CAMPUS POLICIES AND PROCEDURES

Student Code of Conduct/Sexual Misconduct Policy

14. Past History

A. The past history of an organization will not be admissible in a hearing except in the following cases:
   1. A representative for the organization presents false information during the hearing about the organization’s past judicial and/or other history.
   2. If, in the past, the organization charged was found to have violated a similar policy (“Past Violation”), the information related to the Past Violation may be considered by the Hearing Board if:
      a. The previous violation was substantially similar to the present complaint; and
      b. The previous violation indicates a pattern of behavior and substantial conformity with that pattern by the organization charged.

15. Appeals

An appeal of a decision from the initial hearing may be made by Director of Student Conduct and Community Standards or designee, or the accused organization within four (4) school days of the decision except as the period may be extended by the Appellate Board. A victim, if dissatisfied with the sanction(s) imposed, may request the Director of Student Conduct and Community Standards or designee to file an appeal, and such request shall not be unreasonably refused.

• Appeals may be filed by the Director of Student Conduct and Community Standards or designee, on the following grounds only:
  a. that the initial hearing body failed to observe the procedural requirements established by this Code;
  b. that the sanction imposed by the initial hearing body was clearly unreasonable in light of the known circumstances.

• An appeal may be filed by the accused organization on the following grounds only:
  a. that the initial hearing body failed to observe the procedural requirements established by this Code;
  b. that the sanction imposed by the initial hearing body was clearly unreasonable in light of the known circumstances;
  c. that new evidence has appeared, that was not available at the time of the hearing, which could have substantially affected the initial decision.

NOTE: In cases of Greek affiliated Hearings and Appeal Processes, every effort will be made to ensure at least one member of each board is/was affiliated with a Greek community either at SUNY Potsdam or at his/her past college/university. While we work to ensure this occurrence, it is NOT an absolute and the hearing will proceed if there are no hearing officers or appellate board members with Greek affiliation available at the scheduled time.

C. SUNY Potsdam Sexual Misconduct Policy, Process and Procedures

SUNY Potsdam is committed to creating and maintaining an educational environment free from all forms of sex discrimination, including sexual misconduct. Any act involving sexual harassment, violence, coercion, and intimidation will not be tolerated. Specifically, SUNY Potsdam strictly prohibits the offenses of domestic violence, dating violence, sexual assault, sexual harassment and stalking. These acts have a real effect on the lives of victims. They not only violate a person’s feelings of trust and safety, but they can also substantially interfere with a student’s education. It is the policy of SUNY Potsdam that, upon learning
Sexual Misconduct Policy

that an act of sexual misconduct has taken place, immediate action will be taken to address the situation. This includes working with State and local law enforcement to bring possible criminal charges, seeking disciplinary action through the college/university, and enforcing mandatory transcript notifications so other institutions are on notice of the offense committed.

SUNY Potsdam encourages the reporting of sexual misconduct that is prompt and accurate. This allows the college/university community to quickly respond to allegations and offer immediate support to the victim. SUNY Potsdam is committed to protecting the privacy (and confidentiality when possible) of victims, and will work closely with students who wish to obtain confidential assistance regarding an incident of sexual misconduct. All allegations will be investigated promptly and thoroughly, and both the Victim and the accused will be afforded equitable rights during the investigative process.

It is the collective responsibility of all members of the SUNY Potsdam community to foster a safe and secure campus environment. In an effort to promote this environment and prevent acts of sexual misconduct from occurring, the college/university engages in ongoing prevention and awareness education programs. All incoming students [and employees] are required to participate in these programs, and all members of the college/university community are required to participate throughout the year in ongoing campaigns and trainings focused on the prevention of sexual misconduct on campus.

Community expectations related to sexual relations:

*Mutual Respect:* Sexual relations includes respecting your partner (their desires, boundaries, and body) and having open communication with the person(s) with whom you are engaging in sexual contact so that all involved are comfortable with the activity that may occur and understand the boundaries and needs of those involved.

*Communication:* The College encourages students who choose to engage in sexual behavior to talk with each other clearly about what they want or do not want from sex prior to engaging in sexual activity. Open communication and listening includes understanding one’s own needs and desires, discussing these needs and desires with your partner(s), and, in general, creating open communication within the relationship however long the encounter or commitment. Verbal communication in sexual situations is almost always the clearest means to communicate. An environment based on open communication and listening promotes effective consent, which SUNY Potsdam considers integral to any responsible sexual relationship.

*Cultural Awareness and Respect:* The SUNY Potsdam community is a multi-cultural educational environment where the customs and values of each individual are to be respected. Although the College’s standards regarding behavioral expectations and guidelines apply to all individuals, each person should recognize and respect the variations in the cultural expectations of others and demonstrate civility while engaging in open communication regarding sexual desires and boundaries.

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

The health and safety of every student at the State University of New York and its State-operated and community colleges is of utmost importance. SUNY Potsdam 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 Potsdam 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 Potsdam officials or law enforcement will not be subject to SUNY Potsdam’s code of conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.
CAMPUS POLICIES AND PROCEDURES

Sexual Misconduct Policy

Students’ Bill of Rights
The State University of New York and SUNY Potsdam are committed to providing options, support and assistance to victims/survivors of sexual assault, domestic violence, dating violence, and/or stalking to ensure that they can continue to participate in College/University-wide and campus programs, activities, and employment. All victims/survivors of these crimes and violations, regardless of race, color, national origin, religion, creed, age, disability, sex, gender identity or expression, sexual orientation, familial status, pregnancy, predisposing genetic characteristics, military status, domestic violence victim status, or criminal conviction, have the following rights, regardless of whether the crime or violation occurs on campus, off campus, or while studying abroad:

All students have the right to:

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

Options in Brief:

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

- Receive resources, such as counseling and medical attention;
- Confidentially or anonymously disclose a crime or violation (for detailed information on confidentiality and privacy, http://www.potsdam.edu/studentlife/safety/witnessform.cfm

Make a report to:

- Title IX Coordinator & Affirmative Action Officer Stacey Basford: basforsl@potsdam.edu, Van Housen 392, (315) 267-2516: titleix@potsdam.edu
- University Police: universtpolice@potsdam.edu, Van Housen Hall Extension, 315-267-2222, anonymously at http://www.potsdam.edu/studentlife/safety/incidentreporting/witnessform.cfm
- Potsdam Village Police, Main Street, Potsdam, NY, 315-265-2121
- Family Court: see campus Domestic Violence in the Workplace policy; http://www.potsdam.edu/offices/hr/upload/DomesticViolence.pdf
Sexual Misconduct Policy

Sexual Violence Response Policy

In accordance with the Students’ Bill of Rights, reporting individuals shall have the right to pursue more than one of the options below at the same time, or to choose not to participate in any of the options below:

1) Reporting:

• To disclose confidentially the incident to one of the following college officials, who by law may maintain confidentiality, and can assist in obtaining services:
  ○ Anonymously via an internet http://www.potsdam.edu/studentlife/safety/witnessform.cfm;
  ○ Counseling Office Van Housen Ground Floor, 315-267-2330;
  ○ Student Health Services Van Housen Ground Floor, 315-267-2377; and
  ○ Campus Ministry, Barrington Student Union Room 221B, 315-267-2680, smithha@potsdam.edu

  • To disclose confidentially the incident and obtain services from the New York State, New York City or county hotlines: http://www.opdv.ny.gov/help/dvhotlines.html. Additional disclosure and assistance options are catalogued by the Office for the Prevention of Domestic Violence and presented in several languages: http://www.opdv.ny.gov/help/index.html (or by calling 1-800-942-6906), and assistance can also be obtained through:
    ○ SurvJustice: http://survjustice.org/our-services/civil-rights-complaints/;
    ○ Legal Momentum: https://www.legalmomentum.org/;

    ○ NYSCASA: http://nyscasa.org/responding;
    ○ NYSCADV: http://www.nyscadv.org/;
    ○ Pandora’s Project: http://www.pandys.org/lgbtsurvivors.html;
    ○ GLBTQ Domestic Violence Project: http://www.glbtqdv.org/; and


    ○ Safe Horizons: http://www.safehorizon.org/. (note that these hotlines are for crisis intervention, resources, and referrals, and are not reporting mechanisms, meaning that disclosure on a call to a hotline does not provide any information to the campus. Reporting individuals are encouraged to additionally contact a campus confidential or private resource so that the campus can take appropriate action in these cases).

• To disclose the incident to one of the following college officials who can offer privacy and can provide information about remedies, accommodations, evidence preservation, and how to obtain resources. Those officials will also provide information contained in the Students’ Bill of Rights, including the right to choose when and where to report, to be protected by the institution from retaliation, and to receive assistance and resources from the institution. Those college officials will disclose that they are private and not confidential resources, and may still be required by law and college policy to inform one or more college officials about the incident, including but not limited to the Title IX Coordinator and Deputy Title IX Coordinator. They will notify reporting individuals that the criminal justice process uses different standards of proof and evidence than internal procedures, and questions about the penal law or the criminal process should be directed to law enforcement or district attorney:

  ○ Title IX Coordinator & Affirmative Action Officer Stacey Basford: basforsl@potsdam.edu, Van Housen 392, (315) 267-2516 titleix@potsdam.edu
CAMPUS POLICIES AND PROCEDURES

Sexual Misconduct Policy

○ University Police, Van Housen Hall ext., 315-267-2222 (24 hours a day); and
○ Wellness Advocates, Van Housen, 315-261-8873;
○ Coaches/Athletic Trainers
○ Center for Diversity
○ Faculty
○ Area Coordinators/Residence Hall Directors and Resident Assistants
  ▶ Lehman Hall
  ▶ Knowles Hall
  ▶ Bowman East
  ▶ Bowman South
  ▶ Bowman West
  ▶ Draime/Van Housen/Sisson/Townhouses

* To file a criminal complaint with University Police and/or with local law enforcement and/or state police:
  ○ University Police, Van Housen Ext. 315-267-2222
  ○ Potsdam Village Police, Main Street, Potsdam, NY, 315-265-2121
  ○ State police 24 hour hotline to report sexual assault on a NY college campus: 1-844-845-7269.

* To receive assistance by Title IX Coordinator in initiating legal proceedings in family court or civil court.

* To file a report of sexual assault, domestic violence, dating violence, and/or stalking, and/or talk to the Title IX Coordinator for information and assistance. Reports will be investigated in accordance with SUNY Potsdam policy and the reporting individual’s identity shall remain private at all times if said reporting individual wishes to maintain privacy. If a reporting individual wishes to keep his/her identity anonymous, the incident can be reported using University Police’s anonymous reporting form found at: http://www.potsdam.edu/studentlife/safety/incidentreporting/witnessform.ctf
  ○ Title IX Coordinator & Affirmative Action Officer Stacey Basford: basforsl@potsdam.edu, Van Housen 392, (315) 267-2516 titleix@potsdam.edu

* When the accused is an employee, a reporting individual may also report the incident to the Office of Human Resources or may request that one of the above referenced confidential or private employees assist in reporting to Human Resources. Disciplinary proceedings will be conducted in accordance with applicable collective bargaining agreements. When the accused is an employee of an affiliated entity or vendor of the college, college officials will, at the request of the reporting individual, assist in reporting to the appropriate office of the vendor or affiliated entity and, if the response of the vendor or affiliated entity is not sufficient, assist in obtaining a persona non grata letter, subject to legal requirements and college policy.
  ○ Human Resources Office, Raymond Hall 219; 315-267-4816

* You may withdraw your complaint or involvement from the SUNY Potsdam process at any time.

* Every college shall ensure that, at minimum, at the first instance of disclosure by a reporting individual to a college representative, the following information shall be presented to the reporting individual: “you have the right to make a report to University Police, local law enforcement, and/or State Police or choose not to report; to report the incident to your institution; to be protected by the institution from retaliation for reporting an incident; and to receive assistance and resources from your institution.”

2) Resources:

To obtain effective intervention services.
  • College Counseling Center, 131 Van Housen Hall, 315-267-2330. All services are available and free to registered students.
  ○ Wellness Advocates, Van Housen, 315-261-8873
CAMPUS POLICIES AND PROCEDURES

Sexual Misconduct Policy

- Student Health Services; 315-267-2377; Van Housen Hall. Sexual contact can transmit Sexually Transmitted Infections (STI), HIV, Hepatitis B and C and may result in pregnancy. Testing for STIs and emergency contraception is available. Student Health Services does HIV testing for $8, gonorrhea/chlamydia testing for $5. And syphilis testing is free. Hepatitis B and C testing is usually billed to insure and is not free.

- Canton/Potsdam Hospital, Leroy Street, Potsdam, 315-265-3300
  - Within 96 hours of an assault, you can get a Sexual Assault Forensic Examination (commonly referred to as a rape kit) at the hospital. While there should be no charge for a rape kit, there may be a charge for medical or counseling services off campus and, in some cases, insurance may be billed for services. You are encouraged to let hospital personnel know if you do not want your insurance policyholder to be notified about your access to these services. The New York State Office of Victim Services may be able to assist in compensating victims for health care and counseling services, including emergency funds. More information may be found here: http://www.ovs.ny.gov/files/ovs_rights_of_cv_booklet.pdf, or by calling 1-800-247-8035. Options are explained here: http://www.ovs.ny.gov/helpforcrimevictims.html.

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

3) Protection and Accommodations:

- The College can issue a “No Contact Order”, consistent with the college policy and procedure, meaning that continuing to contact the protected individual is a violation of college policy and subject to additional conduct charges; if accused and a protected individual each observe in a public place, it is the responsibility of the accused to leave the area immediately and without directly contacting the protected person. 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”.
  - A “No Contact Order” is provided to both the accused student and victim. This order clearly states that neither party should be in contact by telephone, text message, twitter, instant message, skype, facebook, etc…, in person or through a third party (other than an attorney). Persons receiving a “No Contact Order” should also not find themselves in the general vicinity of one another.

- To have assistance from University Police or other college officials in initiating legal proceedings in family court or civil court, including but not limited to obtaining an Order of Protection or, if outside of New York State, an equivalent protective or restraining order.

- To receive a copy of the Order of Protection or equivalent and have an opportunity to meet or speak with a college official who can explain the order and answer questions about it, including information from the Order about the accused’s responsibility to stay away from the protected person(s); that burden does not rest on the protected person(s).

- To an explanation of the consequences for violating these orders, including but not limited to arrest, additional conduct charges, and interim suspension.

- To have assistance from University Police in effecting an arrest when an individual violates an Order of Protection or, if outside of New York State, an equivalent protective or restraining order within the jurisdiction of University Police or, if outside of the jurisdiction or University Police to call on and assist local law enforcement in effecting an arrest for violating such an order.

- When the accused is a student and presents a continuing threat to the health and safety of the community, the accused may be placed on interim suspension pending the outcome of a conduct process. 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.

- When the accused is not a student, but is a member of the college community, and presents a continuing threat to the health and safety of the community, the accused may be subject to interim measures in accordance with applicable collective bargaining agreements, employee handbooks, and SUNY Potsdam policies and rules. The campus will promptly review existing interim measures at the request of the party who is affected by that interim measure. The parties can submit evidence to support their request.
Sexual Misconduct Policy

- When the accused is not a member of the college community, to have assistance from University Police or other college officials in obtaining a persona non grata letter, subject to legal requirements and college policy.
- To obtain reasonable and available interim measures and accommodations that effect a change in academic, housing, employment, transportation, or other applicable arrangements in order to ensure safety, prevent retaliation, and avoid an ongoing hostile environment. 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. While reporting individuals may request accommodations through any of the offices reference in this policy, the following can serve as a point to assist with these measures:

  ◦ Title IX Coordinator & Affirmative Action Officer Stacey Basford:
    basforsl@potsdam.edu, Van Housen 392, (315) 267-2516
titleix@potsdam.edu

4) Student Conduct Process:

- To request that student conduct charges be filed against the accused, conduct proceedings are governed by the procedures set forth in the Code of Student Rights, Responsibilities and Conduct: http://www.potsdam.edu/studentlife/studentconduct/upload/1415CodeOfConduct.pdf as well as federal and New York State law, including the due process provisions of the United states and New York State Constitutions.
- Throughout conduct proceedings, the respondent and the reporting individual will have:
  ◦ The same opportunity to be accompanied by an advisor of their choice who may assist and advise the parties throughout the conduct process and any related hearings or meetings. Participation of the advisor in any proceeding is governed by federal law and the Student Code of Conduct;
  ◦ The right to a prompt response to any complaint and to have their complaint investigated and adjudicated in an impartial, timely, and thorough manner by individuals who receive annual training in conducting investigations of sexual violence, the effects of trauma, impartiality, the rights of the respondent, including the right to a presumption that the respondent is “not responsible” until a finding of responsibility is made, and other issues related to sexual assault, domestic violence, dating violence, and stalking.
  ◦ The right to an investigation and process conducted in a manner that recognizes the legal and policy requirements of due process (including fairness, impartiality, and a meaningful opportunity to be heard) and is not conducted by individuals with a conflict of interest.
  ◦ The right to receive advance written or electronic notice of the date, time, and location of any meeting or hearing they are required to or are eligible to attend. Accused individuals will also be told the factual allegations concerning the violation, a reference to the specific code of conduct provisions alleged to have been violated, and possible sanctions.
  ◦ The right to have a conduct process run concurrently with a criminal justice investigation and proceeding, except for temporary delays as requested by external municipal entities while law enforcement gathers evidence. Temporary delays should not last more than 10 days except when law enforcement specifically requests and justifies a longer delay.
  ◦ The right to offer evidence during an investigation and to review available relevant evidence in the case file or otherwise held by SUNY Potsdam.
  ◦ The right to present evidence and testimony at a hearing, where appropriate.
  ◦ The right to a range of options for providing testimony via alternative arrangements, including telephone/ videoconferencing or testifying with a room partition.
  ◦ The right to exclude prior sexual history with persons other than the other party in the conduct process or their own mental health diagnosis or treatment from admittance in college disciplinary stage that determines responsibility. Past findings of domestic violence, dating violence, stalking, or sexual assault may be admissible in the disciplinary stage that determines sanction.
  ◦ The right to ask the decision maker questions, and to ask questions of other parties and any witnesses present through the decision maker.
  ◦ The right to make an impact statement during the point of the proceeding where the decision maker is deliberating on appropriate sanctions.
  ◦ The right to simultaneous (among the parties) written or electronic notification of the outcome of a conduct proceeding, including the decision, any sanction(s), and the rationale for the decision and any sanctions.
CAMPUS POLICIES AND PROCEDURES

○The right to written or electronic notice about the sanction(s) that may be imposed on the accused based upon the outcome of the conduct proceeding. For students found responsible for sexual assault, the available sanctions are suspension with additional requirements and expulsion/dismissal.

Sexual Misconduct Policy

• Access to at least one level of appeal of determination before a panel, which may include one or more students, that is fair and impartial and does not include individuals with conflict of interest.
• The right to have access to a full and fair record of a student conduct hearing, which shall be preserved and maintained for at least five years.
• The right to choose whether to disclose or discuss the outcome of a conduct hearing.
• The right to have all information obtained during the course of the conduct or judicial process be protected from public release until the appeals panel makes a final determination unless otherwise required by law.

Options for Confidentially Disclosing Sexual Violence

The State University of New York and SUNY Potsdam want you to get the information and support you need regardless of whether you would like to move forward with a report of sexual violence to campus officials or to police. You may want to talk with someone about something you observed or experienced, even if you are not sure that the behavior constitutes sexual violence. A conversation where questions can be answered is far superior to keeping something to yourself. Confidentiality varies, and this document is aimed at helping you understand how confidentiality applies to different resources that may be available to you.

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

Privileged and Confidential Resources:
Individuals who are confidential resources will not report crimes to law enforcement or college officials without your permission, except for extreme circumstances, such as a health and/or safety emergency. At SUNY Potsdam, this includes:
• SUNY Potsdam’s Counseling Services Center; 315-267-2330; http://potsdam.edu/studentlife/counseling/index.cfm
• Individuals serving in a pastoral role: Campus Ministry, Barrington Student Union room 221B, 315-267-2680, smithha@potsdam.edu
• SUNY Potsdam’s Student Health Services; VanHousen Hall; 315-267-2377
http://www.potsdam.edu/studentlife/healthservices/index.cfm

Off-campus options to disclose sexual violence confidentially include (note that these outside options do not provide any information to the campus):
• Off-campus counselors and advocates. Crisis services offices will generally maintain confidentiality unless you request disclosure and sign a consent or waiver form. More information on an agency’s policies on confidentiality may be obtained directly from the agency.
CAMPUS POLICIES AND PROCEDURES

Sexual Misconduct Policy

- A trained advocate/volunteer at St. Lawrence Valley Renewal House, a local domestic violence/sexual assault agency (315-379-9845).
- Canton-Potsdam Hospital, at 50 Leroy Street, Potsdam (315-265-3300), ER open 24 hours. In Canton: 80 East Main St (M-F 4-9pm, Sat 9am-9pm, Sun 10am-6pm). (315-386-3300)
- REACHOUT of St. Lawrence County for crisis intervention (315-265-2422)
- Planned Parenthood of Canton (315-386-8821)

- Off-campus healthcare providers
  - Note that medical office and insurance billing practices may reveal information to the insurance policyholder, including medication and/or examinations paid for or administered. The New York State Office of Victim Services may be able to assist in compensating victims/survivors for health care and counseling services, including emergency compensation. More information may be found here: http://www.ovs.ny.gov/files/ovs_rights_of_cv_booklet.pdf, or by calling 1-800-247-8035. Options are explained here: http://www.ovs.ny.gov/helpforcrimevictims.html.

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

Non-Professional Counselors and Advocates:
Non-professional counselors and advocates can also assist you without sharing information that could identify you. At SUNY Potsdam, this includes the Wellness Advocates, trained peer counselors; 315-261-8873. These individuals will report the nature, date, time, and general location of an incident to SUNY Potsdam's Title IX Coordinator but will consult with you to ensure no personally identifying details are shared without your consent. These individuals are considered confidential resources as discussed above.

Privacy versus Confidentiality:
Even those SUNY Potsdam offices and employees who cannot guarantee confidentiality will maintain your privacy to the greatest extent possible. The information you provide to a non-confidential resource will be relayed only as necessary to investigate and/or seek a resolution and to notify the Title IX Coordinator who is responsible under the law for tracking patterns and spotting systemic issues. SUNY Potsdam will limit the disclosure as much as possible, even if the Title IX Coordinator determines that the request for confidentiality cannot be honored.

Requesting Confidentiality: How SUNY Potsdam Will Weigh the Request and Respond:
If you disclose an incident to a SUNY Potsdam employee who is responsible for responding to or reporting sexual violence or sexual harassment, but wish to maintain confidentiality or do not consent to the institution’s request to initiate an investigation, the Title IX Coordinator must weigh your request against our obligation to provide a safe, non-discriminatory environment for all members of our community, including you.

We will assist you with academic, housing, transportation, employment, and other reasonable and available accommodations regardless of your reporting choices. While reporting individuals may request accommodations through several college offices, the following can serve as points of contact to assist with these measures: Title IX Coordinator and Affirmative Action Officer Stacey Basford, basforsl@potsdam.edu, Van Housen 392, (315) 267-2516; titleix@potsdam.edu. We also may take proactive steps, such as training or awareness efforts, to combat sexual violence in a general way that does not identify you or the situation you disclosed.

We may seek consent from you prior to conducting an investigation. You may decline to consent to an investigation, and that determination will be honored unless SUNY Potsdam’s failure to act does not adequately mitigate the risk of harm to you or other members of the SUNY Potsdam community. Honoring your request may limit our ability to meaningfully investigate and pursue conduct action against an accused individual. If we determine that an investigation is required, we will notify you and take immediate action as necessary to protect and assist you.
Sexual Misconduct Policy

When you disclose an incident to someone who is responsible for responding to or reporting sexual violence or sexual harassment, but wish to maintain confidentiality, SUNY Potsdam will consider many factors to determine whether to proceed with an investigation despite that request. These factors include, but are not limited to:

- Whether the accused has a history of violent behavior or is a repeat offender;
- Whether the incident represents escalation in unlawful conduct on behalf of the accused from previously noted behavior;
- Whether the accused used a weapon or force;
- Whether we possess other means to obtain evidence such as security footage, and whether available information reveals a pattern of perpetration at a given location or by a particular group.

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

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

Anonymous Disclosure:
The Hotline is for crisis intervention, resources and referrals and is not a reporting mechanism.

- New York State Hotline for Sexual Assault and Domestic Violence: 1-800-942-6906

Institutional Crime Reporting:
Reports of certain crimes occurring in certain geographic locations will be included in the SUNY Potsdam Clery Act Annual Security Report in an anonymized manner that neither identifies the specifics of the crime or the identity of the reporting individual or victim/survivor. Title IX Coordinator & Affirmative Action Officer Stacey Basford: basforsl@potsdam.edu, Van Housen 392, (315) 267-2516: titleix@potsdam.edu

SUNY Potsdam is obligated to issue timely warnings of Clery Act crimes occurring within relevant geography that represent a serious or continuing threat to students and employees (subject to exceptions when potentially compromising law enforcement efforts and when the warning itself could potentially identify the reporting individual or victim/survivor). A reporting individual will never be identified in a timely warning.

The Family Educational Rights and Privacy Act allows institutions to share information with parents when (1) there is a health or safety emergency, or (2) when the student is a dependent on either parents’ prior year federal income tax return. Generally, SUNY Potsdam will not share information about a report of sexual violence with parents without the permission of the reporting individual.

HEARING PROCESS

- Pre-hearing discussion by board members. Board members discuss the case to ensure that all written material is understood, to develop questions that should be asked, and to ensure that any procedural questions are answered. The Director of Student Conduct and Community Standards will work with the board during this time to clarify any procedural questions.
- Everyone involved in the hearing is invited into the room. This includes all witnesses.
- Digital recorder is turned on.
- Introductions. Chair asks each person to introduce him/herself, giving name and what their role is in the hearing (Individual bringing forth charges, Student charged, advisor, witness, etc.)
CAMPUS POLICIES AND PROCEDURES

Sexual Misconduct Policy

• Explain use of the digital recording. A digital recording is made in order to be available for an appeal. An appeal may be made within 4 working days of receiving notification of the outcome of a hearing. The digital recording will be kept only for the length of the appeal period, except in cases of any form of separation from the institution.

• Query student charged as to the appropriateness of board members. If the student objects to the participation of any member of the board, ask for an explanation. The chair will then call a brief recess so that the board can consider the objection. The chair will rule on the objection and may (1) continue the hearing with the same board, (2) adjourn the hearing and take steps to have a new hearing scheduled. The student will be asked to return to the room and the chair will announce the decision with the rationale recorded on record. If the objection is with the chair, the Director of Student Conduct and Community Standards will request an explanation and work with parties involved to determine whether to proceed or adjourn.

• Remind all parties of the following information:
  • Confidentiality of the hearing: It is expected that all information (testimony and written material) given in the hearing will remain confidential. Sharing information presented during the hearing may result in disciplinary action.
  • Role of the advisor to either party: Advisors are reminded that they may only speak with their advisee. If the advisor has a question, they must ask their advisee to address the board.
  • Presenting false information: It is a violation of College policy to present false information in a conduct hearing. Such a violation may lead to further disciplinary action.

• Chair reviews the format of the hearing.
  1. Both parties have the opportunity to make an opening statement.
  2. After each opening statement, witnesses will be asked to participate.
  3. At the appropriate time during the hearing, each party will have the chance to question the other and all witnesses.
  4. Board members may ask questions throughout the hearing.
  5. Both parties can make final statements.
  6. Finally, there will be a time for the board and either party to ask final questions to help everyone understand the incident.

• Witnesses are asked to leave the room. In most cases, witnesses are asked to wait outside the hearing room. They are called in individually to explain whatever information they might have regarding the incident.

• Response of the accused student to each charge. Read each charge, completely, as presented on the charge letter. Have the student state verbally into the recorder whether they are RESPONSIBLE or NOT RESPONSIBLE for the charge(s). For more than one charge, ask the student to respond to each charge individually. In the unlikely event that a student will not respond, record not responsible on the summary form.

• Opening statement made by College or victim. The statement should be relevant to the charges; then
  1. The board will ask questions.
  2. The student charged will ask questions.
  3. Additional questions may be asked.
CAMPUS POLICIES AND PROCEDURES

Sexual Misconduct Policy

• Opening statement made by Student charged. The statement should be relevant to the charges.
  1. The board will ask questions.
  2. The student charged will ask questions.
  3. Additional questions may be asked.

• Witnesses for the College or Victim make statements. Each witness comes in individually.
  1. The board will ask questions.
  2. The student charged will ask questions.
  3. Additional questions may be asked.

• Witnesses for the Student charged make statements. Each witness comes in individually.
  1. The board will ask questions.
  2. The Student charged will ask questions.
  3. Additional questions may be asked.

• Final comments made by College or victim.

• Final comments made by Student charged.

• Final questions and discussion. This is a chance for everyone in the hearing to ask any final questions, which
  will add to everyone’s understanding of what happened in the incident and help the board to understand the
  organization’s perspective about the incident.

• Explain that the board will move into closed session to deliberate. At this point, the board will go into closed
  session to determine whether or not the student charged is responsible or not responsible for each of the
  charges and will determine sanctions if appropriate. The Hearing Board or Hearing Officer may request the
  Director of Student Conduct and Community Standards remain in the hearing area in case there are ques-
  tions of clarification. These decisions will be given to the Director of Student Conduct and Community
  Standards or designee, who will notify the student charged in writing, of the board’s decision. If the Stu-
  dent is found responsible, he/she may appeal the board’s decision based on specific criteria that is defined
  later in this document.

• Turn off the digital recorder.

• All but board members leave the room.

Appeals

• An appeal of a decision from the initial hearing may be made by Director of Student Conduct and Community Standards or
  designee, or the student found responsible within four (4) school days of the decision except as the period may be extended by
  the Appellate Board. A Victim, if dissatisfied with the sanction(s) imposed, may request the Director of Student Conduct and
  Community Standards or designee to file an appeal, and such request shall not be unreasonably refused.

• Appeals may be filed by the Director of Student Conduct and Community Standards or designee on the following grounds
  only:
  1. that the initial hearing body failed to observe the procedural requirements established by this Code;
  2. that the sanction imposed by the initial hearing body was clearly unreasonable in light of the known cir-
     cumstances.
Campus Policies and Procedures

Sexual Misconduct Policy

3. An appeal may be filed by the responsible student or Victim on the following grounds only:
   a. that the initial hearing body failed to observe the procedural requirements established by this Code;
   b. that the sanction imposed by the initial hearing body was clearly unreasonable in light of the known circumstances;
   c. The new evidence has appeared, that was not available at the time of the hearing, which could have Substantially affected the initial decision.

The non-requesting party will receive notice of the appeal and may submit either his or her own appeal or a written response to the requesting party’s appeal within 4 days, which the appeals board will consider together.

The purpose of the appeal is not to rehear the underlying case; rather, it is to determine if there is sufficient information presented to allow a reconsideration of the Hearing Board’s decision.

The Director of Student Conduct and Community Standards will ask the Appellate Board to reconsider the case based on new information presented.

The decision of the appeal board is final.

IX. Administrative Process

A. Appointment: All members of the Harassment and Sexual Misconduct Board, the Appellate Board, and all Hearing Officers shall be appointed by the Student Conduct Council.
   1. The Student Conduct Council shall consist of the President of the College, the President of the Student Government Association, and the Chairperson of the Faculty Senate. The Affirmative Action Officer shall be an advisor to the Student Conduct Council and attend all meetings.
   2. Unanimity of the Student Conduct Council is a desired goal, but a simple majority vote of the Student Conduct Council shall be adequate to appoint any candidate.
   3. The Student Conduct Council will select Hearing Officers and Hearing Board members who are capable of adjudicating cases in a fair, knowledgeable, and impartial manner.
   4. Hearing Officers and Board members will possess or receive the necessary education and training regarding the subject matter of cases he or she will be adjudicating.

B. Vacancy: All effort shall be made to ensure that vacancies shall be filled by the Student Conduct Council within twenty (20) days of the date of the actual vacancy.

C. Hearings: Hearings are prescribed by the Code and may be held before the following: Hearing Board or Hearing Officer.
CAMPUS POLICIES AND PROCEDURES

Sexual Misconduct Policy

Hearing Board - This Board hears cases involving violations of this Code which are not referred to a Hearing Officer, or to the Harassment and Sexual Misconduct Hearing Board or Officer. This board shall consist of one student and two faculty or staff. Every effort will be taken to include at least one faculty member according to procedures outlined in Section X, A. The Hearing Board can impose any of the sanctions listed in Section VII or any combination thereof of this Code.

Hearing Officer - A Hearing Officer may be a member of the faculty or the staff of the College. The Director of Student Conduct and Community Standards shall choose from a list of hearing officers one officer to hear each case in which a Hearing Officer has been requested. The choice of Hearing Officer shall be made by the Director of Student Conduct and Community Standards. A Hearing Officer who is unable to be impartial for whatever reason shall disqualify himself or herself. Hearing Officers may impose any of the sanctions listed in Section VII or any combination thereof of this Code. For cases of Harassment and Sexual Misconduct there shall be hearing officers appointed by the Student Conduct Council.

The Harassment and Sexual Misconduct Board - This Board hears cases as set forth in IX (B). This Board shall consist of one student and two faculty or staff members. They may impose sanctions as set forth in Section VII. An alternate for each Board position shall be appointed by the same process.

The Appellate Board - This Board is empowered to hear all appeals. The Appellate Board may review a case, deny review, remand to the disciplinary body below with or without instructions to include the choice of Hearing Officer or Board should that option not have been originally available, and/or alter the sanctions imposed below.

The Appellate Board may not alter or reverse a disciplinary agency’s decision on any grounds other than those outlined in the “Appeals” section above. The burden of establishing that standard has been met rests on the party making the appeal. Further, the Appellate Board may not alter or reverse the decision of the disciplinary agency on any grounds other than that specifically cited as the basis of the appeal.

The Appellate Board shall consist of two students, two members of the faculty, and one staff member.

The Appellate Board can impose any of the sanctions set forth in Section VII, or any combination thereof of this Code.

Administrative Agreement in Waiver of a Hearing - Students found to be in violation of the Code of Student Conduct can have the case resolved through the Administrative Agreement in Waiver of a Hearing process (AA). An Administrative Agreement in Waiver of a Hearing would be completed only when there is acknowledgment of responsibility on the part of the student who has been charged and agreement that the sanction/s imposed is/are reasonable and fair. All parties, including the victim, must agree that the sanctions are reasonable and fair. Should the accused student not accept responsibility for the charges or accept the proposed sanction, the case will be referred to the Director of Student Conduct or designee. The case will then be heard by a Hearing Board or a Hearing Officer.
D. Resolving a Complaint by Mediation

1. The College encourages mediation whenever practical and appropriate. If the parties agree, the Office of Student Conduct and Community Standards may refer any disciplinary matter other than a reported act of academic dishonesty to the Campus Mediation Program or other resources for mediation.

2. It is within the sole discretion of the Director of Student Conduct and Community Standards to determine whether a disciplinary complaint is suitable for mediation. If mediation fails or new information comes to light about an unresolved matter than in mediation, the Director of Student Conduct and Community Standards may proceed with an investigation and the filing of disciplinary charges. The Director of Student Conduct and Community Standards may also set a date, after which it will begin to investigate the original complaint or file charges if a matter has not been successfully mediated.

3. If the Director of Student Conduct and Community Standards refers a complaint for mediation and both parties to the dispute agree to participate, the College Mediation Center will assign a trained mediator and advise the complainant(s) and respondent(s) in advance of the date, time, and place set for mediation. In order to resolve a disciplinary matter by mediation, both the complainant and the respondent must agree, first, to participate in the mediation and, second, to the proposed resolution.

4. If a student fails to comply with the terms of a mediation agreement, the Director of Student Conduct and Community Standards may take steps to enforce the agreement (including use of a Judicial Hold or the filing of new charges under the Code of Student Conduct) or may investigate the original complaint and bring disciplinary charges under this Code.

X. MISCELLANEOUS

A. Compliance with Other Laws: This Code shall be administered in compliance with the Family Rights and Privacy Act of 1974 and the Crime Awareness and Campus Security Act of 1990.

B. Survival Clause: If any part, or portion, or provision of this Code is determined to be unconstitutional or illegal, the remaining provisions of the Code shall remain in full force and effect.

Revised: June 2014

Sections of this Code, in part or in whole, come from the SUNY Cortland, SUNY Delhi and SUNY Oswego Code of Student Conduct and A 21st Century Model Student Conduct Code by Edward N. Stoner II and John Wesley Lowery. This was done with permission. Special thanks for the guidance received from those documents.
### A Plain Language Explanation of Distinctions Between the New York State Penal Law and the College Disciplinary Processes

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<table>
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<tr>
<th>Goals.</th>
<th>Criminal Justice System</th>
<th>College/University Disciplinary System</th>
</tr>
</thead>
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<td>Public safety, deterrence, and punishment.</td>
<td>Education; safety; safe and supportive campus environment.</td>
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| Governing Law. | New York State Penal Code; New York State Rules of Criminal Procedure (or another state’s rules if the crime took place there), Federal Criminal Law, and Rules of Evidence. | Title IX; The Clery Act as amended by the Violence Against Women Act; NYS Education Law sections 129-A and 129-B. More specific rules govern particular colleges and universities. |

| How to report and whether there must be action once a report is made. | Crimes involving sexual violence may be reported to campus police (if the campus has police officers), the local police agency, or to the New York State Police. Certain crimes may also be reported to federal law enforcement agents. Once a report is made, the decision whether to investigate is made by the police/law enforcement agency, often in consultation with a District Attorney or other prosecuting agency. An investigation may be conducted without the consent or participation of a reporting individual. The ultimate decision of whether to initiate a criminal prosecution is initially made by a prosecutor. In cases involving felony charges, the final charging decision is made by a Grand Jury. | Victims may disclose sexual violence to various college employees who are designated confidential resources or to others who will try to ensure privacy to the extent consistent with the institution’s obligation to provide a safe educational environment. Disclosures made to a confidential resource will not trigger an investigation. When a report is made to the Title IX Coordinator (TIXC) or another Non-Confidential resource, the TIXC will determine whether an investigation is necessary by weighing a request for confidentiality by the reporting individual against the continuing safety of that person and the safety and best interests of the campus community. |

| Who investigates? | Police or other law enforcement officials. | Investigators employed or retained by the college or university; these individuals may work for different departments within the institution, including, but not limited to, the police/public safety department, student affairs and academic affairs. |

| Procedures | See Governing Law. Procedures established by police departments, prosecutors’ offices, etc. | College/University policies and Bylaws, which generally incorporate requirements of Governing Law. Collective bargaining agreements may impact some procedures. |

| Standard of Evidence. | Crimes must be proven “Beyond a Reasonable Doubt” | A violation of disciplinary rules must be found by a “Preponderance of the Evidence” (more likely than not) |

| Confidentiality. | Law enforcement agencies offer some confidential assistance, but a criminal charge and trial must be public. | Colleges and universities offer confidential resources, but a disciplinary proceeding requires that relevant information be shared with those involved. |

| Privacy. | Criminal trials must be public. | Disciplinary proceedings are kept as private as possible, but information must be shared with certain individuals within the college, the parties, and pursuant to law. |
| **Who are the parties?** | The prosecution and defendant. The victim/survivor is **not** a party, but often the critical witness for the prosecution. | Varies by school—some consider the institution and the respondent to be parties, and confer on the reporting individual certain rights to participate, as the law provides. Otherwise, reporting individual and accused/respondent. |
| **Participation in the process.** | In limited circumstances, a criminal prosecution can proceed without the participation or cooperation of the reporting individual, but without a reporting individual’s participation, it is generally more difficult to prove a crime beyond a reasonable doubt. | Reporting students cannot be required to participate in the college process. However, a college will be limited in its ability to respond if a reporting individual does not participate. |
| **Who initiates the proceedings?** | A prosecutor, acting on behalf of the state (or the United States in federal cases). | The college or university initiates proceedings. While rules vary from school to school, they most provide an active role for the reporting individual. |
| **Testimony.** | In a court, testimony is generally public. Other parties are, through counsel, entitled to cross-examine witnesses. | The rules are established by individual colleges and universities, but some institutions provide for alternative approaches that permit students to testify without having other parties in the room and/or to ask cross-examination questions only through the disciplinary panel, investigator, or representative of the reporting individual and/or respondent. |
| **Role of attorneys.** | Both the state and the defendant are represented by counsel; counsel may question witnesses. | Varies by school. Many permit the parties to be advised by attorneys but some limit the attorney’s roles to quietly speaking with their clients or passing notes. |
| **Mental Health and Sexual History.** | In New York, a reporting individual’s prior sexual and mental health history is generally, but not always, inadmissible in a criminal case. There are limited circumstances under which directly relevant evidence of that kind may be admitted. | Generally not admissible, but subject to quite limited exceptions. Education Law 129-b permits parties to exclude information about their prior sexual history with persons other than the other party and also to exclude evidence of their own mental health history in the fact finding phase of the disciplinary process. |
| **Possible Results.** | If a prosecution takes place, the defendant may plead guilty or “no contest” have the case dismissed by the judge (on legal grounds) be found “guilty” or “not guilty” by a judge or jury | In cases that do not involve sexual assault, some schools permit mediation or similar procedures if parties agree. If there is a formal proceeding, the respondent may be found “responsible” or “not responsible” for violations of the institution’s rules. Respondents may also accept responsibility before a finding by an adjudicator. |
| **Sanctions.** | An individual found guilty may be fined, imprisoned, or both. In some courts, alternative sanctions are sometimes used. | An individual found responsible for violating college policy may be given a range of sanctions (depending on the severity of the conduct and other factors, such as prior judicial history), ranging from a warning to suspension or expulsion from the institution. |