



***The Proposed Changes to the Student Code of Conduct for 2015-2016
were approved by the College Council on April 21, 2015.***

MEMORANDUM

To: College Council Members

From: Barbara E. Jones, Vice President for Student Life

Date: March 30, 2015

Re: Proposed Changes to the Student Code of Conduct for 2015-16

As you know, SUNY Delhi is committed to maintaining a campus environment which is free from sexual violence, harassment, or any form of discrimination on or off campus. The College does not tolerate any types of sexual violence or sexual harassment and students found to be responsible for these types of behaviors face suspension or expulsion. The College has long had well established policies, procedures and support services in place to assist victims of sexual violence or sexual harassment.

Recently, you have probably heard and seen news coverage of President Obama's and Governor Cuomo's commitment to preventing sexual violence on college campuses. In December, the SUNY Board of Trustees adopted new policies in this realm for all state operated and community colleges which must be reflected in a uniform manner across the system for 2015-2016. These policies were developed by a diverse team of faculty and staff experts, students and advocates from across the state, and meet the requirements of Federal Law, namely the Clery Act (inclusive of the amendments in the 2013 Violence Against Women's Act reauthorizations) and Title IX.

Please find attached for your review the proposed changes to the 2015-16 Student Code of Conduct based on these new SUNY policies which have been written and approved by SUNY Counsel. If you have any questions, please feel free to contact me at 607-746-4442. I look forward to seeing you on April 21.

Proposed Changes to the Student Code of Conduct for 2015-2016

- 1. Replace current Consent definition-Section XXX. J with new SUNY wide definition of Affirmative Consent:**

Definition of Affirmative Consent

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, 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 cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.

- 2. Add new SUNY Wide Policy for Alcohol and/or Drug Use Amnesty in Sexual Violence Cases to Section XXI. - Alcohol and Other Drug Sanctions and to Section XXIII. - Disciplinary Procedures for Allegations of Sexual Violence:**

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 Delhi recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time a sexual violence incident occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. SUNY Delhi strongly encourages students to report incidents of sexual violence to campus officials. A bystander reporting in good faith or a victim/survivor reporting sexual violence to SUNY Delhi officials or law enforcement will not be subject to campus conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the sexual violence.

- 3. Create new Section XXIII - Disciplinary Procedures for Allegations of Sexual Violence.**

Cases of alleged sexual violence including rape, sexual assault, sexual abuse, sexual harassment, dating violence, domestic violence, and stalking are covered by the procedures listed below, and are defined in Section XXX-Definition of Terms.

A. 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 Delhi recognizes that students who have been

drinking and/or using drugs (whether such use is voluntary or involuntary) at the time a sexual violence incident occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. SUNY Delhi strongly encourages students to report incidents of sexual violence to campus officials. A bystander reporting in good faith or a victim/survivor reporting sexual violence to SUNY Delhi officials or law enforcement will not be subject to campus conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the sexual violence

B. Burden of Proof

The burden of proof in all student conduct cases is the preponderance of the evidence, which means it is deemed “more likely than not” that the specific policies were violated. If the evidence presented is deemed to meet this standard, then the accused is found responsible.

C. Protections and Accommodations

The victim/survivor will have access to the protections and accommodations listed below:

1. When the accused is a student, to have the college issue a “No Contact Order,” meaning that continuing to contact the protected individual is a violation of college policy subject to additional conduct charges; if the accused and a protected person observe each other in a public place, it is the responsibility of the accused to leave the area immediately and without directly contacting the protected person.
2. To have assistance from University Police or other college officials in obtaining an Order of Protection or, if outside of New York State, an equivalent protective or restraining order.
3. 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).
4. To an explanation of the consequences for violating these orders, including but not limited to arrest, additional conduct charges, and interim suspension.
5. 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 to call on and assist local law enforcement in effecting an arrest for violating such an order.
6. When the accused is a student and presents a continuing threat to the health and safety of the community, to have the accused be subject to interim suspension pending the outcome of a conduct process.
7. When the accused is not a member of the college community, to have assistance from University Police and/or the Judicial Affairs Office in obtaining a Persona Non Grata letter, subject to legal requirements and college policy.
8. To obtain reasonable and available interim measures and accommodations that effect a change in academics, housing, employment, transportation, or other applicable arrangements in order to ensure safety, prevent retaliation, and avoid an ongoing hostile environment. Victims/survivors may request accommodations through any of the offices listed: University Police, Residence Life, Counseling & Health Services, Judicial Affairs, Title IX

Coordinators, Academic Affairs or Student Life. These services may also be coordinated through one of the offices listed below:

Judicial Affairs Director, Bush Hall 127, 607-746-4443

Title IX Coordinator, Bush Hall 103, 607-746-4495

Title IX Deputy Coordinator, Foreman Hall 114, 607-746-4692

D. Student Conduct Process

1. The victim/survivor has the right to file student conduct charges against the accused. Conduct proceedings are governed by the procedures set forth in the SUNY Delhi Student Code of Conduct as well as federal and New York State law, including the due process provisions of the United States and New York State Constitutions.
2. Throughout conduct proceedings, the accused and the victim/survivor will have:
 - a. The same opportunity to have access to an advisor of their choice. Participation of the advisor in any proceeding is governed by federal law and the Student Code of Conduct;
 - b. The right to a prompt response to any complaint and to have their complaint investigated and adjudicated in an impartial and thorough manner by individuals who receive annual training in conducting investigations of sexual violence, the effects of trauma, and other issues related to sexual assault, domestic violence, dating violence, and stalking.
 - c. The right to an investigation and process conducted in a manner that recognizes the legal and policy requirements of due process and is not conducted by individuals with a conflict of interest.
 - d. The right to receive written or electronic notice of any meeting or hearing they are required to or are eligible to attend.
 - e. 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.
 - f. The right to review available evidence in the case file.
 - g. The right to a range of options for providing testimony via alternative arrangements, including telephone/videoconferencing or testifying with a room partition.
 - h. The right to exclude prior sexual history or past mental health history from admittance in college disciplinary stage that determines responsibility. Past sexual violence findings may be admissible in the disciplinary stage that determines sanction.
 - i. The right to ask questions of the decision maker and via the decision maker indirectly request responses from other parties and any other witnesses present.
 - j. The right to make an impact statement during the point of the proceeding where the decision maker is deliberating on appropriate sanctions.
 - k. The right to simultaneous (among the parties) written or electronic notification of the outcome of a conduct proceeding, including the sanction(s).
 - l. The right to know the sanction(s) that may be imposed on the accused based upon the outcome of the conduct proceeding and the reason for the actual sanction imposed. For students found responsible for sexual assault, the available sanctions are suspension with additional requirements and expulsion/dismissal.
 - m. Judicial Affairs Office, 607-746-4443, Bush Hall 127, 454 Delhi Drive, Delhi, NY 13753

- n. The right to choose whether to disclose or discuss the outcome of a conduct hearing.

E. Retaliation

The act of retaliation and/or assisted retaliation against any individual including but not limited to students, college officials, faculty, residence hall staff, University Police, Title IX complainants or witnesses is strictly prohibited.

F. Appeals

After receiving notice of the disciplinary hearing decision, both the complainant and accused student, in cases of sexual harassment and sexual violence, dating violence, domestic violence and stalking, may request an appeal within 5 business days upon receipt of the original disciplinary decision.

Appeals must be based on violations of due process procedure, new evidence or a lack of substantial evidence to support the original 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 5 business days of notice. Both the appeal and response will be considered together by the appeals officer. The decision of the appeal officer is final.

4. Add new information regarding time frames to Section XXII. A. Time Frames for all student cases as per recommendation from SUNY Counsel:

Once a hearing is scheduled, each party may request a single delay or extension of up to five business days, so long as the state of default (Section XXII, O.) has not taken effect. No further extensions will be granted, under any circumstances.