

Administrative Hearing Procedures and Sexual Misconduct Addendum

Administrative Hearing Procedures

1. The Director of the Student Conduct (or designee) selects at least two persons in an administrative capacity at the University to provide a disciplinary hearing opportunity for a current (or former) student with pending campus disciplinary charges.
2. The administrative hearing officers will set up a hearing for the student. If the student does not reply, or does not show up, a hearing may be held in their absence.
3. The attendance or participation of any person in an administrative hearing is at the discretion of the hearing officers. All responding individuals (accused students), and reporting individuals (complainants) in Sexual Misconduct cases, may always participate in their administrative hearing if they so wish. The administrative hearing officers may request the attendance of University officials, students, named witnesses, or any other identifiable relevant person to an administrative hearing.
4. Prior to the administrative hearing, Student Conduct will provide the student and the administrative hearing officer with:
 - a. Alleged Student Code of Conduct charges; and
 - b. All available information relevant to the incident(s). Where necessary, personally identifiable information of other persons within reports may be redacted.
5. Both the responding individual (accused student) and a participating reporting individual (complainant) may utilize one advisor, but no person may represent a student except the student themselves.
6. Both the responding individual (accused student) and a participating reporting individual (complainant) may submit evidence on their behalf in advance of the hearing. Students wishing to bring witnesses to the administrative hearing should coordinate with the administrative hearing officers in advance of the administrative hearing, and may be asked to have such witnesses reduce their testimony to a written statement.
7. At the discretion of the administrative hearing officers, the responding individual (accused student) or a participating reporting individual (complainant) may submit questions in advance of the hearing, to be asked by the hearing officers. These questions could be asked of University officials, students, named witnesses, or any other identifiable relevant persons attending the administrative hearing. Hearing officers shall determine appropriate questioning. In Title IX hearings, the advisor conducts cross-examination as required by federal regulations; this does not apply to non-Title IX administrative hearings.
8. At the end of the hearing, and prior to its conclusion, both the responding individual (accused student) and a participating reporting individual (complainant) have an opportunity to make an impact statement.
9. The administrative hearing officers have the authority to remove any person from the administrative hearing who they believe is exhibiting behavior not conducive to the

administrative hearing.

10. Administrative hearings are closed to the public. All administrative hearings will be recorded.
11. Unless the administrative hearing officers include a member of Student Conduct, the administrative hearing officers must write a recommendation of their findings to Student Conduct within five business days of the hearing. All administrative hearings are based upon a **preponderance of evidence standard** (i.e. “**more likely than not**”) that a student is:
 - a. Not Responsible for alleged charges of the Student Code of Conduct
 - b. Responsible for at least one alleged charge of the Student Code of Conduct

Administrative hearing officers may add or amend charges based on the information covered during the administrative hearing.

12. If there is a finding of ‘responsible’ for any of the alleged Student Code of Conduct charges, the administrative hearing officers may recommend educational sanctioning as described in the Student Code of Conduct to Student Conduct. Suspension or expulsion sanctions require final review by the President or a designee. If the violation involves a Clery Act crime of violence and the proposed sanction is less than expulsion, the decision-maker must provide the President or designee with a written justification.
13. A written decision (including e-mail) must be provided to the student by Student Conduct within ten business days after the administrative hearing. The decision letter must include a date by which an appeal may be accepted.
14. A responding individual (accused student), and a participating reporting individual (complainant) in a Sexual Misconduct case, have the right to appeal an administrative hearing decision by writing to the Director of Student Conduct (or designee) prior to the due date provided within the decision letter. The Director will assemble an appellate review “panel” for Sexual Misconduct cases.

Students have the right to appeal on the following grounds:

- a. The sanction is substantially disproportionate to the severity of the violation;
- b. A procedural defect in the process had a significant effect on the outcome; and./or
- c. The discovery of new information which was unknown or unavailable at the time of the hearing and would have a significant effect on the outcome.

If applicable, the non-requesting party will have the option to submit a written response to the appeal.

15. The Director of Student Conduct (or designee) may authorize extended due dates at any point during the administrative hearing timeline based on extenuating circumstances.

Addendum for Sexual Misconduct Cases

In accordance with SUNY policies on sexual violence, Article 129 of the Education Law and the Violence Against Women Act, the University at Buffalo will adhere to the following policies,

procedures, and definitions in cases of sexual misconduct. Sexual misconduct cases include dating violence, domestic violence, sexual violence, sexual exploitation, stalking, and sexual harassment that fall outside the scope of the University's Title IX Grievance policy. This information is in addition to the above hearing procedures.

*For allegations that meet geographic scope and definition of sexual harassment under Title IX of the Education Amendments of 1972 regulations issued by the U.S. Department of Education on May 19, 2020, the University's **Title IX Grievance** policy and procedures will apply:*

https://www.buffalo.edu/content/www/equity/support/obtaining-assistance/sex-discrimination-and-sexual-harassment/title-ix/jcr_content/par/download/file.res/TITLE%20IX%20Policy%20-%20University%20at%20Buffalo.pdf

Sexual Violence Response Policy:

<https://www.buffalo.edu/equity/support/obtaining-assistance/sex-discrimination-and-sexual-harassment/sexual-assault--domestic-violence--dating-violence-and-stalking/sexual-violence-reponse-policy.html>

Options for Confidentially Disclosing Sexual Violence:

<https://www.buffalo.edu/equity/support/obtaining-assistance/sex-discrimination-and-sexual-harassment/sexual-assault--domestic-violence--dating-violence-and-stalking/confidentiality-and-reporting-protocol.html>

Student Bill of Rights:

<https://www.buffalo.edu/equity/support/obtaining-assistance/sex-discrimination-and-sexual-harassment/sexual-assault--domestic-violence--dating-violence-and-stalking/sexual-violence-victim-survivor-bill-of-rights.html>

Students are encouraged to read through each policy carefully, as they contain specific information including but not limited to reporting procedures, resources and student rights.

Important Terms:

Alternative Arrangements: Both parties have the right to a range of options for providing testimony and participating in the hearing process. Alternative arrangements must enable both parties and the hearing officers to hear each other. These arrangements include telephone/videoconferencing or testifying with a room partition.

Burden of Proof: The burden of proof in these sexual misconduct cases is “preponderance of the evidence.” This test asks whether it is “more likely than not” that the violation occurred.

Confidentiality: The University will protect the privacy of all parties to a complaint or other report of sexual misconduct or crimes of violence to the extent permitted by law. Please note that both the Family Educational Right to Privacy Act (FERPA) and the Freedom of Information Law (FOIL) have provisions that may affect the release of information related to campus disciplinary proceedings. When the University receives complaints of sexual misconduct or crimes of violence, the university has an obligation to respond in a way that limits the effects of the misconduct and prevents its recurrence. Information will be shared as necessary in the course of an investigation

with people who need to know, such as investigators, witnesses, and the accused. If you are unsure of someone's duties and ability to maintain your privacy, ask them before you talk to them. Staff at certain resources are obligated by law to maintain confidentiality, including the counseling center and the local crisis center off-campus.

Counseling Center information can be found at this site:

<https://www.buffalo.edu/studentlife/who-we-are/departments/counseling.html>;

Crisis Services can be reached by calling 716-834-3131

Equal Rights for the Responding Individual and Reporting Individual: Any rights or processes offered to a responding individual (accused student) are also offered to a reporting individual (complainant). For example, the right to an appeal, right to an advisor, and a right to call witnesses must all be offered equally, if at all.

Notice of Outcome: Both parties in sexual misconduct incidents have an absolute right to be informed of the outcome, essential findings, and sanctions (including the reason for the outcome and sanctions) of the hearing, in writing, in a way consistent with federal and state law. The complainant and accused shall be notified concurrently in writing within 10 business days of the hearing of the result of the hearing and any appeal procedures available and when the hearing results become final.

Required Sanctions for Sexual Violence: A finding of "responsible" for sexual violence requires either immediate suspension with additional requirements or expulsion as a sanction. Suspension or expulsion sanctions require final review by the President or a designee. If the violation involves a Clery Act crime of violence and the proposed sanction is less than expulsion, the decision-maker must provide the President or designee with a written justification.

Questioning and Cross-Examination: The responding individual (accused student) and reporting individual (complainant) may not directly question or cross-examine each other. In Title IX hearings, the advisor conducts cross-examination as required by federal regulations; this does not apply to non-Title IX administrative hearings. Both parties may also submit questions to the hearing officers in advance of the hearing. The hearing officers will be responsible for asking the questions and determining appropriate questioning. *For allegations that meet the geographic scope and definition of sexual harassment under the Title IX of the Education Amendments of 1972 regulations issued by the U.S. Department of Education on May 19, 2020, the University's **Title IX Grievance** policy and procedure will apply. They can be found here:*

https://www.buffalo.edu/content/www/equity/support/obtaining-assistance/sex-discrimination-and-sexual-harassment/title-ix/_jcr_content/par/download/file.res/TITLE%20IX%20Policy%20-%20University%20at%20Buffalo.pdf

Impact Statement: The responding individual (accused student) and the reporting individual (complainant) have the right to make an impact statement during the point of the proceeding where the decision maker is deliberating on appropriate sanctions.

Right to Appeal: The right to appeal if offered to either party, must be equally accessible to the reporting individual (complainant) and the responding individual (accused student). Grounds for appeal are stated in the administrative hearing procedures. The non-requesting party will have the

option to submit a written response to the appeal. Sexual Misconduct related cases will be reviewed by a panel.

Retaliation: Retaliation against a person who files a Sexual Misconduct complaint, serves as a witness, or assists or participates in any manner is strictly prohibited and will result in disciplinary sanctions. Participants who experience retaliation should contact the Director of Student Conduct or the Title IX Coordinator.

Elizabeth Lidano, Director of Student Conduct, 9 Norton Hall, 716-645- 6154
Sharon Nolan-Weiss, Title IX Coordinator, 406 Capen Hall, 716-645-2266

Timeline: A timeline letter will be provided of the major steps of the conduct process to both parties, so they know what to expect and when to expect it. If extraordinary circumstances prevent any step from occurring within the stated time frame, all parties will be promptly notified and will be given an estimated time for the step to occur. Participants may also request an extension from the University, which should be granted if it will not unduly prejudice the rights of the other party. All deadlines and time requirements may be extended for good cause.

The major stages that should be outlined are:

- **Investigation:** full investigation including any necessary interviews to be conducted with all involved parties and gathering of evidence and any necessary interim measures to be put in place, will usually be completed within 20 business days of receipt of the complaint. Students have 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 business days except when law enforcement specifically requests and justifies a longer delay.
- **Hearing:** to usually be completed within 15 business days of receipt of complaint. Parties will receive notice of the outcome in writing.
- **Appeal Letters:** must be submitted in writing by the date indicated in the outcome letter.
- **Appeal Decisions:** typically issued within 10 business days of submission of the appeal and any response.

Written Acknowledgement from Reporting Individual (Complainant): Obtain a written acknowledgment from reporting individuals (complainants) in cases of sexual misconduct to document (1) the university employee or representative who spoke to or worked with the complainant, as well as the date; (2) which options the complainant would like to pursue, including the criminal justice system, the student judicial system, both, or none; (3) that the complainant received information about resources (medical, counseling, academic) available to them.

Parties' Rights to Advisors: Both parties are permitted to have an advisor at all Sexual Misconduct meetings and proceedings. The responding individual (accused student) or the reporting individual (complainant) may utilize the advisor, but no person may represent the student except the student themselves.

The following definitions will be used by the University in hearing Sexual Misconduct

cases:

Responding Individual (Accused Student): Any student accused of violating the Student Code of Conduct.

Reporting Individual (Complainant): Any person who submits a statement alleging that a student violated the Student Code of Conduct.

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

- 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.

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 victim. The existence of such a relationship shall be determined based on the victim's statement and with consideration of the type and length of the relationship and the frequency of interaction between the persons involved in the relationship. Two people may be in a romantic or intimate relationship, regardless of whether the relationship is sexual in nature; however, neither a casual acquaintance nor ordinary fraternization between two individuals in a business or social context shall constitute a romantic or intimate relationship. This definition does not include acts covered under domestic violence.

Domestic Violence: any violent felony or misdemeanor crime committed by a current or former spouse or intimate partner of the victim, a person sharing a child with the victim, or a person cohabitating with the victim as a spouse or intimate partner.

Force: the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcome resistance or produce consent.

Non-Consensual Sexual Contact: Any intentional sexual touching, however slight, with any object, by a man or a woman upon a man or a woman that is without consent and/or by force.

Non-Consensual Sexual Intercourse: Any sexual intercourse, however slight, with any object, by a man or woman, upon a man or a woman that is without consent and/or by force. Intercourse includes: vaginal penetration by a penis, object, tongue or finger, anal penetration by a penis, object, tongue, or finger, and oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the penetration or contact.

Retaliation: Any action by any person that is perceived as intimidating, hostile, harassing, retribution, or violent that occurred as a result of the making and follow-up of a report of a violation of this code of conduct.

Sex Discrimination: Sexual Discrimination includes all forms of: sexual harassment, sexual assault, and sexual violence by employees, students, or third parties against employees, students, or third parties. Students, College employees, and third parties are prohibited from harassing other students and/or employees whether or not the incidents of harassment occur on the College campus and whether or not the incidents occur during working hours.

Sexual Exploitation: Occurs when a student takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of the other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to:

- Invasion of sexual privacy;
- Prostituting another student;
- Non-consensual video or audio-taping of sexual activity;
- Going beyond the boundaries of consent (such as letting your friends hide in the closet to watch you having consensual sex);
- Engaging in voyeurism;
- Knowingly transmitting an STI or HIV to another student;
- Exposing one's genitals in non-consensual circumstances;
- Inducing another to expose their genitals;
- Sexually-based stalking and/or bullying may also be forms of sexual exploitation.

Sexual Harassment: Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that unreasonably interferes with an individual's performance and/or access to educational opportunity by creating an intimidating, hostile, or objectively offensive University environment. Submission to or enduring such conduct when rejected is made either explicitly or implicitly a term or condition of instruction, employment, or participation in other University activity.

Sexual Violence: Physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent, including, but not limited to rape, sexual battery, sexual coercion, criminal sexual contact, and other forms of non-consensual sexual contact.

Stalking: Repeated direct or indirect coercive acts or offenses through third parties that collectively instill a fear of physical injury or harm sufficient to cause a reasonable person to

suffer emotional damage. This includes any action for which the purpose is to attempt to manipulate or control another person. Inappropriate actions may include, but are not limited to: phone calls, physical and/or verbal confrontations, breaking and entering (cars, apartments, lockers, etc.), vandalizing, etc.

Criminal Sexual Contact: the intentional touching of the clothed or unclothed body parts without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation; or the forced touching by the victim of the actor's clothed or unclothed body parts, without consent of the victim for the purpose of sexual degradation, sexual gratification, or sexual humiliation.

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