Procedures Applicable to Grievance Steps

(a) Steps 1 and 2 shall be informal and the grievant and/or PEF shall meet with the appropriate step representative for the purpose of discussing the grievance, and attempting to reach a resolution.

(b) No transcript is required at any step. However, either party may request that the review at Step 2 only be tape recorded at its expense and shall provide a copy of such tape recording to the other party.

(c) Step 3 is intended primarily to be a review of the existing grievance file; provided, however, that additional exhibits and evidence may be submitted in writing.

(d) Any meeting required by this Article may be mutually waived.

(e) All of the time limits contained in this Article may be extended by mutual agreement. Extensions shall be confirmed in writing by the party requesting them. Upon failure of the State, or its representatives, to provide a decision within the time limits provided in this



Article, the grievant or PEF, as appropriate at each step, may appeal to the next step. Upon failure of the grievant, or the grievant's representative, to file an appeal from a written decision issued by the State or its representatives within the time limits provided in this Article, the grievance shall be deemed withdrawn.

(f) A settlement of or an award upon a contract grievance may or may not be retroactive as the equities of each case demand, but in no event shall such a resolution be retroactive to a date earlier than 30 days prior to the date the contract grievance was first presented in accordance with this Article, or the date the contract grievance occurred, whichever is the later date.

(g) A settlement of a contract grievance in Steps 1 through 3 shall constitute precedent in other and future cases only if the Director of the Governor's Office of Employee Relations and the President of PEF agree, in writing, that such settlement shall have such effect.

(h) The State shall supply in writing, with each copy of each step response, the name and address of the person to whom any appeal must be sent, and a statement of the applicable time limits for filing such an appeal.

(i) All contract grievances, appeals, responses and demands for arbitration shall be submitted by certified mail, return receipt requested, or by personal service. All time limits set forth in this Article shall be measured from the date of certified mailing or of receipt by personal service. Where submission is by certified mail, the date of mailing shall be that date appearing on the postal receipt. During the term of this Agreement, the parties shall meet and discuss whether implementation of a pilot program for the electronic transmittal of grievance submission and responses at any or all Steps of the grievance and arbitration procedure set forth in this Article is feasible and otherwise appropriate. If the parties are unable to negotiate an agreement regarding implementation of such a pilot program, they shall continue to submit the above-listed filings by certified mail, return receipt requested.

(j) Working days shall mean Monday through Friday, excluding holidays, unless otherwise specified, and days shall mean calendar days.

(k) The State and PEF shall prepare, secure introduction and recommend passage by the Legislature of such legislation as may be appropriate and necessary to establish a special appropriation fund to be administered by the Department of Audit and Control to provide for prompt payments of settlements reached or arbitration awards issued pursuant to this Article.

(l) The purpose of this Article is to provide a prompt, equitable and efficient procedure to review grievances filed by an employee or PEF. Both the State and PEF recognize the importance of the reasonable use of and resort to the procedure provided by this Article and the timely issuance of decisions to filed grievances among other aspects of the procedure provided by this Article. Representatives of the Governor's Office of Employee Relations and PEF shall meet at mutually agreed upon times to discuss and take the necessary steps to resolve matters of mutual concern in the implementation and administration of this procedure.

(m) A claimed failure to follow the procedural provisions of Article 33, Discipline Procedure, shall be reviewable in accordance with the provisions contained in that Article.

(n) Following issuance of the decision at Step 2 but prior to the appeal by PEF to Step 3, a grievance may be amended to specify a different term or provision of the Agreement alleged to have been violated than specified at the submission of the grievance at Step 1. The amended grievance shall be forwarded by PEF to the agency or department head or the designee within 30 working days of the receipt of the Step 2 decision. Such amendment shall be in writing, and shall include a copy of the grievance filed at Step 1, a copy of all prior decisions and appeals, including the Step 2 decision, and a short, plain written statement noting the new term or provision of the Agreement alleged to have been violated. The agency or department head or a designee shall issue a short, plain written statement of reasons for the decision with respect to the new term or provision of the Agreement to the President of PEF no later than 20

working days following receipt of the amended grievance. In addition to the above process, a grievance at Step 2 may be amended by mutual consent of the parties. Upon implementation of electronic grievance submission pursuant to Article 34.5(i) above, grievances shall no longer be amended in accordance with the foregoing. Rather, grievances may thereafter be amended to specify different terms or provisions of the Agreement alleged to have been violated in conjunction with an appeal to Step 3. Such amendment shall be in writing, and shall include the documentation required by 34.4(c), and a statement noting the new terms or provisions of the Agreement alleged to have been violated. No other amendment(s) to the grievance shall be permitted except upon consent.

CSEA Disciplinary procedure:

**Article 33**

**Discipline**

**§33.1 (a) Eligibility**

The following disciplinary procedure for incompetency or misconduct shall apply to all employees as provided herein in lieu of the procedure specified in the Civil Service Law Sections 75 and 76. This entire disciplinary procedure shall apply to all persons currently subject to Sections 75 and 76 of the Civil Service Law and, in addition, shall apply to any permanent non-competitive class employees described in Section 75(1)(c) and to permanent labor class employees who, since last entry into State service, have completed at least one year continuous service in the State classified service, except that approved leaves of absence or reinstatement within one year of resignation shall not constitute an interruption of such service. The disciplinary procedure provided herein is not applicable to review the removal of an employee from a probationary appointment.

**§33.1 (b) Definitions**

As used in this Article, "days" shall mean calendar days.

"Service" shall be complete upon personal delivery or, if by registered or certified mail, return receipt requested and concurrent first-class mailing, it shall be complete 10 business days from mailing if the concurrent first class mailing is not returned to the appointing authority.

As used in this Article, "appointing authority" shall include the agency that currently employs an employee of this unit and any agency where such employee was formerly employed.

**§33.2 Employee Rights**

**(a) Representation**

(1) An employee shall be entitled to representation by CSEA at each step of the disciplinary procedure, or by private counsel selected at his or her own expense.

(2) CSEA representation may include both a grievance representative and the CSEA Local President or, where the Local President is absent from work, his or her designee, and a CSEA staff representative; however, the absence of the two additional representatives shall not unreasonably delay an interrogation and/or the request to sign a statement made pursuant to this section.

**(b) Interrogation**

(1) The term "interrogation" shall be defined to mean the questioning of an employee who, at the time of such questioning appears to be a likely or potential target or subject for disciplinary action.

(2) If an employee is improperly subjected to an interrogation in violation of the provisions of this subdivision, an arbitrator appointed pursuant to this Article shall have the authority to exclude information obtained thereby or other evidence derived solely through such interrogation. The State shall have the burden of proof to show that, upon the preponderance of the evidence, such evidence sought to be introduced was not derived solely by reason of such interrogation and was obtained independently from the statements or evidence so provided by the employee.

(3) No employee shall be required to submit to an interrogation by a department or agency (a) if the information sought is for use against such employee in a disciplinary proceeding pursuant to this Article, or (b) after a notice of discipline has been served on such employee, or (c) after the employee's resignation has been requested pursuant to Article 35, unless such employee is notified in advance of the interrogation that he or she has the right to have CSEA representation, as defined in Section 33.2(a)(2) -

**Representation** - or private counsel provided at his or her own expense present or to decline such representation and that, if such representation is requested, a reasonable period of time will be afforded for that purpose. If the employee requests representation and the CSEA or employee fails to provide such representation within a reasonable time, the interrogation may proceed. An arbitrator under this Article shall have the power to find that a delay in providing such representation may have been unreasonable.

**(c) Recording Devices/Transcripts**

No recording devices or stenographic or other record shall be used during an interrogation unless the employee (1) is advised in advance that a transcript is being made, and (2) is offered the right to have CSEA representation, as defined in Section 33.2(a)(2) - **Representation** - or private counsel provided at his or her own expense present. Unless the employee declines such representation, he or she will be given a reasonable period of time to obtain representation. If the employee requests representation and the CSEA or employee fails to provide such representation within a reasonable time, the interrogation and taking of a record thereof may proceed. An arbitrator under this Article shall have the power to find that a delay in providing such representation may have been unreasonable. A copy of any stenographic record (verbatim transcript) and/or tape recording made pursuant to this provision shall be supplied to the employee.

**(d) Signed Statement**

(1) No employee shall be requested to sign any statement regarding his or her incompetency or misconduct unless the employee is offered the right to have CSEA representation, as defined in Section 33.2(a)(2) - **Representation** - or private counsel provided at his or her own expense present.

(2) Unless the employee declines such representation he or she will be given a reasonable period of time to obtain such representation. If the employee requests representation and CSEA or the employee fails to provide such representation within a reasonable time, the employee may be requested to sign such a statement. An arbitrator under this Article shall have the power to find that a delay in providing such representation may have been unreasonable. The statement shall be submitted to the employee within a reasonable time after the interrogation. A copy of the statement shall be supplied to the employee at the time the employee is requested to sign the statement. Prior to signing the statement, the employee may make such modifications or deletions in such statement that the employee deems necessary. Any statements or admissions signed by him or her without having been so supplied to him or her may not subsequently be used in any disciplinary proceeding.

**(e) Burden of Proof**

In all disciplinary proceedings, the employee shall be presumed innocent until proven guilty and the burden of proof on all matters shall rest upon the employer. Such burden of proof, even in

serious matters which might constitute a crime, shall be preponderance of the evidence on the record and shall in no case be proof beyond a reasonable doubt.

**(f) Coercion/Intimidation**

An employee shall not be coerced, intimidated or caused to suffer any reprisals, either directly or indirectly, that may adversely affect his or her hours, wages or working conditions as the result of the exercise of his or her rights under this Article.

**§33.3 Disciplinary Procedure**

**(a) Notice of Discipline**

(1) Where the appointing authority or the appointing authority's designee seeks the imposition of a written reprimand, suspension without pay, a fine not to exceed two weeks' pay, loss of accrued leave credits, reduction in grade, or dismissal from service, notice of such discipline shall be made in writing and served upon the employee. Discipline shall be imposed only for incompetency or misconduct. The specific acts for which discipline is being imposed and the penalty proposed shall be specified in

the notice. The notice of discipline shall contain a detailed description of the alleged acts and conduct including reference to dates, times and places. (2) If the arbitrator appointed pursuant to this Article finds, upon motion before the commencement of the arbitration, that the notice does not sufficiently apprise the employee of the acts or conduct for which discipline is being imposed, he or she may require that, where the employer has either refused to provide such specificity where the information sought

was available or the charges are so vague and indefinite that the employee cannot reasonably respond, the State provide more specificity within thirty (30) days of the ruling. The arbitrator shall proceed immediately with the arbitration hearing on those charges in the notice of discipline where no specificity is required. If the State does not provide such specificity as required by the arbitrator within thirty (30) days, the arbitrator shall dismiss those non-specific charges only, with prejudice, and resolve the remaining

charges, if any, contained in the notice. In order for such a motion to be made at the hearing, the employee or his or her representative must have made a request of the employer before the hearing to provide such specificity of the notice and the employer must have failed to do so. (3) Two copies of the notice shall be served on the employee. Service of the notice of discipline shall be made by personal service, if possible. If

service cannot be effectuated by personal service, it shall be made by registered or certified mail, return receipt requested. (4) The Arbitration Administrator of CSEA and the CSEA Local President shall be immediately advised by email, where available, and by regular first-class mail, of the name and work site of an employee on whom a notice of discipline has been served.

(5) The notice of discipline served on the employee shall be accompanied by a written statement that:

- the employee has a right to object by filing a grievance within twenty-one (21) days;
- the grievance procedure provides for a hearing by an independent arbitrator as its final step;
- he or she is entitled to representation by CSEA at every step of the proceeding, or by private counsel selected at his or her own expense;
- if a grievance is filed, no penalty can be implemented until the matter is settled or the arbitrator renders a determination;
- a copy of this Article shall be supplied.

(6) In the case of an employee who speaks only Spanish, this written statement shall also be given in a Spanish translation.

(7) If an employee is not able to personally sign and file a disciplinary grievance, CSEA may, at the employee's request, submit such grievance on the employee's behalf. Provided, however, that within twenty-one (21) days of submission, the employee in question must appear to sign the grievance form or CSEA must produce documentation supporting any reason as to why the

employee could not appear. Should neither of these actions occur, the grievance shall be deemed void after twenty-one (21) days.

**(b) Statute of Limitations**

(1) An employee shall not be disciplined for acts, except those which would constitute a crime, which occurred more than one (1) year prior to the notice of discipline.

(2) In those cases where such acts are alleged to constitute a crime, a notice of discipline must be served no later than the period set forth for the commencement of a criminal proceeding against a public employee in the Criminal Procedure Law of the State of New York.

**(c) Service of Notice of Discipline**

(1) A notice of discipline shall be served in accordance with this section no later than fourteen (14) days following any suspension without pay or temporary reassignment.

(2) The appointing authority or his or her designee, at his or her discretion, may suspend without pay or temporarily reassign an employee charged with the commission of a crime. Within thirty (30) calendar days following a suspension, a notice of discipline shall be served on such employee or such employee shall be reinstated with back pay. Where the employee, who is charged with the commission of a crime, is temporarily reassigned, the notice of discipline shall be served on such employee within fourteen (14) days after the disposition of the criminal charges as provided in the Criminal Procedure Law of the State of New York or the employee shall be returned to his or her regular assignment. Nothing in this paragraph shall limit the right of the appointing authority or his or her designee from taking disciplinary action while criminal proceedings are pending. Nothing in this paragraph shall preclude the application of the provisions in Article 33.3(j) sections 9 thru 11.

**(d) Penalty**

(1) The penalty proposed by the appointing authority or the appointing authority's designee may not be implemented until (a) the employee fails to file a grievance within twenty-one (21) calendar days of the service of the notice of discipline, or (b) having filed a grievance, the employee elects not to pursue it, or (c) the penalty is upheld by the disciplinary arbitrator or a different penalty is determined by the arbitrator to be appropriate, or (d) the matter is settled.

(2) At any time during the disciplinary procedure after a timely grievance has been filed, the employee may elect in writing to the appointing authority or his or her designee, the agency or department head or his or her designee, or the Panel Administrator that he or she elects not to pursue the grievance. In such event, the proposed penalty may be implemented.

**(e) Grievance**

(1) If not settled or otherwise resolved, the notice of discipline may be the subject of a grievance before the department or agency head and shall be filed either in person or by email where available and by first-class mail, by the employee or CSEA within twenty-one (21) calendar days of service of the notice of discipline.

(2) The timely filing of such a grievance shall constitute a demand for arbitration unless the grievance is settled or the employee elects not to pursue it.

(3) The filing of such a grievance shall be complete on (a) the date on which it is personally delivered or emailed or, (b) the date of mailing by first-class mail. The date of first-class mailing shall be the date the stamp is cancelled on the mailing envelope. No other documentation or evidence of the date of such mailing will be acceptable.

**(f) Expedited Resolution**

(1) If a notice of discipline has been grieved by the employee or CSEA pursuant to Section 33.3(e), the employee must utilize the Expedited Resolution procedure in this section unless the employee has elected to be represented by private counsel. An employee represented by private counsel shall utilize the Disciplinary Arbitration process set forth in Article 33.4.



(2) During the Expedited Resolution process, the employee shall be represented by CSEA and the State shall be represented by the agency or a designee thereof. Each party may have a maximum of two (2) representatives present at any Expedited Resolution meeting or expedited arbitration, exclusive of the employee.

(3) The Expedited Resolution procedure shall commence with a mandatory meeting to be conducted by an arbitrator. Arbitrators will be jointly selected by CSEA and the State for each of CSEA's six (6) regions to conduct all such meetings and, if necessary, all subsequent one (1) day expedited arbitrations. All fees and expenses for the arbitrators will be divided equally between CSEA and the State. CSEA and the State will determine the number of Expedited Resolution meeting days per month, which will be detailed in the arbitrator's contract. Additional Expedited Resolution meeting days may be scheduled as needed. Except in unusual circumstances, a maximum of six (6) cases will be scheduled for each Expedited Resolution meeting day. The Panel Administrator will schedule all cases and issue notifications regarding the Expedited Resolution meetings, including the date, time and location.

(4) The parties shall provide copies of all relevant documents to the opposing party at least two weeks prior to the Expedited Resolution meeting. At that meeting, all efforts will be made to reach a satisfactory resolution of the matter. The arbitrator will serve as a mediator to facilitate a discussion of the issue(s) and the pursuit of an acceptable resolution. If necessary, the arbitrator may choose to hear testimony and review formal evidence.

(5) The arbitrator shall have the right to decide, in order to facilitate resolution of the matter and based on the information presented by the parties at the Expedited Resolution meeting, whether there needs to be a second settlement meeting to review additional information or documentation, or to hear from additional witnesses. Before the initial meeting is concluded, the parties shall agree as to whether the matter will be scheduled for a second meeting.

(6) In those cases where the appointing authority is not seeking the employee's termination, if the matter is not settled at the Expedited Resolution meeting and the arbitrator believes that no additional information, documentation or witness testimony is necessary, the arbitrator shall issue a short, written decision and award no later than seven (7) calendar days following the meeting.

(7) If the matter still cannot be settled or decided by the arbitrator without either additional evidence or testimony, the arbitrator may conduct a one (1) day expedited arbitration hearing. Before the Expedited Resolution settlement meeting is concluded, the parties and the arbitrator shall agree on the issue and the witnesses to be presented at the expedited arbitration. After the conclusion of the expedited arbitration, the arbitrator shall issue a short, written decision and award within fourteen (14) calendar days.

(8) In those cases where the appointing authority is seeking the employee's termination and the matter is not settled at the Expedited Resolution meeting, the employee may request a one (1) day expedited arbitration hearing to be held before the same arbitrator or, in the alternative, the employee may request arbitration pursuant to Section 33.4 - Disciplinary Arbitration and the arbitrator shall so inform the Panel Administrator, who shall schedule the case for arbitration pursuant to Section 33.4. If the employee is also suspended or temporarily reassigned pursuant to Article 33.3(j), the Panel Administrator shall give the case priority in assignment and shall forthwith set the matter down for hearing to be held within thirty (30) days.

(9) Should the arbitrator believe that a disciplinary matter cannot be presented at an expedited arbitration within one (1) day, the arbitrator shall have the authority to refer the case back to the Panel Administrator for arbitration pursuant to Section 33.4.

**(g) Withdrawal/Amendment**

The agency or department head or his or her designee has full authority, at any time before or after the notice of discipline is served by an appointing authority or his or her designee, to review

such notice and the proposed penalty and to take such action as he or she deems appropriate under the circumstances in accordance with this Article including, but not limited to, determining whether a notice should be issued, amendment of the notice no later than 15 days prior to first Expedited Resolution Meeting or 15 days

prior to the disciplinary arbitration hearing provided for in Section 33.4 – Disciplinary Arbitration – of this Article withdrawal of the notice or a reduction in the proposed penalty. Amendment of the notice after 15 days prior to the first Expedited Resolution meeting or after 15 days prior to the disciplinary arbitration hearing provided for in Section 33.4, or withdrawal of the notice, are subject to the following:

- where amended, the employee is entitled to an adjournment where requested by the employee, or his or her representative;
- in the instance where an employee is suspended without pay or temporarily reassigned pursuant to Section 33.3(j)(1) – **Suspension Without Pay** - the withdrawal of a notice of discipline shall cause the employee to be retroactively reinstated with back pay, if suspended, or returned to his or her original assignment, if temporarily reassigned, upon such withdrawal. The amendment of the notice of discipline in such instances shall end such suspension or temporary reassignment as of the date of such amendment.

However, the disciplinary arbitrator shall determine whether there was a probable cause for suspension in accordance with Section 33.3(j)(1) - **Suspension Without Pay** - and, where in issue whether the amendment is, in fact, a withdrawal of the initial notice of discipline and entitled to be treated as such pursuant to this section; in all instances where an employee is suspended without pay or temporarily reassigned pursuant to Sections 33.3(j) – **Suspension without Pay or Temporary Reassignment** - and the notice of discipline is amended or withdrawn pursuant to this provision, such an employee may not be again suspended or temporarily reassigned solely upon those same facts alleged to constitute incompetency or misconduct in the notice of discipline which has been withdrawn or amended;

- where a notice of discipline is withdrawn pursuant to this section, said notice must be reinstituted pursuant to Section 33.3(a) – **Notice of Discipline** - no later than thirty (30) days from the time of the withdrawal of the notice of discipline or such withdrawal will be

with prejudice to the reinstitution of the notice of discipline; in those instances where there is an amendment of the notice of discipline after 15 days prior to the first expedited Resolution meeting, or 15 days prior to the disciplinary arbitration hearing provided for in Section 33.4, or a withdrawal of the notice of discipline and an arbitrator has been appointed pursuant to Section 33.4(b)(1) - **Disciplinary Arbitrators**, any hearing on the amended or reinstituted charges shall be held before the arbitrator initially appointed unless that arbitrator is not available within a reasonable time and the parties jointly agree to the selection of a new arbitrator pursuant to Section 33.4(b)(1) - **Disciplinary Arbitrators. (h) Suspension Without Pay or Temporary Reassignment**

(1) Prior to exhaustion or institution by an employee of the grievance procedure applicable to discipline, an employee may be suspended without pay or temporarily reassigned only if the appointing authority determines that there is probable cause to believe that the employee's continued presence on the job represents a potential danger to persons or property or would severely interfere with operations. Such determination shall be reviewable by the arbitrator in accordance with this section to determine whether the appointing authority had probable cause. The Arbitration

Administrator of CSEA and the CSEA Local President shall be notified in writing by email and first-class mail, within four (4) calendar days of any such suspension.

(2) Where the employee has been suspended without pay or temporarily reassigned, the Panel Administrator shall give the case priority in assignment and shall forthwith set the matter down for hearing.

(3) In the event of a failure to serve a notice of discipline within the time established in Section 33.3 (c) – **Service of Notice of Discipline**, the employee shall be deemed to have been

suspended without pay as of the date of service of the notice of discipline or, in the event of a temporary reassignment, may return to his or her actual assignment until such notice is served. In the event of failure to notify the Arbitration Administrator of CSEA of the suspension within four (4) calendar days, the employee shall be deemed to have been suspended without pay as of the date the notice is sent to the Arbitration Administrator of CSEA.

(4) In the case of any suspension without pay, the employee may be allowed to draw from accrued annual or personal leave credits, holiday leave or compensatory leave which shall be reinstated in the event that, in accordance with this Article, the suspension is deemed improper or the employee is found innocent of all allegations contained in the notice of discipline. The use of such credits shall be at the option of the employee.

Such use of leave credits during suspension will not be available if the employee is offered a reassignment and declines.

(5) When an employee is suspended without pay or temporarily reassigned pursuant to this section, the disciplinary arbitrator shall, upon the request of the employee at the close of the State's case, issue an interim decision and award with respect to the issue of whether there was probable cause for the suspension without pay or the temporary reassignment. Should the arbitrator find in the interim decision that probable cause did exist, the arbitrator is not precluded from reconsidering the issue of probable cause after the hearing is closed.

(6) In those cases which involve a suspension without pay pursuant to this section, when the disciplinary arbitrator finds the employee innocent of all allegations contained in the notice of discipline and also finds probable cause for such suspension, he or she shall reinstate the employee with back pay for all of the period of the suspension without pay.

(7) In the event an employee is found innocent of all allegations contained in the notice of discipline as a result of a disciplinary proceeding, he or she must be reinstated to the exact shift, work location and pass days that the employee possessed prior to the institution of the disciplinary charges against said employee and prior to any temporary reassignment imposed pursuant to this Article. In all instances where a disciplinary arbitrator reinstates an employee who is found innocent of all allegations contained in the notice of discipline, and the appointing authority later seeks to change the shift, work location or pass days of said employee, the appointing authority must notify the employee in writing of the reason therefore without prejudice. Such action by the appointing authority shall be grievable under the Article 34 contract grievance procedure, and all such grievances shall be commenced at Step 3 of said contractual grievance procedure.

(8) During a period of suspension without pay pursuant to the provisions of Article 33.3(h)(1) or 33.3(c)(2), the State shall continue to pay its share of the cost of the employee's health coverage under Article 9 which was in effect on the day prior to the suspension provided that the suspended employee pays his or her share. Also, any employee suspended pursuant to the provisions of Article 33.3(h)(1) or 33.3(c)(2) shall be counted for the purpose of calculating the amount of any periodic deposit to the Employee Benefit Fund.

(9) Where the appointing authority informs an employee that he or she is being temporarily reassigned pursuant to this Article, and prior to exhaustion or institution of the disciplinary grievance procedure, the employee shall be notified in writing of the location of such temporary reassignment and that the employee may elect in writing to refuse such temporary reassignment and be suspended without pay. Such election must be made in writing before the commencement of the temporary reassignment. An election by the employee to be placed on a suspension without pay is final and may not thereafter be withdrawn. Once the employee commences the temporary reassignment, no election is permitted.

(10) Temporary reassignments under this section shall not involve a change in the employee's rate of pay. The provisions of Article 24, **Out of-Title Work**, shall not apply to temporary reassignments under this section.



(11) The fact that the State has temporarily reassigned an employee rather than suspending him or her without pay or the election by an employee to be suspended without pay rather than be temporarily reassigned shall not be considered by the disciplinary arbitrator for any purpose.

#### **§33.4 Disciplinary Arbitration**

##### **(a) Purpose**

(1) The purpose of this Section is to provide for final and binding arbitration in cases where the State has served a notice of discipline upon an employee seeking the employee's termination and: a) the employee has elected to proceed under this section; b) where the arbitrator in the Expedited Resolution process has remanded the matter to this section because the matter cannot be heard within one (1) day; or c) where the employee has elected to be represented by private legal counsel. This Section shall not apply to Section 33.5 - Time and Attendance Disciplinary Grievances. (2) In matters under this Section, the fact that the employee's grievance was initially discussed in the Expedited Resolution meeting shall not preclude the employee from electing to proceed to arbitration pursuant to this section.

##### **(b) Disciplinary Arbitrators**

(1) The State and CSEA jointly agree to the creation of a permanent panel of arbitrators to serve during the term of this Agreement and to be jointly selected and administered by the State of New York and CSEA by an agreed Panel Administrator. The composition of the panel of arbitrators may be changed by mutual agreement of the State and CSEA. In those cases involving an allegation of patient, client, resident or similar abuse, the Panel Administrator of the panel of disciplinary arbitrators must appoint the disciplinary arbitrator from a select panel of arbitrators jointly agreed to by the State and CSEA. Disciplinary arbitrators on the select panel shall receive special training regarding patient abuse and the disciplinary process. The special training shall be jointly sponsored by the State and CSEA.

(2) All fees and expenses of the arbitrator, if any, shall be divided equally between the appointing authority and CSEA, or the employee if not represented by CSEA. Each party shall bear the cost of preparing and presenting its own case. The estimated arbitrator's fees and estimated expenses may be collected in advance of the hearing. Where the arbitrator requires that his or her estimated fees and expenses be collected in advance of the hearing from an employee who elects not to be represented by CSEA, and the employee fails to tender such advance as required, the grievance shall be deemed withdrawn.

##### **(c) Hearing**

(1) The disciplinary arbitrator shall hold a hearing within twenty-one (21) calendar days after selection. A decision shall be rendered within seven (7) calendar days of the close of the hearing or within seven (7) calendar days after receipt of the transcript, if either party elects a transcript as provided in this Article, or within such other period of time as may have been mutually agreed to by the department or agency and the grievant or his or her representative.

(2) Arbitrations, pursuant to this Article, shall be held at an appropriate location at the employee's facility.

##### **(3) Protection of Patient or Client Witnesses**

(i) A patient or client witness will be protected, when giving testimony in a disciplinary arbitration hearing, by shielding the employee from view, in one of the following ways: use of a portable screen or partition consisting of one-way glass; or use of a closed circuit television in a live transmission with the employee in a separate room and the arbitrator, the representatives and the witness(es) in another room; or use of a one-way mirrored room with the employee in a separate room with the ability to view and hear the proceedings.

A patient or client witness will be shielded in one of the described ways when a certified or licensed professional determines that there is a need for such protection for the patient or client witness. A determination that there is a need for such protection is not subject to review.

(ii) Additionally, where the employee is in a separate room during the arbitration hearing, a method of communication will be provided for the employee to communicate with his or her representative.

**(d) Recording/Transcript**

(1) Unless both parties agree, the proceedings in disciplinary arbitrations should not be tape recorded. The use of transcripts is to be discouraged and the fact that a transcript is made should not extend the date the hearing is closed. The party ordering the transcript shall obtain and pay for an expedited or rush transcript.

(2) Either party wishing a transcript at a disciplinary arbitration hearing may provide for one at its own expense and shall provide a copy to the arbitrator and the other party.

**(e) Ex Parte Hearing**

The arbitrator may hold ex parte hearings in cases where an employee fails to attend the hearing after being served with a notice of discipline pursuant to this Article, and has not notified the arbitrator in advance or produced a satisfactory reason for his or her failure to appear.

**(f) Settlement**

(1) A disciplinary matter may be settled at any time following service of the notice of discipline. The terms of the settlement shall be agreed to in writing. An employee before executing such a settlement shall be notified of his or her right to have a CSEA representative or private counsel provided at his or her own expense present or to decline such representation and, if such representation is requested, to have a reasonable period of time for that purpose. If the employee requests representation and the CSEA or employee fails to provide a representative within a reasonable time, the

settlement may be executed. An arbitrator pursuant to Article 34 shall have the power to find that a delay in providing a representative may have been unreasonable. A settlement entered into by the employee, his or her private counsel or CSEA shall be final and binding on all parties. The Arbitration Administrator of CSEA and the CSEA Local President shall be advised of the settlement in writing by first-class mail or email.

(2) Offers of compromise or any attempt at settlement prior to the arbitration, shall not be introduced at the arbitration hearing or accepted as evidence by the arbitrator.

**(g) Arbitrator's Authority**

(1) Disciplinary arbitrators shall render determinations of guilt or innocence and the appropriateness of proposed penalties and shall have the authority to resolve a claimed failure to follow the procedural provisions of this Article including, but not limited to, the timeliness of the filing of the disciplinary grievance, and whether the notice of discipline was properly served in accordance with this Article.

(2) Disciplinary arbitrators shall neither add to, subtract from or modify the provisions of this Agreement.

(3) The disciplinary arbitrator's decision with respect to guilt or innocence, penalty, probable cause for suspension or temporary reassignment, if any, and a claimed failure to follow the procedural provisions of this Article shall be final and binding upon the parties.

(4) The disciplinary arbitrator may approve, disapprove or take any other appropriate action warranted under the circumstances, including, but not limited to, ordering reinstatement and back pay for all or part of any period of suspension without pay. If the arbitrator upon review finds probable cause for suspension without pay, he or she may consider such suspension in determining the penalty to be imposed.

(5) The disciplinary arbitrator is not restricted by the contractual limits on penalties which may be proposed by the State. He or she has full authority, if the remedy proposed by the State is found to be inappropriate, to devise an appropriate remedy, but shall not increase the penalty sought by the State except that the arbitrator may direct referral to a rehabilitative program in addition to the penalty.

(6) The employee's entire record of employment may be considered with respect to the appropriateness of the penalty to be imposed, if any.

(7) This disciplinary procedure is not the proper forum for the review of counseling memoranda or unsatisfactory performance evaluations.

**(h) Back Pay Award**

Where an employee is awarded back pay, the amount to be reimbursed shall not be offset by any wages earned by the employee during the period of his or her suspension. Where an employee is awarded back pay, said award shall be deemed to include retroactive reimbursement of all other benefits, including the accrual of leave credits and holiday leave.

**§33.5 Time and Attendance Disciplinary Grievances**

(a) All notices of discipline based solely on time and attendance, including tardiness, which have not been settled or otherwise resolved, shall be reviewed by a permanent umpire in accordance with the attached schedule except as otherwise provided in paragraph (g) below.

(b) The determinations of the permanent umpire shall be confined to the guilt or innocence of the grievant and the appropriateness of the proposed penalty. The employee's entire record of employment may be considered by the permanent umpire with respect to the appropriateness of the penalty to be imposed. The permanent umpire shall have the authority to resolve a claimed failure to follow the procedural provisions of this Article.

(c) The decision and award of the permanent umpire, with respect to guilt or innocence and penalty, if any, shall be final and binding on the parties and not subject to appeal to any other forum except that, in the case of a decision and award of the permanent umpire which results in a penalty of dismissal from service, the decision and award may be reviewed in accordance with Article 75 of the CPLR. The permanent umpire shall, upon a finding of guilt, have full authority to uphold the penalty proposed in the notice of discipline or to impose a lesser penalty within the minimum and maximum penalties as contained in the attached schedule and appropriate to that notice of discipline. In appropriate cases and in addition to the penalty imposed, the permanent umpire may direct the grievant to attend counseling sessions or other appropriate programs jointly agreed upon by the State and CSEA.

(d) Within one (1) month of the execution of this Agreement, the State and CSEA shall mutually select a panel of two or more permanent umpires who shall serve for the term of this Agreement, and shall be jointly administered by the State and CSEA. All fees and expenses of the permanent umpires shall be divided equally between the State and CSEA.

(e) Unless the State and CSEA mutually agree otherwise, the permanent umpires shall be available to hold reviews at least once each month on a regularly scheduled basis. At such times, the permanent umpires shall review and finally determine all time and attendance disciplinary grievances which have been pending no less than ten (10) days prior to the permanent umpire's scheduled appearance, and are unresolved in accordance with paragraph (a) above. (f) An employee is entitled to appear at the review before a permanent umpire and is entitled to have a CSEA representative or an attorney provided at his or her own expense present. Matters scheduled to be heard by the permanent umpire may not be adjourned except at the discretion of the permanent umpire for good cause shown. Any matters which are adjourned shall be rescheduled for the next regularly scheduled appearance of the permanent umpire.

(g) Where an employee is to be served a notice of discipline related solely to time and attendance and, within three years of such notice, has been found guilty of or settled (or a combination of both) two prior notices of discipline not solely related to time and attendance, the appointing authority may elect either to pursue such time and attendance notice before the permanent umpire in accordance with the attached Schedule or to service a notice of discipline and proceed before a disciplinary arbitrator.

This paragraph shall not apply to notices of discipline based solely on tardiness.

For the purposes of the Time and Attendance Schedule only, "prior record" shall mean any notice of discipline based solely on time and attendance where either guilt was found or a

settlement occurred or a combination of both occurred. However, for all notices of discipline based solely upon time and attendance issued on or after July 1, 1992, the "prior record" shall not include any notices of discipline based solely upon time and attendance that are three or more years old if the employee has not been served a notice of discipline based solely upon time and attendance within the three years from the date of the resolution of the last notice of discipline based solely upon time and attendance. Notices of discipline based solely on tardiness shall proceed on the tardiness schedule only and shall not be considered as a prior record for any other offense. The penalty level for notices of discipline which contain charges of both tardiness and unauthorized absence shall be the appropriate level within the type of unauthorized absence charge. (h) As used in this Article, "time and attendance disciplinary grievances" shall mean those disciplinary grievances based upon notices of discipline which specify tardiness, or unauthorized absence, including improper use of sick leave, and do not contain any other allegations of misconduct or incompetence.

### **§33.6 Administration**

The State and CSEA may jointly administer the arbitration procedure and panels for the purpose of this Article. The State shall seek an appropriation in the amount indicated in each year of the 2016-2021 Agreement: \$404,320 in 2016-2017, \$412,406 in 2017-2018, \$420,654 in 2018-2019, \$429,067 in 2019-2020 \$437,649 in 2020-2021 to be used for the self-administration of the panels and procedure, the time and attendance procedure, research for and training of the panels in the area of patient abuse, and publication of arbitration decisions. The unexpended portion of each year's appropriation shall be carried over into the succeeding year and added to the appropriation for the succeeding year.

### **§33.7 Application**

Changes in shift, pass day, job assignment, transfer or reassignment to another institution, station or work location shall not be made for the purpose of imposing discipline.

## Police Benevolent Association Disciplinary procedures:

### **Article 8**

#### **Discipline**

##### **8.1 Exclusive Procedure**

Discipline shall be imposed upon employees otherwise subject to the provisions of Sections 75 and 76 of the Civil Service Law only pursuant to this Article, and the procedure and remedies herein provided shall apply in lieu of the procedure and remedies prescribed by such sections of the Civil Service Law which shall not apply to employees.

##### **8.2 Disciplinary Procedure**

(a) Discipline shall be imposed only for just cause. Where the appointing authority or his designee seeks the imposition of a loss of leave credits or other privilege, written reprimand, fine, suspension without pay, reduction in grade, or dismissal from service, notice of such discipline shall be made in writing and served, in person, by courier, or by registered or certified mail upon the employee. The conduct for which discipline is being imposed

and the penalty proposed shall be specified in the notice. The notice served on the employee shall contain a detailed description of the alleged acts and conduct including reference to dates, times and places, and if the Employer claims that the employee has been charged with a crime for the alleged acts, the notice of discipline must identify the specific section of the Penal Law or other statute which the Employer claims the employee has been charged with violating, if known by the Employer. The employee shall be provided with two copies of the notice which shall include the statement, "You are provided two copies in order that one may be given to your representative. Your PBA representative is the Police Benevolent Association of New York State, Inc."

(b) The PBA grievance representative at the appropriate level shall be notified of the name of the employee in writing within 24 hours of the service of a notice of discipline. Notification will also be sent to the President of the PBA.

(c) The penalty proposed may not be implemented until the employee (1) fails to file a disciplinary grievance within 14 days\* of service of the notice of discipline, or (2) having filed a grievance, fails to file a timely appeal to disciplinary arbitration, or (3) having appealed to disciplinary arbitration, until and to the extent that it is upheld by the disciplinary arbitrator, or (4) until the matter is settled.

(d) The notice of discipline may be the subject of a disciplinary grievance which shall be served upon the department or agency head or his designee in person or by registered or certified mail within 14 days of the date of the notice of discipline by the employee or the PBA. The employee or the PBA shall be entitled to a meeting to present his position to the department or agency head or his designee within 14 days of the receipt of a disciplinary grievance, and upon consideration of such position, the department or agency head shall advise the PBA of its response in writing by registered or certified mail within seven days of such meeting.

(e) If the disciplinary grievance is not settled or otherwise resolved, it may be appealed to disciplinary arbitration by the employee or the President of the PBA (or his designee) within 14 days of the service of the department or agency head response. Notice of appeal to disciplinary arbitration shall be served, by personal service, registered or certified mail, with the New York State Public Employment Relations Board, with a copy to the department or agency head, or his designee.

(f) The Employer and the PBA shall continue the procedure for the arbitration process which is now in existence as contained in the notice to the Public Employment Relations Board outlining the disciplinary panel and procedures for PBA bargaining unit members dated November 18, 2013 and as amended by mutual agreement hereafter.

(g) Either party wishing a transcript at a disciplinary arbitration hearing may provide for one at its expense and shall provide a copy to the arbitrator and the other party. Unless mutually agreed otherwise, transcripts must be requested prior to the first day of a disciplinary arbitration.

(h) Disciplinary arbitrators shall confine themselves to determinations of guilt or innocence and the appropriateness of proposed penalties, taking into account mitigating and extenuating circumstances. Disciplinary arbitrators shall neither add to, subtract from, nor modify the provisions of this Agreement. The disciplinary arbitrator's decision with respect to guilt or innocence, penalty, or probable cause for suspension, pursuant to Section 8.4 of this Article, shall be final and binding upon the parties, and the disciplinary arbitrator may approve,

disapprove or take any other appropriate action warranted under the circumstances, including, but not limited to, ordering reinstatement and back pay for all or part of the period of suspension. If the disciplinary arbitrator, upon review, finds probable cause for the suspension, he may consider such suspension in determining the penalty to be imposed.

(i) All fees and expenses of the arbitrator, if any, shall be divided equally between the Employer and the PBA or between the Employer and the employee if such employee is not being represented by the PBA. Each party shall bear the costs of preparing and presenting its own case. The estimated arbitrator's fee and expenses and estimated expenses of the arbitration may be collected in advance of the hearing.

(j) In the event that any employee against whom disciplinary charges are brought by the Employer is not being represented by the PBA, such employee shall be individually responsible for all expenses which are incurred in connection with such disciplinary proceeding. No employee can be represented in such a disciplinary proceeding by any officer, executive board member, delegate, representative or employee of any actual or claimed employee organization or affiliate thereof other than the PBA.

### 8.3 Settlement

A disciplinary grievance may be settled at any time following the service of a notice of discipline. The terms of the settlement shall be reduced to writing. An employee offered such a settlement shall be offered a reasonable opportunity to have his attorney or a PBA representative present before he is required to execute it. The PBA grievance representative at the appropriate level shall be provided with a copy of any settlement within 24 hours of its execution.

### 8.4 Suspension Before Notice of Discipline

(a) Prior to issuing a notice of discipline or the exhaustion of the disciplinary grievance procedure provided for in this Article, an employee may be suspended without pay by his appointing authority only pursuant to paragraphs (1) or (2) below.

(1) The appointing authority or his designee may suspend without pay an employee when the appointing authority or his designee determines that there is probable cause that such employee's continued presence on the job represents a potential danger to persons or property or would severely interfere with its operations. Such determination shall be reviewable by a disciplinary arbitrator. A notice of discipline shall be served no later than seven days following any such suspension. At the time of suspension, the appointing authority or his designee shall set forth in writing to the employee the specific reasons for the suspension.

(2) The appointing authority or his designee may with agency approval suspend without pay an employee charged with the commission of a crime. Such employee shall notify his appointing authority in writing of the disposition of any criminal charge including a certified copy of such disposition within seven days thereof. Within 30 days following such suspension under this provision, or within seven days from receipt by the appointing authority of notice of disposition of the charge from the employee, whichever occurs first, a notice of discipline shall be served on such employee or the employee shall be reinstated with back pay. Nothing in this paragraph shall limit the right of the appointing authority or his designee to take disciplinary action during the pendency of criminal proceedings.

(3) In the event that an employee is suspended without

pay, the employee will have the option to draw from previously accrued annual leave, personal leave, holiday leave and/or compensatory leave upon written notification to his/her supervisor.

(4) When an employee has been suspended without pay, the agency or department meeting may be waived by the employee or by the PBA with the consent of the employee at the time of filing the disciplinary grievance. In the event of such waiver, the employee or the PBA shall file the grievance form within the prescribed time limits for filing an agency level grievance directly with PERB. The case shall be given priority in assignment.

(5) An employee who is charged with the commission of a crime, suspended without pay and subsequently found not guilty and against whom no disciplinary action is taken for the incident in question, shall be reinstated with full back pay.

(6) During a period of suspension without pay pursuant to this section, the State shall continue to pay its share of the cost of the employee's health, dental and vision care coverage under Article 12 which was in effect on the day prior to the suspension provided that the suspended employee pay his or her share.

(b) A registered or certified letter notifying the President of the PBA of any suspension under paragraph 8.4(a) above shall be sent within one day, excluding Saturdays, Sundays and holidays.

(c) Back Pay Award

Where an employee is awarded back pay, the amount to be reimbursed shall not be offset by any wages earned by the employee during the period of his suspension with the exception of unemployment insurance. An award of back pay shall be deemed to include reimbursement of all other benefits including the accrual of leave credits and holiday leave.

#### 8.5 Union Representation

An employee shall be entitled to be represented at a disciplinary grievance meeting by PBA representatives, provided, however, the number of such officials shall not exceed two (2) and PBA counsel. Such representatives shall not suffer any loss of earnings or be required to charge leave credits as a result of processing or investigating disciplinary grievances during such representatives' scheduled working hours. Reasonable and necessary time spent in processing and investigating grievances, including travel time, during such representatives' scheduled working hours shall be considered as time worked provided, however, that when such activities extend beyond such representatives' scheduled working hours, such time shall not be considered as time worked. On the representative's prior written request at least 48 hours in advance, the Employer will make every effort to reschedule shift assignments so that meetings fall during working hours of PBA representatives. PBA staff representatives and PBA counsel may be present at disciplinary grievance meetings and arbitration proceedings.

#### 8.6 Limitation

An employee shall not be disciplined for acts, except those which would constitute a crime, which occurred more than nine months prior to the service of the notice of discipline. The employee's whole record of employment, however, may be considered with respect to the appropriateness of the penalty to be imposed, if any.

#### 8.7 Other Actions

Shift, pass day, job transfer or other reassignment or assignments to another institution or work station shall not be made for the purpose of

imposing discipline provided, however, that nothing in this section shall bar any action otherwise taken pursuant to this Article. A claimed violation of this section will be processed as an Article 7 grievance.

#### 8.8 Expedited Arbitration

In lieu of the procedures specified elsewhere in Article 8 of this Agreement, any disciplinary grievance involving the suspension of an individual employee can, with mutual agreement of the parties hereto, or the employee if not represented by the PBA, be submitted to arbitration under the expedited arbitration procedure hereinafter provided within 14 days after the filing of a disciplinary grievance. In all other grievances involving disciplinary action which are specifically subject to arbitration under Article 8 of this Agreement, the PBA may, within 14 days after the filing of a demand for arbitration under Article 8.2(e), propose to use the expedited arbitration procedure hereinafter provided. Either party may propose use of this procedure, but it shall be in writing and must be agreed to by both the parties. If no such election is made within the foregoing time period, the arbitration procedure in Article 8 shall be followed. As soon as possible after this Agreement becomes final and binding, a panel of arbitrators shall be selected by the parties. Each arbitrator shall serve until the termination of this Agreement unless by mutual agreement the parties terminate his/her services earlier. The arbitrator shall be notified of his or her termination by a joint letter from the parties.

The arbitrator shall conclude his/her services upon conclusion of any outstanding arbitrations. A successor arbitrator shall be selected by the parties. Arbitrators shall be assigned cases as described below.

The procedure for expedited arbitration shall be as follows:

- (a) The panel of arbitrators shall be assigned a number in rotation.
- (b) The parties shall rank the next five members of the panel in rotation and the member with the highest ranking shall serve as arbitrator.
- (c) The five members shall be randomly assigned a number (remixed) after each rotation is complete.
- (d) The parties shall notify the arbitrator in writing on the day of the arbitration demand in suspension cases to settle a grievance by expedited arbitration. The arbitrator shall notify the parties in writing of the hearing date which must be within 30 days.
- (e) The parties must submit to the arbitrator five days prior to the hearing a written stipulation of all facts not in dispute.
- (f) The parties shall present an oral closing argument of the case. However, alternatively, and by mutual agreement only, and within five (5) working days after the hearing each party may submit a brief written summary of the issues raised at the hearing and arguments supporting its position. The arbitrator shall give his or her award within five (5) working days after the hearing, or when applicable after receiving the briefs. He/she shall provide the parties a brief written statement of the reasons supporting his/her award.
- (g) The time limits in this Section may be extended by agreement of the parties only in emergency situations. Such extensions shall not circumvent the purpose of this procedure.
- (h) The decision of the arbitrator will be final and binding. The compensation and expenses of the arbitrator and the general expenses of the arbitration shall be borne by the Employer and the PBA in equal parts except in cases where the employee is not represented by the PBA, in which cases the costs shall be borne by the employee and the Employer, as per Article 8.2(j).



(i) The power, authority and restrictions applicable to a disciplinary arbitrator under Article 8 shall apply under the expedited arbitration procedure.  
\*Unless otherwise specified days as used in this Article shall mean calendar days.

NYSCOPBA Bargaining Unit Disciplinary procedures:

**ARTICLE 8**

**Discipline**

**8.1 Exclusive Procedure**

Discipline shall be imposed upon employees otherwise subject to the provisions of Sections 75 and 76 of the Civil Service Law only pursuant to this Article, and the procedure and remedies herein provided shall apply in lieu of the procedure and remedies prescribed by such sections of the Civil Service Law which shall not apply to employees.

**8.2 Disciplinary Procedure**

- (a) Discipline shall be imposed only for just cause. Where the appointing authority or his designee seeks the imposition of a loss of leave credits or other privilege, written reprimand, fine, suspension without pay, reduction in grade, or dismissal from service, notice of such discipline shall be made in writing and served, in person, by courier, or by registered or certified mail upon the employee. The conduct for which discipline is being imposed and the penalty proposed shall be specified in the notice. The notice served on the employee shall contain a detailed description of the alleged acts and conduct including reference to dates, times and places, and if the Employer claims that the employee has been charged with a crime for the alleged acts, the notice of discipline must identify the specific section of the Penal Law or other statute which the Employer claims the employee has been charged with violating, if known by the Employer. The employee shall be provided with two copies of the notice which shall include the statement, "You are provided two copies in order that one may be given to your representative. Your Union representative is NYSCOPBA."
- (b) The Union grievance representative at the appropriate level shall be sent a copy of the notice of discipline within 24 hours of the service of a notice of discipline upon the employee. A copy of the notice of discipline will also be sent to the President of the Union.
- (c) The penalty proposed may not be implemented until the employee (1) fails to file a disciplinary grievance within 14 days\* of service of the notice of discipline, or (2) having filed a grievance, fails to file a timely appeal to disciplinary arbitration, or (3) having appealed to disciplinary arbitration, until and to the extent that it is upheld by the disciplinary arbitrator, or (4) until the matter is settled.
- (d) The notice of discipline may be the subject of a disciplinary grievance which shall be served upon the department or agency head or his designee in person or by registered or certified mail within 14 days of the date of the notice of discipline by the employee or the Union. The employee or the Union shall be entitled to a meeting to present his position to the department or agency head or his designee within 14 days of the receipt of a disciplinary grievance, and upon consideration of such position, the department or agency head shall advise the Union of its response in writing by registered or certified mail within seven days of such meeting.
- (e) If the disciplinary grievance is not settled or otherwise resolved, it may be appealed to disciplinary arbitration by the employee or the President of the Union (or his designee) within 14 days of the service of the department or agency head response. Notice of appeal to disciplinary arbitration shall be served, by personal service, registered or certified mail, with the Public Employment Relations Board, with a copy to the department or agency head, or his designee.

\*Unless otherwise specified days as used in this Article shall mean calendar days.

(f) The Employer and the Union shall continue the procedure for the arbitration process which is now in existence as contained in the agreement with the Public Employment Relations Board dated December 28, 1979, and as amended hereinafter. Arbitration hearings may not be rescheduled without mutual consent of the parties.

(g) Either party wishing a transcript at a disciplinary arbitration hearing may provide for one at its expense and shall provide a copy to the arbitrator and the other party. Unless mutually agreed otherwise, transcripts must be requested prior to the first day of a disciplinary arbitration.

(h) Disciplinary arbitrators shall confine themselves to determinations of guilt or innocence and the appropriateness of proposed penalties, taking into account mitigating and extenuating circumstances. Disciplinary arbitrators shall neither add to, subtract from nor modify the provisions of this Agreement. The disciplinary arbitrator's decision with respect to guilt or innocence, penalty, or probable cause for suspension, pursuant to Section 8.4 of this Article, shall be final and binding upon the parties, and the disciplinary arbitrator may approve, disapprove or take any other appropriate action warranted under the circumstances, including, but not limited to, ordering reinstatement and back pay for all or part of the period of suspension. If the disciplinary arbitrator, upon review, finds probable cause for the suspension, he may consider such suspension in determining the penalty to be imposed.

(i) All fees and expenses of the arbitrator, if any, shall be divided equally between the Employer and the Union or between the Employer and the employee if such employee chooses not to be represented by the Union. Each party shall bear the costs of preparing and presenting its own case. The estimated arbitrator's fee and expenses and estimated expenses of the arbitration may be collected in advance of the hearing.

(j) In the event that any employee against whom disciplinary charges are brought by the Employer elects to be represented by any party other than the Union, such employee shall be individually responsible for all expenses which are incurred in connection with such disciplinary proceeding. No employee can be represented in such a disciplinary proceeding by any officer, executive board member, delegate, representative or employee of any actual or claimed employee organization or affiliate thereof other than NYSCOPBA.

### 8.3 Settlement

A disciplinary grievance may be settled at any time following the service of a notice of discipline. The terms of the settlement shall be reduced to writing.

An

employee offered such a settlement shall be offered a reasonable opportunity to have his attorney or a Union representative present before he is required to execute it. The Union grievance representative at the appropriate level shall be provided with a copy of any settlement within 24 hours of its execution.

### 8.4 Suspension Before Notice of Discipline

(a) Prior to issuing a notice of discipline or the exhaustion of the disciplinary grievance procedure provided for in this Article, an employee may be suspended without pay by his appointing authority only pursuant to paragraphs (1) or (2) below.

(1) The appointing authority or his designee may suspend without pay an employee when the appointing authority or his designee determines that there is probable cause that such employee's continued presence on the job represents a potential danger to persons or property or would severely interfere with its operations. Such determination shall be reviewable by a disciplinary arbitrator. A notice of discipline shall be served no later than seven days following any such suspension. At the time of suspension, the appointing authority or his designee shall set forth in writing to the employee the specific reasons for the suspension.

(2) The appointing authority or his designee may with agency approval suspend without pay an employee charged with the commission of a crime. Such employee shall notify his appointing authority in writing of the disposition of any criminal charge including a certified copy of such disposition within seven days thereof. Within 30 days following such suspension under this provision, or within seven days from receipt by the appointing authority of notice of disposition of the charge from the employee, whichever occurs first, a notice of discipline shall be served on such employee or the employee shall be reinstated with back pay. Nothing in this paragraph shall limit the right of the appointing authority or his designee to take disciplinary action during the pendency of criminal proceedings.

(3) Upon the ratification of this Agreement, in the event that an employee is suspended without pay, the employee will have the option to draw from previously accrued annual leave, personal leave, holiday leave and/or compensatory leave upon written notification to his/her supervisor.

(4) When an employee has been suspended without pay, the agency or department meeting may be waived by the employee or by the Union with the consent of the employee at the time of filing the disciplinary grievance. In the event of such waiver, the employee or the Union shall file the grievance form within the prescribed time limits for filing an agency level grievance directly with PERB. The case shall be given priority in assignment.

(5) An employee who is charged with the commission of a crime, suspended without pay and subsequently not found guilty and against whom no disciplinary action is taken for the incident in question, shall be reinstated with full back pay.

(6) During a period of suspension without pay pursuant to this section, the State shall continue to pay its share of the cost of the employee's health, dental and vision care coverage under Article 12 which was in effect on the day prior to the suspension provided that the suspended employee pay his or her share.

(b) A registered or certified letter notifying the President of the Union of any suspension under paragraph 8.4(a) above shall be sent within one day, excluding Saturdays, Sundays and holidays.

(c) Back Pay Award

Where an employee is awarded back pay, the amount to be reimbursed will be offset by unemployment insurance collected by the employee during the period that the back pay award covers. An award of back pay shall be deemed to include reimbursement of all other benefits including the accrual of leave credits and holiday leave.

#### 8.5 Union Representation

An employee shall be entitled to be represented at a disciplinary grievance meeting or arbitration by a chief sector steward or designee. Such representatives shall not suffer any loss of earnings or be required to charge leave credits as a result of processing or investigating disciplinary grievances during such chief sector steward's or designee's scheduled working hours. Reasonable and necessary time spent in processing and investigating grievances, including travel time, during such chief sector steward's or designee's scheduled working hours shall be considered as time worked provided, however, that when such activities extend beyond such chief sector steward's or designee's scheduled working hours, such time shall not be considered as time worked. On the employee's prior written request at least 48 hours in advance, the Employer will make every effort to reschedule shift assignments so that meetings fall during working hours of Union representatives. Union staff may be present at disciplinary grievance meetings and arbitration proceedings.

#### 8.6 Limitation

An employee shall not be disciplined for acts, except those which would constitute a crime, which occurred more than nine months prior to the service of the discipline.

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