



Committee Meeting: Policy & Governance Committee	Date: March 8, 2019
Committee Chair: Kathleen Masiello - members present page 20	
New or Edited: New	

POLICY NAME: Sexual Misconduct Policy

POLICY TYPE: Board

SUBMITTED BY: Daniel Kaufmann, Employee Relations Manager and Petrina Hill-Cheatom, Dean of Students

ISSUE OR STATEMENT OF PURPOSE: SUNY Erie Community College, its Board of Trustees, and the County of Erie, are committed to providing all members of the SUNY Erie community an educational and working environment that is free from sexual misconduct. The College seeks to foster a climate free from sexual misconduct through a coordinated education and prevention program, the promulgation of clear and effective policies, and the enforcement of investigative and grievance procedures that are prompt, decisive, equitable and accessible to all.

Acts of sexual misconduct are harmful and will not be tolerated at SUNY Erie. Such acts corrupt the integrity of the educational process, are contrary to the mission and values of the College community and are against College policy. In response to any reported sexual misconduct, the College will take all appropriate steps to eliminate the misconduct, prevent its recurrence and address its effects.

In addition, to defining various forms of sexual misconduct, this policy also:

1. Identifies resources and support for all members of the College community;
2. Identifies the Title IX Coordinator, Deans of Students, and College Safety and their respective roles;
3. Provides information about where a College community member can obtain support or access to confidential resources;
4. Provides information about how a College community member can submit a report of sexual misconduct;
5. Describes options for persons who believe they have experienced behaviors that are prohibited by this policy; and
6. Provides information about how a report against a College community member will be assessed and resolved.

NEW OR EDITED POLICY: New

Scope of Policy

This policy applies to all members of the SUNY Erie community, including faculty, staff and students, visitors, vendors and independent contractors. It applies to all persons regardless of ethnicity, age, sex, gender, gender expression, sexual orientation or gender identity and/or any status protected under applicable federal, state or local law. When used in this policy, “employees” generally refers to both staff and faculty members. Vendors,



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independent contractors, visitors and others who conduct business with the College or are on College property are also expected to comply with this policy. This policy will be reviewed annually.

Definitions

The term “complaint”: An allegation of behavior that violates this policy filed against a faculty or staff member, student, vendor, independent contractor or visitor that initiates a formal process for resolution of the complaint.

The term “Complainant” means any person, victim or witness, who files a report or submits a charge alleging that a student violated the Code of Student Conduct. When a student believes that he or she has been a victim of another student’s misconduct, the student who believes that he or she has been a victim will have the same rights under this Code of Student Conduct that are provided to the Complainant, even if another member of the College community submitted the charge.

The term “Respondent” means any person responding to an alleged violation of the Code of Student Conduct or complaint.

The term “Third Party” means any individual who makes a report about behaviors prohibited by this policy that were experienced or perpetrated by another person.

The term “report” means a disclosure of any incident or concern regarding sexual misconduct made directly to the Title IX Coordinator, a Dean of Student, College Safety, or a College employee with mandatory reporting responsibilities or to any other person who then subsequently shares the information with the Title IX Coordinator, or her/his designee.

Notice of Non-Discrimination

SUNY Erie Community College is committed to establishing and maintaining an environment free of all forms of harassment and discrimination for all College community members. The College does not discriminate on the basis of race, color, ethnicity, national origin, age, sex, sexual orientation, gender identity or expression, physical or mental disability, religion or any other protected class.

SUNY Erie Community College does not discriminate on the basis of sex in its educational, extracurricular, athletic or other programs or in the context of employment. Sexual misconduct, including sexual harassment as defined in this policy, is a form of sex discrimination that unjustly deprives a person of equal treatment. It is prohibited by Title IX of the Education Amendments of 1972, a federal law that provides that:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any education program or activity receiving Federal financial assistance.

Sexual harassment is also prohibited under Title VII of the Civil Rights Act of 1964, and other applicable statutes. This policy prohibits sexual misconduct against all SUNY community members of any sex, gender or



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sexual orientation. This policy also prohibits gender-based harassment that does not involve conduct of a sexual nature.

Contact Information:

U.S. Department of Education
Office for Civil Rights
Lyndon Baines Johnson Department of Education Bldg.
400 Maryland Avenue, SW
Washington, DC 20202-1100
Telephone: (800) 421-3481
FAX: 202-453-6012; TDD: 800-877-8339
Email: OCR@ed.gov

Civil rights Bureau
New York State Attorney General's Office
28 Liberty Street
New York, NY 10005
Telephone: (212) 416-8250
Fax: (212) 416-6030
Email: civil.rights@ag.ny.gov

Prohibited Conduct and Definitions

The College prohibits sexual misconduct which includes, but is not limited to, sexual harassment, sexual assault, sexual violence, domestic and dating violence, sexual exploitation, stalking, and aiding or facilitating the commission of a violation and retaliation.

Consistent with the values of an educational and employment environment free from harassment based on sex, the College also prohibits gender-based harassment, which may include acts of verbal, nonverbal or physical aggression, bullying, intimidation or hostility based on gender or gender-stereotyping, even if those acts do not involve conduct of a sexual nature.

Examples of behavior that may be considered sexual misconduct include, but are not limited to:

Sexual Harassment

Sexual harassment is a form of sex discrimination and is unlawful under federal, state and local law. Sexual harassment includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender.



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Sexual harassment includes unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual's sex when:

- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment, even if the complaining individual is not the intended target of the sexual harassment;
- Such conduct is made either explicitly or implicitly a term or condition of employment; or
- Submission to or rejection of such conduct is used as the basis for an individual's workplace and/or employment decisions.

The College is committed to maintaining a workplace free from sexual harassment and bans all forms of sexual harassment under its **Sexual Harassment Policy**. Examples include but are not limited to:

- A. Unwanted or inappropriate sexual innuendo, propositions, sexual attention or suggestive comments and gestures; humor and jokes about sex or gender-specific traits; sexual slurs or derogatory language directed at another person's sexuality or gender; insults and threats based on sex or gender and other oral, written or electronic communications of a sexual nature that an individual communicates which is unwanted and unwelcome.
- B. Written graffiti or the display or distribution of sexually explicit drawings, pictures or written materials; sexually charged name-calling; sexual rumors or ratings of sexual activity/performance; the circulation, display or creation of emails or websites of a sexual nature.
- C. Non-academic display or circulation of written materials or pictures degrading to one or more individuals or gender group.
- D. Inappropriate or unwelcome physical contact or suggestive body language, such as touching, patting, pinching, hugging, kissing or brushing against an individual's body.
- E. Undue and unwanted attention, such as repeated inappropriate flirting, inappropriate or repetitive compliments about clothing or physical attributes, staring, or making sexually oriented gestures.
- F. Physical coercion or pressure of an individual to engage in sexual activity or punishment for a refusal to respond or comply with sexual advances.
- G. Change of academic or employment responsibilities (increase in difficulty or decrease of responsibility) based on sex, gender identity/expression or sexual orientation.



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- H. Use of a position of power or authority to (1) threaten or punish, either directly or by implication, for refusing to tolerate harassment, for refusing to submit to sexual activity or for reporting harassment or (2) promise rewards in return for sexual favors.
- I. Abusive, disruptive or harassing behavior, verbal or physical, which endangers another's mental or physical health, including, but not limited to, threats, acts of violence or assault based on gender and/or in the context of intimate partner violence.
- J. Demeaning verbal or other expressive behavior of a sexual or gendered nature in instructional settings.
- K. Acts of verbal, nonverbal or physical aggression, intimidation or hostility based on sex or sex-stereotyping. Harassment for exhibiting what is perceived as a stereotypical characteristic for one's sex, or for failing to conform to stereotypical notions of masculinity and femininity, regardless of actual or perceived sexual orientation or gender identity of the harasser or target.

Sexual Violence

Physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent. This includes rape, sexual assault, battery, and sexual coercion. Sexual Violence may involve individuals who are known to one another or have an intimate and/or sexual relationship, or may involve individuals not known to one another. Examples include, but are not limited to:

- A. Having or attempting to have sexual intercourse with another individual without consent. Sexual intercourse includes vaginal or anal penetration, however slight, with a body part or object or oral copulation by mouth- to- genital contact.
- B. Having or attempting to have sexual contact with another individual without consent. Sexual contact includes kissing, touching the intimate parts of another, causing the other to touch one's intimate parts or disrobing of another without permission. Intimate parts may include the breasts, genitals, buttocks, mouth or any other part of the body that is touched in a sexual manner.
- C. Domestic Violence: An act of violence committed by: 1) (a) a current or former spouse or intimate partner of the victim; (b) a person with whom the victim shares a child; and/or c) with whom the victim cohabitants; or 2) a person considered similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction. Prohibited activities include, but are not limited to:
 - a. attempting to cause or causing physical harm
 - b. placing another in fear of imminent serious physical harm



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- c. causing another to engage involuntarily in sexual relations by force, threat or duress
“Family or household members” are persons who:
 - 1. are or were married to one another
 - 2. are or were residing together in the same household
 - 3. are or were related by blood or marriage
 - 4. have a child in common regardless of whether they have ever married or lived together, or
 - 5. are or have been in a substantive ongoing dating or engagement relationship

D. Dating Violence: Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

Sexual Exploitation:

An act or acts committed through non-consensual abuse or exploitation of another person’s sexuality for the purpose of sexual gratification, financial gain, personal benefit or advantage or any other non-legitimate purpose. Sexual exploitation may involve individuals who are known to one another, have an intimate or sexual relationship and/or individuals not known to one another. Examples include, but are not limited to:

- A. Observing another individual’s nudity or sexual activity or allowing another to observe consensual sexual activity without the knowledge and consent of all parties involved
- B. Non-consensual streaming of images, photography, video or audio recording of sexual activity or nudity, or distribution of such without the knowledge and consent of all parties involved
- C. Prostituting another individual for monetary gain.
- D. Knowingly exposing another individual to a sexually transmitted disease or virus without their knowledge, and
- E. Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.



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Stalking:

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for her/his safety or the safety of others or suffer substantial emotional distress. This includes cyber-stalking, a particular form of stalking in which electronic media such as the Internet, social networks, blogs, cell phones, texts or other similar devices or forms of contact are used to pursue, harass or make unwelcome contact with another person. Stalking and cyber-stalking may involve individuals who are known to one another or have an intimate or sexual relationship, or may involve individuals not known to one another.

Aiding or Facilitating:

Aiding, facilitating, promoting or encouraging the commission of a violation under this policy is prohibited. Aiding or facilitating may also include failing to take action to prevent an imminent act when it is reasonably prudent and safe to do so. Taking action may include directly intervening, calling SUNY Erie College Safety or local law enforcement and/or seeking assistance from a person in authority.

Intimidation:

Placing another person in reasonable fear of bodily harm for the purpose of interfering with that person's opportunity to report sexual misconduct through: 1) the use of threatening words and/or other conduct; and/or 2) subjecting the person to actual physical attack.

Statement on Consent, Coercion, Incapacitation, and Alcohol

Affirmative consent is a clear, unambiguous, knowing, informed, and voluntary agreement between all participants to engage in sexual activity. Consent is active, not passive. Silence or lack of resistance cannot be interpreted as consent. Seeking and having consent accepted is the responsibility of the person(s) initiating each specific sexual act regardless of whether the person initiating the act is under the influence of drugs and/or alcohol. Consent to any sexual act or prior consensual sexual activity between or with any party does not constitute consent to any other sexual act. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity or gender expression. Consent may be initially given but withdrawn at any time.

When consent is withdrawn or cannot be given, sexual activity must stop.

Consent cannot be given when a person is incapacitated. Incapacitation occurs when an individual lacks the ability to fully and knowingly choose to participate in sexual activity. Incapacitation includes 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 if an individual otherwise cannot consent. Consent is not given when it is the result of any coercion, intimidation, force, or threat of harm.



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Further resources may be found at the SUNY Sexual Violence Prevention Resources page and the SUNY Compliance Page Safety, Security, and Public Health.

Information on complying with the Violence Against Women Act and SUNY created policies may be found in the SUNY Office of General Counsel document Policy and Programming Changes Pursuant to the Campus SaVE Provisions of the Violence Against Women Act.

The College considers sexual contact while under the influence of alcohol or drugs to be risky behavior. Alcohol and drug use impairs a person's decision-making capacity, awareness of the consequences and ability to make informed judgments. Being intoxicated or impaired by drugs or alcohol is never an excuse for sexual misconduct and does not excuse one from the responsibility to obtain consent.

Reporting Sexual Misconduct to the College

SUNY Erie encourages anyone who directly experiences, becomes aware of or witnesses an incident or potential violation of a College policy or procedure to immediately report the incident to the person in authority.

The College also recognizes that the decision whether or not to report sexual misconduct is personal and that there are many barriers to reporting, both individual and societal. Not every individual will be prepared to make a report to the College or to law enforcement, and individuals are not expected or required to pursue a specific course of action.

The College will promptly and thoroughly review and respond to all reports of sexual misconduct in an integrated, consistent manner that treats each individual with dignity and respect. The College will approach each report with an earnest intent to understand the perspective and experiences of each individual involved, so as to ensure fair and impartial evaluation and resolution.

An incident does not have to occur on campus to be reported to the College. Off-campus conduct that adversely affects the College or the SUNY Erie community also falls under this policy as well as the Code of Student Conduct policy.

Complainants, Respondents, and Third Parties can expect:

- The opportunity to meet with the Title IX Coordinator, or her/his designee, to answer questions regarding the College's policies and processes related to sexual misconduct.
- Notice of resources, including health care and mental health counseling services, on campus and in the local community.
- Notice of the option to pursue law enforcement action and to be assisted by SUNY Erie College Safety or other College officials in accessing and communicating with such authorities. This notice will include a discussion of the importance of the preservation of evidence.



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- The opportunity to request that the College take steps to prevent unnecessary or unwelcome contact or communication with another member of the SUNY Erie community.
- Prompt response to reports of retaliation. Any concerns of retaliatory behavior should be immediately reported to SUNY Erie College Safety and/or the Equity and Diversity Office.

Campus Reporting Options

To enable the College to respond to all reports in a prompt and equitable manner, the College encourages all individuals to directly report any concerns regarding sexual misconduct to the Title IX Coordinator, or her/his designee.

SUNY Erie's Title IX Coordinator is the Chief Diversity Officer within the Equity and Diversity Office.

Any report made at a SUNY Erie Health Services location or the Erie County Crises Services is confidential.

Emergency/Immediate Reporting Options

The College encourages all individuals to seek prompt assistance from a medical provider and/or law enforcement immediately after an incident of sexual misconduct. This is the best option to preserve evidence and to begin a timely investigative and remedial response. The College will assist any member of the SUNY Erie community and law enforcement and will provide information about the College's resources and complaint processes to the Complainant.

Assistance is available from College Safety year-round by calling the office at (716) 270-6600. Any individual can request that a member of the SUNY Erie Department of College Safety respond and take a report, or request to speak with an Administrator on Call or a member of the Student Support Centers, a full list of on and off campus resources is attached. There is no requirement that an individual file an incident report with the SUNY Erie Department of College Safety in order to speak with an Administrator on call or a member of the Student Support Centers.

The College encourages persons to obtain medical attention promptly after an assault. A medical provider can provide emergency and/or follow-up medical services, and the ability to discuss any health care concerns related to the incident in a confidential medical setting may bring peace of mind. The medical exam has two goals: first, to diagnose and treat the full extent of any injury or physical effect (e.g. sexually transmitted infection or the possibility of becoming pregnant) and second, if qualified as a Sexual Assault a Nurse Examiner can properly collect and preserve evidence. There is a limited window of time (typically no longer than 72 to 96 hours) following an incident of sexual assault to preserve physical and other forms of evidence.

Taking the step to gather evidence immediately does not commit an individual to any course of action. The decision to seek medical attention and gather any evidence will remain confidential and may assist in the



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preservation of the full range of options to seek resolution through the College’s complaint processes or through the pursuit of criminal action.

Private Report to the Title IX Coordinator or to a Person Who Is Obligated to Share a Report with the Title IX Coordinator:

Any individual who is concerned about sexual misconduct affecting any SUNY Erie community member may provide that information to the Title IX Coordinator, or her/his designee, in person, via email, or by using the Discrimination/Harassment Complaint Form (<https://myecc.ecc.edu/student/supportservices/Pages/equality-antidiscrimination.aspx>).

The reporting person can include their identifying information or maintain their anonymity within the form.

Mandatory Reporters of Information Regarding Sexual Misconduct

Individuals may also disclose concerns to faculty, staff, and certain employees who have been designated by the College as “mandatory reporters” of information regarding sexual misconduct.

All College employees, including faculty and staff, except those identified in Confidential Resources and Support, are required to share with the Title IX Coordinator, or her/his designee, information they learn that then gives them reason to believe that a SUNY Erie community member has been affected by sexual misconduct.

Student employees also have the responsibility to report – to the Title IX Coordinator, or her/his designee – instances of sexual misconduct which they become aware of while acting in the following roles:

- Student leaders e.g. Student Government Association, Student Ambassadors, START (Support, Through, Advisement, Registration, Transition) Orientation Leaders, Student Assistants and or Work Study students.

All SUNY Erie community members are strongly encouraged to report information regarding any incident of sexual misconduct to the Title IX Coordinator, or her/his designee, once made aware.

Anonymous Reporting

Any individual may make an anonymous report concerning an act of sexual misconduct. An individual may report the incident without disclosing her/his name, identifying the Respondent or requesting any action. Depending on the level of information available about the incident or the individuals involved, however, the College’s ability to respond to an anonymous report may be limited. Anonymous reports may be made by telephone at (716) 270-6600.



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Reporting Patterns of Sexual Misconduct

In the event that an individual believes that s/he may be experiencing behavior that points to a pattern of sexual misconduct, s/he should document that behavior and report it to the Title IX Coordinator, or her/his designee.

Time Frame for Reporting

Individuals are encouraged to report sexual misconduct promptly in order to maximize the College's ability to respond promptly and equitably. The College does not, however, limit the time-frame for reporting.

Regardless of the status of the alleged perpetrator, however, the College will conduct a Title IX review and take appropriate steps depending on the level of control the College has (if any) over the accused person. Adjudication processes are not available for reports against individuals who are no longer associated with the College.

Coordination with Law Enforcement

The College encourages Complainants to pursue criminal action for incidents of sexual misconduct that may also be crimes under New York law. The College can assist a Complainant in making a criminal report, either with the SUNY Erie Department of College Safety or a local Police Department. The College will, to the extent permitted by law, cooperate with law enforcement agencies if a Complainant decides to pursue the criminal process.

Amnesty for Students Who Report Sexual Misconduct

The College encourages reporting and seeks to remove barriers to reporting. The College recognizes that an individual who has been drinking or using drugs at the time of the incident may be hesitant to make a report because of potential Code of Student Conduct consequences related to her/his personal conduct. Individuals who report sexual misconduct, either as a Complainant or as a third-party witness, will not be subject to disciplinary action by the College for their own personal consumption of alcohol or drugs at or near the time of the incident, provided that any such violations did not and do not place the health or safety of any other person at risk. The College may, however, initiate an educational discussion or pursue other educational remedies regarding alcohol or other drugs. This amnesty policy applies to the College's Community Standards Adjudication Hearing Board process.

Bystander Intervention

The College encourages all community members to take reasonable and prudent actions to prevent or stop an act of sexual misconduct. Taking action may include direct intervention, creating a distraction or delegating by calling law enforcement or seeking assistance from a person in authority.

Statement against Retaliation



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SUNY Erie does not engage in retaliation against anyone who has brought forth a complaint in good faith. Any retaliation engaged in by any person involved in the complaint and investigation process is strictly prohibited, regardless of the ultimate resolution of the complaint. Retaliation, itself, may be grounds for disciplinary action up to and including dismissal. Students who believe they have been retaliated against for filing a complaint should report the facts and circumstances promptly to a person in authority.

The College recognizes that retaliation can take many forms, may be committed by an individual or a group against an individual or a group and that a Respondent can also be the subject of retaliation by the Complainant or a third party. The College will take immediate and responsive action to all reports of retaliation and may pursue disciplinary action as appropriate. An individual reporting sexual misconduct is entitled to protection from any form of retaliation following a report that is made in good faith, even if the content of the report is later not proven to be actionable.

Interim Measures

Upon receipt of a report, the College will provide, when appropriate, interim measures and support and reasonable protective measures to prevent further acts of misconduct and to provide a safe educational and work environment. The College will determine the necessity and scope of any interim measures. Even when a person involved with the Title IX process does not specifically request that protective action be taken, the College may choose to impose interim measures at its discretion to ensure the safety of any individual, the broader College community or the integrity of the review process.

All persons involved with concerns related to sexual misconduct or sex- or gender-based harassment are entitled to request and receive interim measures.

Students seeking such assistance should speak with the Title IX Coordinator, a Dean of Students or College Safety, who will coordinate such requests on the behalf of the student. The College will maintain contact with the parties to ensure that all safety and emotional and physical well-being concerns are being addressed.

All individuals are encouraged to report concerns about the failure of another individual to abide by any restrictions imposed by an interim measure. The College will take immediate and responsive action to enforce measures previously ordered or implemented by the College.

The College may impose any remedy that can be tailored to the involved parties to achieve the goals of this policy, even if the remedy is not specifically listed here. The range of interim measures may include, but is not limited to:

No Contact Order (NCO): A student may request, or the College may impose, communication and contact restrictions to prevent further potentially harmful interaction between individuals. These communication and contact restrictions generally preclude in-person, telephone, electronic or third-party communications e.g., social media.



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In some cases, an individual may also wish to consider an Abuse Prevention Order or a Harassment Prevention Order, both of which can be obtained from the local courts through a civil proceeding that is independent of the College. If a court order is issued, the College will, to the extent possible, assist the protected person in benefiting from the restrictions imposed by the court and will also facilitate on campus compliance with the order. The College may also limit an individual or organization's access to certain College facilities or activities as part of the NCO.

Academic, Employment, or Residence Interim Measures: An individual involved with the Title IX process may request an academic or employment modification or a change in residence after a report of sexual misconduct. An individual who requests assistance in changing their academic or living situation will receive appropriate and reasonably available modifications. These may include:

- Academic modifications, including a change in class schedule, taking an incomplete, dropping a course without penalty, attending a class via Skype or other alternative means, providing an academic tutor or extending deadlines for assignments
- Change of residence hall assignment
- Change in work assignment or schedule, or
- Providing an escort to ensure safe movement between classes and activities.

Emotional Support: The College will provide counseling services through the Student Support Service Centers or will assist in providing a referral to off-campus agencies as detailed in the Campus Resources and Community Resources sections of this policy. Services and emotional support are available to any member of the campus community.

Interim Suspension or Employee Leave: Where the report of sexual misconduct poses an ongoing risk of harm to the safety or well-being of an individual or members of the campus community, the College may place any student or organization on interim suspension or impose leave for an employee in accordance with the employee's collective bargaining agreement. Pending resolution of the complaint, the student or organization may be denied access to campus. When interim suspension or leave is imposed, the College will make reasonable efforts to complete the investigation and resolution within an expedited time frame.

Role of the Title IX Coordinator

The Title IX Coordinator oversees the College's centralized review, investigation and resolution process for reports of sexual misconduct and coordinates the College's compliance with Title IX. The Title IX Coordinator leads the College's Title IX Teams supported by several College administrators who may serve as Title IX designees.

The Title IX Coordinator can be contacted by telephone, by mail, by email or in person during regular office hours.



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The duties and responsibilities of the Title IX Coordinator and her/his designees include training, education and climate checks as well as the oversight of procedures that promptly and equitably eliminate sexual harassment, prevent its recurrence and address its effects on individuals and our community. The Title IX Coordinator will:

- Oversee the investigation and resolution of all reports of sexual misconduct
- Meet with any individual, whether a Complainant, a Respondent or a third party, to discuss interim measures, resources and procedures on and off campus
- Ensure prompt and equitable resolutions that comply with all requirements and time-frames specified in the complaint procedures
- Conduct ongoing and regular climate checks, tracking and monitoring of sexual misconduct allegations on campus, and
- Coordinate and assist in developing and training, education and prevention efforts related to sexual misconduct.

Role of the Title IX Team

All reports of sexual misconduct are brought to the College's Title IX team. This interdepartmental team, led by the Chief Diversity Officer (CDO), designated as the Title IX Coordinator, responds promptly and equitably to coordinate the review and resolution of all reports, ensures that all appropriate interim measures are implemented, and ensures consistent application of this policy to all persons. Members of the Title IX team include the Title IX Coordinator, a Dean of Students, the SUNY Erie Vice President for College Safety, and others as may be necessary.

The Title IX team also oversees the resolution of reported misconduct through the College's complaint processes. The role of the Respondent will determine which complaint process is followed with the assistance of the Title IX Coordinator:

Complaints against students will be resolved by the Code of Student Conduct system.

Complaints against faculty and staff will be resolved by the Human Resources Office.

Each process is guided by the same principles of fairness and respect for all parties. Resources are available for both students and employees, whether as Complainants or Respondents, to provide guidance throughout the investigation and resolution of the complaint.

Initial Assessment of Reports of Sexual Misconduct

The College will address all reports of sexual misconduct. The Title IX team, under the leadership of the Title IX Coordinator, will oversee the College's Title IX review process.

In every report of sexual misconduct, the College, through members of the Title IX team, will make an initial assessment of any risk of harm to individuals or to the campus community and will take steps necessary to



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address those risks, including, when necessary, interim measures to provide for the safety of the Complainant and the campus community.

The College's responsibility to review and respond to all allegations of misconduct exists regardless of whether that review culminates in additional investigation or goes before the Adjudication Hearing Board. The College's investigation exists independently of the criminal justice process.

The College will take all reasonable steps to review and respond to the report, consistent with the request for confidentiality or request not to pursue an investigation (see section *Request for Confidentiality*). In doing so, the College may take steps to limit the effects of the alleged sexual misconduct and prevent its recurrence without initiating formal action. Examples include providing increased monitoring, supervision or security at locations or activities where the misconduct occurred; providing training and education materials for students and employees; revising and publicizing the school's policies on sexual misconduct; and conducting climate surveys regarding sexual misconduct. At all times, the College will seek to respect the request of the Complainant, and where it cannot do so, the College will consult with the Complainant and keep her/him informed about the chosen course of action.

Request for Confidentiality

Where the College has received a report of sexual misconduct, but the Complainant requests anonymity and/or that the College not pursue an investigation, the College will balance this request in the context of its responsibility to provide a safe and non-discriminatory environment for all College community members, including the Complainant. The College will take all reasonable steps to review and to respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation, but its ability to review may be limited by the request for confidentiality. Although rare, there are times when the College may not be able to honor a Complainant's request in order to provide a safe, non-discriminatory environment for all students. The Title IX Coordinator is the individual responsible for evaluating requests for confidentiality.

When weighing a Complainant's or victim's request for confidentiality or that no investigation or discipline be pursued, the Title IX Coordinator will consider a range of factors, including the following:

- Whether there have been other reports of alleged sexual misconduct against the same Respondent
- Whether the Respondent has a history of arrests or records from a prior school indicating a history of violence
- Whether the Respondent is alleged to have threatened further sexual misconduct or other violence against the Complainant or others
- Whether the alleged sexual misconduct was committed by multiple Respondents
- Whether the alleged sexual misconduct involved the use of a weapon
- Whether the Complainant or victim is under 18 years of age
- Whether the College possesses other means to obtain relevant evidence of the sexual misconduct (e.g. security cameras, physical evidence), and



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- Whether the Complainant's report reveals a pattern of alleged sexual misconduct (e.g. via illicit use of drugs or alcohol, at a particular location, or by a particular group).

The presence of one or more of these factors could lead the College to investigate and, if appropriate, to pursue disciplinary action. If none of these factors is present, the College will likely respect the Complainant's request for confidentiality, but may nonetheless be prompted to consider broader remedial action, such as: increased monitoring, supervision or security at locations where the sexual misconduct occurred; increased education and prevention efforts, including to targeted population groups; conducting climate surveys; and/or revisiting its policies and practices.

At all times, the College will seek to respect the request of the Complainant, and where it cannot do so, the College will consult with the Complainant and keep her/him informed about the chosen course of action, and, to the extent possible, share information with only those people responsible for handling the College's response. The Complainant has an option to participate in any investigation or disciplinary proceeding.

Investigation

The Title IX Coordinator, or her/his designee, will determine if an investigation of the report of sexual misconduct will be conducted. This determination is based on a variety of factors. The Title IX Coordinator may designate an investigator of her/his choosing. Any investigator used by the College, whether internal or external, must have specific training and experience investigating allegations of sexual misconduct.

Notice of Investigation. Within the first 1-3 days of the investigation, the Title IX Coordinator or her/his designee will notify the Complainant and the Respondent in writing (either by regular and certified mail, e-mail, or in person) of the commencement of the investigation. Students who may need an accommodation based on a disability to participate in the investigation are encouraged to notify the Title IX Coordinator as soon as possible. The notice of investigation will: (1) identify the Complainant and Respondent (if known); (2) specify the date (or range of dates if applicable), time (if known), location, and a description of the alleged conduct allegedly constituting the potential violation; (3) identify specific potential policy violations; (4) identify the investigators; (5) explain the prohibition against retaliation; (6) instruct the parties to preserve any potentially relevant evidence in any format; (7) provide links to or a copy of the any relevant policies or procedures; (8) inform the parties of available interim actions/measures (9) offer the respondent the opportunity to meet with the investigator.

The investigator will coordinate the gathering of information from the Complainant, the Respondent and any other individuals who may have information relevant to the determination of the investigation. The investigator will also gather any available physical or medical evidence, including documents, communications between the parties and other electronic records as appropriate. The investigator may also consider prior allegations of, or findings of responsibility for, sexual misconduct by the Respondent. In gathering such information, the investigator will comply with applicable laws and SUNY Erie policies. The investigation will be thorough, impartial and fair, and all individuals will be treated with appropriate sensitivity and respect.



POLICY NAME: Sexual Misconduct Policy - **Continued**

As described in the College Statement on Privacy, all College investigations will respect individual privacy concerns.

Information gathered during the investigation will be used to evaluate the responsibility of the Respondent, to provide for the safety of the individual and the College campus community and to impose remedies as necessary to address the effects of the alleged conduct. Any investigative report will serve as the foundation for all related resolution processes. These investigative documents will be secured when not in use.

Time Frame for Resolution

The College will make a good faith effort to complete the review and resolution of all reports within 60 days. However, there are some circumstances that may affect and extend the time frame for resolution including, but not limited to: the complexity and severity of the review; whether a complaint has been filed that has initiated adjudication; if there is a parallel criminal investigation; or if a review or adjudication occurs during school breaks or between school years. In general, a Complainant and Respondent can expect to receive periodic updates as to the status of the review or investigation, particularly if the timeframe must be extended.

Resources

The College is committed to treating all individuals with dignity, care and respect. All SUNY Erie community members affected by sexual misconduct have equal access to support and counseling services through the College. The College recognizes that any individual may have questions and we encourage Erie Community College members to seek the support of campus and community resources. The College can provide guidance in making decisions, obtaining information about available resources and assisting either party in the event that a report and/or resolution is pursued. Individuals are encouraged to use all available resources, regardless of whether the incident occurred recently or in the past.

Confidential Resources and Support—Making a Confidential Disclosure

The College encourages all SUNY Erie community members to report concerns about sexual misconduct. The College recognizes, however, that there are many barriers to reporting, both individual and societal, and not every individual will choose to report to the College or local law enforcement. For those individuals who are not prepared for their information to be reported to the Equity and Diversity Office, there are several confidential resources available for students, staff and faculty. The staff at these confidential resources are prohibited, either by state law and/or College policy, from releasing an individual's information without that individual's express consent (except under limited circumstances that pose an imminent danger to the individual or to others.)

Disclosures made to individuals at the following resources (not affiliated with SUNY Erie) are confidential and will not be shared with the Title IX Coordinator:



POLICY NAME: Sexual Misconduct Policy - **Continued**

Confidential Resources:

- **Crisis Services Advocate**
(716) 834-3131
- **NY State Office of Victim Services**
<https://ovs.ny.gov>
- **Sexual Assault & Violence Response (SAVR) Resources**
- <https://www.suny.edu/violence-response/>
- **RAINN The Rape, Abuse and Incest National Network**
1-800.656.HOPE (4673)
<https://www.rainn.org>
- **SUNY Erie Health Offices**

City Campus
Post, Room 228
(716) 851-1199

North Campus
Building S, Room 152B
(716) 851-1499

South Campus
Building 5, Room 5109
(716) 851-1699

On-Campus Resources

In addition to the confidential resources listed above, all SUNY Erie community members have access to a variety of resources provided by the College that can provide crisis intervention services, counseling, academic support and medical services. All of the staff and faculty listed below are trained to support individuals affected by sexual misconduct and to coordinate with the Title IX Coordinator consistent with the College’s commitment to a safe and healthy educational environment. While not bound by confidentiality, these resources will nevertheless maintain the privacy of an individual’s information within the limited circle of those involved in the Title IX resolution process.

SUNY Erie Title IX Coordinator

Chief Diversity Officer
Equity and Diversity Office
City Campus
Post Building, Room 174
(716) 851-1118

SUNY Erie Student Support Centers

City Campus
45 Oak Street, Room 150
(716) 851-1188

North Campus
Building S, Room 213
(716) 851-1488

South Campus
Building 5, Room 5200
(716) 851-1653



POLICY NAME: Sexual Misconduct Policy - **Continued**

SUNY Erie Department of College Safety

Emergency: 911

Dispatch Center: (716) 270-6600

City Campus	North Campus	South Campus
Post Building, Room 102	Building S, Room 115	Building 5, Room 5223

SUNY Erie Health Offices

City Campus	North Campus	South Campus
Post, Room 228	Building S, Room 152B	Building 5, Room 5109
(716) 851-1199	(716) 851-1499	(716) 851-1699

Deans of Students Offices

City Campus	North Campus	South Campus
Post, Room 167	building G, Room 157	Building 5, Room 5212
(716) 851-1120	(716) 851-1420	(716) 851-1620

Community Resources

Faculty, staff and students may also access resources located in the local community. Most services are free, however some community organizations may use a sliding scale fee based on income. These organizations can provide crisis intervention services, counseling, medical attention, and assistance in interfacing with the criminal justice system. All individuals are encouraged to utilize the resources that are the best suited to their needs, whether on or off campus.

New York State Police 24-hour hotline: 1-844-845-7269

New York State Domestic and Sexual Violence Hotline: 1-800-942-9606

New York State Office of Victim Assistance: 1-800-247-8035

Erie County Crisis Services Advocate: (716) 834-3131

DOES IT SUPERCEDE A POLICY/WHICH ONE: N/A

POLICY & GOVERNANCE COMMITTEE RECOMMENDED ACTION:

Policy & Governance Committee recommends the Board of Trustees approve this Board policy under Committee Briefings, Policy and Governance Committee. This Policy supersedes all prior policies/procedures and practices related to Sexual Misconduct Policy.



POLICY NAME: Sexual Misconduct Policy - **Continued**

POLICY & GOVERNANCE COMMITTEE MEMBERS PRESENT: Trustee Kathleen Masiello, Provost and Executive Vice President Douglas Scheidt, Executive Vice President for Administration and Finance Penelope Howard, VP Human Resources, Equity and Inclusion Tracey Cleveland (by phone), Vice President of Enrollment Management Steven Smith, Director of Registrar Paul Lamanna, Dean of Liberal Arts and Sciences Joanne Colmerauer, Dean of Liberal Arts and Sciences Jamie Smith, Professor and College Senate Representative Michael Delaney, Dean of Students Jason Perri

DATE OF BOARD APPROVAL: March 28, 2019

POLICY & GOVERNANCE COMMITTEE TEAM FOLLOW-UP:

Following Trustee approval, this Board policy will be included in the SUNY Erie Community College Board of Trustees Policy Manual.

INFORMATION/INPUT CONSIDERED DURING POLICY & GOVERNANCE COMMITTEE DELIBERATIONS:

Applicable state and federal laws. Education Law 6440 (1) regarding compliance under Article 129-A and 129-B, SUNY Board of Trustee policy regarding Violence Against Women's Act, New York State Penal Law; federal laws regarding Title IX and Clery Act,

Several College policies were referenced State University of New York at Buffalo, Buffalo State College, SUNY Cortland, Columbia Greene, and SUNY Suffolk.

The Policy has been reviewed and discussed at the Policy & Governance Committee meeting of February 8, 2019 and March 8, 2019.