

# **Buffalo State College**

## **Code of Student Rights, Freedoms, and Responsibilities**

**and**

## **Sexual Violence Addendum**

*Approved by the College Council, February 24, 2015 and  
Revised to Comply with NYS "Enough is Enough" Law  
September; 2015*

# Code of Student Rights, Freedoms and Responsibilities

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# Buffalo State College Code of Student Rights, Freedoms, and Responsibilities

(Revised, September, 2015)

## I. Introduction

**Higher education, with its emphasis on individual growth and independent thinking, requires a high degree of freedom. Yet, it also demands an orderly, harmonious atmosphere in which its members may pursue those aims in peace and security. Accordingly, the Buffalo State campus is governed by laws to foster such an atmosphere. Its policies and procedures are designed to guide student conduct and to ensure fair treatment for all students. Those policies follow and articulate student rights and responsibilities. Contact the Dean of Students Office (Student Union 306, 878-4618) should you require assistance with a specific issue or clarification of any policy. Students are expected to know the contents of this document.**

This document recognizes that students have rights, freedoms and responsibilities both as citizens and as members of the college community. It is meant to be operable within the provisions of the Constitution of the United States; federal, state and local laws; and the policies of the Board of Trustees of the State University of New York.

The Code of Student Rights, Freedoms and Responsibilities is published each semester by the Office of Student Affairs. It defines student rights, freedoms and responsibilities; it defines proscribed student conduct; it provides due process and delineates sanctions when guilt has been properly determined.

Students should be aware that, effective June 1, 2004, Buffalo State College will indicate a permanent notation on the official college transcript of any student that is dismissed as a result of either serious and/or repeated violations of the *Code of Student Rights, Freedoms and Responsibilities*. Students dismissed from the College as a result of violations of the *Code* shall not receive credit for the semester in which the expulsion occurred and will be liable for all tuition and fees for that semester.

Students should also be aware that the College will vigorously prosecute students who violate provisions of the *Code* through abuse of alcohol and other substances. Behaviors that are detrimental to the learning environment and/or damaging to the reputation of the College (whether occurring on or off of college property) will not be tolerated. These include but are not limited to intentionally causing physical injury to self or others; the use of threats, harassment or intimidation; the verbal abuse of any other person; actions that result in bodily harm and sexual misconduct, sexual harassment, intimidation or assault, including rape. The provisions of the *Code*, presented at Article VI below, define the full circumstances under which violations of the *Code* occur. Persons who are found to be repeat offenders will be subject to increasing penalties, with the possibility of suspension or dismissal from the College.

The code has been approved by the College Council with the advice of the President and the College Senate.

## ii. Title

The code is titled, Buffalo. State College *Code of Student Rights, Freedoms and Responsibilities*.

## Hi. Authorization for Establishment of the Code

Section 356, Education Law of the State of New York delegates to the Board of Trustees of the State University of New York authority to establish rules and regulations governing the operation of collegiate units. Within this authority, the Council for Buffalo State College is authorized to 1) make regulations governing the conduct and the behavior of students (Section 356, item G); 2) establish appropriate regulations, and 3) exercise supervision over student housing and safety (Section 356, item H).

## IV. Definitions

The following terms, when used with reference to the Code of Student Conduct, are defined as follows:

- A. College: The term "college" refers to Buffalo State College.
- B. College Property: The term "college property" refers to all property owned, leased or on loan to the college and/or to college organizations. Such organizations include, but are not limited to, United Students' Government Inc., The Research Foundation of the State University of New York, and Auxiliary Services.
- C. College Document: The term "college document" refers to any college record, official communication or form.
- D. Personal Property: The term "personal property" refers to anything of value to which a person has possession or title.
- E. College Council: The term "college council" refers to a council for the State University College at Buffalo as provided by Section 356 of the Education Law. (Refer to the most recent issues of the Policies of the Board of Trustees.)
- F. Designated College Official: The term "designated college official" refers to a person who is employed by the college and authorized to perform in a prescribed manner.
- G. College Staff: The college staff includes college employees not classified as faculty, by Article II of the Policies of the Board of Trustees.
- H. Faculty: The term "faculty" includes members of the academic staff employed by the college to conduct instruction, research and other service programs. (Specific responsibilities are stated in the Policies of the Board of Trustees.)
- I. College Senate: The term "college senate" is defined in Article III of the By-Laws of the college (1973) as to the governance body of the college with respect to such matters as curriculum, instruction and research, professional welfare of the faculty, budget and staff allocation, student welfare, standards for students, international education, by-laws and elections and academic planning.
- J. Student: The term "student" includes all persons registered for course(s) at the State University of New York College at Buffalo, both full and part time, pursuing undergraduate or graduate studies.
- K. Student Organization: The term "student organization" means a group or association of students with a specific purpose which has complied with the formal requirements for recognition by the student government and/or the college,
- L. Trustees: The term "trustees" refers to the Board of Trustees of the State University of New York as defined by Section 356 of the State Education Law.
- M. Institution. The term "institution" shall mean any college or university chartered by the regents or incorporated by special act of the legislature that maintains a campus in New York.
- N. Title IX Coordinator. The term "Title IX Coordinator" shall mean the Title IX Coordinator and/or his or her designee or designees.

- O. Bystander. The term "Bystander" shall mean a person who observes a crime, impending crime, conflict, potentially violent or violent behavior, or conduct that is in violation of rules or policies of an institution.
- P. Code of Conduct. The term "Code of Conduct" shall mean the written policies adopted by an institution governing student behavior, rights, and responsibilities while such student is matriculated in the Institution.
- Q. Confidentiality. "Confidentiality" may be offered by an individual who is not required by law to report known incidents of sexual assault or other crimes to institution officials, in a manner consistent with State and Federal law, including but not limited to 20 U.S.C. 1092(f) and 20 U.S.C. 1681(a). Licensed mental health counselors, medical providers and pastoral counselors are examples of institution employees who may offer confidentiality.
- R. Privacy. "Privacy" may be offered by an individual when such individual is unable to offer confidentiality under the law but shall still not disclose information learned from a reporting individual or bystander to a crime or incident more than necessary to comply with this and other applicable laws, including informing appropriate Institution officials. Institutions may substitute another relevant term having the same meaning, as appropriate to the policies of the Institution.
- S. Accused. The term "Accused" shall mean a person accused of a violation who has not yet entered an institution's judicial or conduct process.
- T. Respondent. The term "Respondent" shall mean a person accused of a violation who has entered an Institution's judicial or conduct process.
- U. Reporting Individual. The term "Reporting Individual" shall encompass the terms victim, survivor, complainant, claimant, witness with victim status, and any other term used by an institution to reference an individual who brings forth a report of a violation.
- V. "Sexual activity" shall have the same meaning as "sexual act" and "sexual contact" as provided in 18 U.S.C. 2246(2) and 18 U.S.C. 2246(3).
- W. "Domestic violence", "dating violence", "stalking" and "sexual assault" shall be defined by each Institution in its Code of Conduct in a manner consistent with applicable federal definitions.

## **V. Student Rights and Freedoms**

### **A. Freedom of Government**

Students have the right to organize and maintain democratic self-government.

### **B. Academic Freedom and Responsibilities**

Students have the right to be informed of and are responsible for maintaining the standard of academic performance expected of them in each class and/or program in which they are enrolled. Students have the right to take reasoned exception with the data or views offered in any course of study and to hold differing opinions without fear of prejudiced or capricious academic evaluation.

### **C. Freedom of Expression and Inquiry**

Students and student organizations have the right to meet, engage in discussion, pass resolutions, distribute leaflets, circulate petitions, invite speakers and take other action by orderly means which does not disrupt the operation of the institution. Except as proscribed herein, they are free to express opinions publicly or privately.

#### **D. Freedom of Communication Media**

Student communication organizations are to be free of censorship and advance approval of copy. Student editors and managers are free to develop editorial policies and news coverage in accordance with generally accepted standards of responsible journalism. Such public expressions are to be taken only as the work and opinions of their author(s).

#### **E. Freedom of Association**

Students are free to organize and join associations for educational, political, social, religious or cultural purposes, as consistent with law.

#### **F. Freedom from Disciplinary Action Without Due Process**

No sanction or other disciplinary action shall be imposed on a student by or in the name of the college without due process. This document defines due process at the college.

#### **G. Freedom from Improper Disclosure**

Information about student views, beliefs and political associations which faculty and college staff may acquire in the course of their duties at the college are to be considered confidential. Judgments of ability and character may be expressed in appropriate circumstances (e.g., letters of recommendation).

#### **H. Right to Privacy**

Students are protected from invasion of privacy and searches of their residences, except where a court ordered search warrant has been legally obtained or where permitted by the campus residence hall license or in the case of a danger to health or safety.

#### **I. Freedom from Prejudice**

Students have a right to be free from prejudice based on race, creed, sex, religion, ethnicity, sexual orientation, disability or age.

#### **J. Right to be Informed**

The college has the obligation to inform all students, within a reasonable time, of their rights, freedoms and responsibilities. Additionally, the college has the obligation to provide both complainants and those accused of violations, within a reasonable time, a set of documents that clearly outlines the alleged violation, campus judicial process, possible sanctions, student advocacy rights and a list of available college and community support services.

#### **K. Student Bill of Rights**

The State University of New York and Buffalo State 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 Buffalo State and SUNY-wide 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 rights enumerated under Section IV of the Sexual Violence Addendum to the code of conduct, regardless of whether the crime or violation occurs on campus, off campus, or while studying abroad.

## **VI. Violations of the Code of Rights, Freedoms and Responsibilities for Students**

**While on college property, while attending college-sponsored activities, or off campus where a definite, legitimate and substantial college interest exists, no student, either singly, or in concert with others, shall:**

### **A. Persons**

1. intentionally cause physical *injury to self or others*, *threaten*, harass, intimidate or verbally abuse any other person.
2. take any action for the purpose of inflicting bodily harm upon any person or take any action with such reckless disregard that bodily harm might result.
3. engage in sexual misconduct in any form. Sexual misconduct allegations are addressed under the provisions detailed in the Sexual Violence Addendum to the Code
4. engage in hazing, stalking, harassment or threats of violence based on, but not limited to, a person's race, ethnicity, national origin, religion, creed, sexual orientation, disability, age or gender. Examples of hazing include, but are not limited to: paddling or other physical abuse or brutality; activities that involve illegal acts of excessive fatigue and/or stress; verbal and/or psychological abuse that compromises the dignity of individuals.
5. physically restrain or detain any person or remove such person from any place where he/she is authorized to remain.
6. obstruct the free movement of persons and college-owned and/or operated vehicles on the college property.
7. without appropriate permission enter into a private office of an administrator, faculty or staff member or student organization.
8. disrupt or prevent the peaceful and orderly conduct of classes, lectures and meetings or interfere with the freedom of any persons, including invited speakers, to express their views.
9. interfere with or disrupt any college office, classroom or activity through any means including the excessive use of amplified sounds or other electronic equipment.
10. vandalize, damage or destroy personal property of another individual.
11. remove or use another individual's personal property without authorization.
12. practice any form of dishonesty, including cheating, plagiarism, or furnishing false information to the college.

### **B. College Property**

1. vandalize, damage, misuse or destroy college property.
2. take college property such as supplies, equipment, services or documents without authorization.
3. misuse college supplies, services or documents.
4. misuse college property such as computer services, computer time, telephones, fax machines, and college or student records.
5. camp on college property without authorization by appropriate officials.

6. forge, transfer, alter or misuse any student record, identification card or other college document

### **C. Safety**

1. fail to comply with a directive by a designated college official who has duly identified him/herself and is acting in performance of his/her duties on college property.
2. enter and remain in any building or facility for any purpose other than its authorized use or in such manner as to obstruct its authorized use by others.
3. without authorization remain in any building or facility after it is normally closed.
4. refuse to leave any building or facility after being directed to do so by an authorized college official.
5. have in his/her possession on college property a rifle, shotgun, pistol, revolver or other firearm, an air gun, BB gun, paintball gun or any other replica of a firearm, instrument or weapon in which the propelling force is air or carbon dioxide, knife, club, slingshot, or other thing adaptable to the purpose of a weapon without the written authorization of the chief administrative officer, whether or not a license to possess same has been issued to such person.
6. use or have in his/her possession on college property any fireworks without the written authorization of the chief administrative officer.
7. possess, sell, use or distribute illegal drugs on college property or off campus where a nexus between the off campus location and the college exists under this code. (This includes possession, use, sale and/or distribution of alcoholic beverages other than in authorized areas and to persons at least 21 years of age.)
8. smoke or use tobacco products, including electronic smoking devices, anywhere on college property.
9. make a false report of a bomb, fire or other emergency in any building, structure or facility on college property.
10. alter or make unwarranted use of firefighting equipment, safety devices or other emergency safety equipment.
11. have animals in the residence halls or other college buildings without written authorization from appropriate college officials. (Assistant dogs are permitted as needed for those with physical impairment.)
12. leave animals unleashed or otherwise unattended on college property.
13. violate college parking and driving regulations. (Parking is prohibited at all times on roadways, sidewalks, lawns, grounds, lanes and throughways of parking areas except as posted. The college may have illegally parked vehicles towed away, the expense of which will be borne by the violator. Vehicles may be towed if they have acquired excessive parking violations.) Violations of this section are referred to the Traffic Appeals process. Students are notified of the appeals process through the Traffic Office. The determination of the hearing officer is final.
14. drive motorcycles, snowmobiles or other mechanized vehicles on college property other than on provided roadways. (Aids to the disabled are exempted.)
15. violate the rules and regulations governing residence halls as stated in the most recent edition of residence hall policies.
16. violate the guidelines established in the Residence Hall License agreement.
17. violate the established rules and regulations governing registered student activities. (Guidelines pertaining to registration of activities, use of campus facilities and organizational responsibilities are available from the Student Life Office.)
18. fail to keep the Records and Registration Office informed of his/her current mailing address and any change thereof.
19. incite any other person(s) to commit any of the acts herein prohibited.

#### **D. Other**

For disciplinary action to be taken against a student for violation of a federal, state or local criminal statute, a definite relationship between the statutory violation and the college's rules and regulations must exist. The violation of a statute or conviction off campus must be shown to be such that it justifies action by the College Court.

### **VII. Judicial System**

#### **A. Jurisdiction and Double Jeopardy**

The college judicial system's functions are to respect the rights of both complainants and accused students and to render fair judgments. It is not bound by the technical and formal rules of evidence.

The college judicial system has original jurisdiction in matters concerning infractions and violations of the Code of Student Rights, Freedoms, and Responsibilities. Enforcement of college rules and regulations does not constitute double jeopardy even when students are charged with violation of state or federal laws as well as with violation of college rules and regulations.

**B.** The Judicial System of the State University College at Buffalo is comprised of the following positions appointed by the president or his/her designee and fulfill the following functions:

**1. Director:** The Director shall be the Dean of Students or his/her designee. He/she will:

- a. train judicial board members, appeals board members and advocates for students.
- b. organize judicial hearings.
- c. initiate consultations between affected students and advocates for students.
- d. ensure adherence to college judicial procedures and, whenever possible, attend judicial board hearings.
- e. organize appeals board meetings.
- f. whenever possible, informally resolve grievances, disputes and accusations in accordance with the limitations and procedures stipulated in VIII.D. of this document.
- g. ensure compliance with the findings of the judicial board.
- h. prepare an annual report to be made available to the college community at the beginning of the subsequent academic year. This report will:
  - provide statistical data on the number of hearings and the sanctions imposed for specific violations, and
  - document the participation and college service of judicial board members and advocates for students.

**2. Advocate for Students**

The Advocate for Students will be drawn from a list of faculty and/or staff members selected and trained by the Director.

Advocates for students will advise affected students of their rights and responsibilities, resources that are available to them, and college judicial procedures preparatory to informal resolution or a judicial hearing.

### 3. **Judicial Boards**

#### a. composition and limitations

- 1) The College Court will consist of two Judicial Boards that will be appointed by the President from a list of volunteers recommended by the College Senate for a term of two years. Students may elect to serve for one or two years. Each Judicial Board will consist of seven persons, including: three students, two faculty members and two college staff members. Each board will also consist of two students, one faculty member and one college staff member serving as alternates. These boards will hear cases on a rotating basis. Additional boards may be appointed by the president upon recommendation of the director. Board members may serve on either board as deemed necessary by the Director.
- 2) The following persons may not serve on the judicial boards: the Dean of Students, University Police officers and staff, staff members of the Office of Residence Life, and the Office of Student Life, its student interns and resident assistants.
- 3) Any board member who has a personal or professional interest in the outcome of a case must disqualify him/herself from hearing that case. Where the director has reason to suspect that such an interest exists, the director must request the board member to disqualify him/herself and inform the board of that request. A simple majority of the board may elect to exclude a board member from participating where the board believes a personal or professional interest exists.
- 4) A quorum shall consist of five members, including the chairperson, at least one of whom must be a student.

#### b. Judicial boards will:

- 1) hear and evaluate charges and evidence.
- 2) question participants on matters directly germane to the case.
- 3) make judgments of guilt or innocence.
- 4) make final determinations of sanctions in cases of guilty verdicts.

### 4. **Judicial Board Chair(s):** The Judicial Board Chair position shall be filled by college faculty and professional staff drawn from the judicial board pool and serving on a rotating basis. Judicial board chairs will:

- 1) chair hearings: formally present charges to the board and ensure the orderly and thorough presentation of necessary evidence, participate in board discussion and vote on guilt or innocence.
- 2) inform the accused of the judgment of the judicial board. (Interim suspension, suspension and expulsion can be imposed only by the college president.)

### 5. **Appeals Board**

#### a. Composition: Members of the appeals board will consist of five members, as follows:

1. One faculty member, one staff member, two students, one member of the College Council
2. The chair of the appeals board shall be appointed by the president for a two year term from the faculty or staff members of the appeals board. The chair

formally presents all information on the case being appealed, participates in board discussion, and votes on all matters before the board.

3. Members of the Appeals Board will be appointed from a list of volunteers for a term of two years by the college president upon the recommendation of the College Senate except that College Council members will be appointed by the chairman of the College Council. Students may elect to serve for one or two years.
4. A quorum shall consist of three members, including the chairperson, at least one of whom must be a student.

b. The appeals board will:

1. Determine which cases will be granted appeals.
2. Review such cases.
3. Where deemed appropriate, allow students who have received guilty verdicts to *personally address the board and* answer questions posed by members of the appeals board.
4. In cases where sexual misconduct is alleged, the appeals board will, where deemed appropriate, allow complainants who wish to challenge the results of a hearing to personally address the board and answer questions posed by members of the appeals board.
4. Where deemed appropriate, vacate convictions in verdicts and/or reduce sanctions.
5. Where deemed appropriate, grant new hearings.
6. Where deemed appropriate, uphold the decisions of the original hearing board.

### **C. Initiating Complaints and Scheduling Hearings**

Complaints may be initiated by any member of the college community - student, faculty, and/or staff. Any complaint concerning a violation of the Code of Student Rights, Freedoms, and Responsibilities should be made or referred to the director of the college judicial system as soon as practicable but no later than the end of the semester after the incident occurred. All complaints must be filed in writing, dated and signed by the complainant(s). If it is determined by the director that the complaint is within the jurisdiction of the judicial board and no informal resolution can be made, a hearing shall be scheduled. Both the complainant(s) and accused shall be notified by email to their official college email address, at least two weeks before the hearing date. The hearing will be concerned only with the allegations written in the complaint.

In cases where sexual misconduct is alleged, the complainant and accused shall, upon request of either party, be separated from view of each other during the course of a hearing, such that both parties and the hearing board are able to hear each other.

Judicial board hearings are normally held on either Tuesday or Thursday between 12:15 and 1:30 PM.

### **D. Informal Resolution**

1. An informal resolution is an agreement negotiated by the director of the judicial system and the accused. Where an informal resolution is not possible, a formal hearing must be held.

2. Informal resolution may not result in interim suspension, suspension, or dismissal from the college.
3. The Campus Mediation Service provides an additional method for informal resolution permitting students through the assistance of trained mediators to decide a workable solution between and among themselves. Involved students may be asked to participate in a conflict management workshop.
4. Cases involving violations of this code and/or the guidelines established in the Residence Hall License Agreement may be considered for informal resolution except as otherwise noted. Those emanating from residence hall grievances, disputes, and accusations may be referred to the residence halls' judicial system for informal resolution at the discretion of the director. The following are excepted from informal resolution:
  - a. sexual harassment, intimidation, or assault on any person, including rape, regardless of the nature of the relationship between the persons involved. (VI.A.1.C.)
  - b. disruption or prevention of the peaceful and orderly conduct of classes, lectures and meetings or interference with the freedom of any person, including invited speakers, to express their views. (VI.A.5.)
  - c. forgery, transfer, alteration or misuse of any student record, identification card or other college document. (VI.B.6.)
  - d. false report of a bomb, fire or other emergency in any building, structure or facility on college property. (VI.C.9.a.)

#### **E. Hearing the Case**

Accused students and complainants may each bring an advisor of their choice at their own expense. This person may assist them during the hearing. The advisor takes no direct part in the proceedings, unless permitted to do so by the chair although he or she may advise students during the proceedings. All hearings are closed to the public. Only individuals directly concerned with the extant case may be present during a hearing; e.g., complainant(s), witnesses, the accused, advisor(s). Observers are not allowed, it is the responsibility of both the accused student(s) and complainant(s) to notify witnesses of the time and place of the judicial hearing. Complainants and accused students are responsible for presenting their cases, with the assistance of an advisor if desired and have the right to present witnesses on their behalf and to ask questions of witnesses presented by the opposing party or parties. No evidence other than that received at the hearing may be considered by the hearing board. Written statements by anyone not present at the hearing are not acceptable.

#### **F. Decisions**

The hearing board will determine the responsibility of the student(s) accused by a simple majority plus one vote of those present during the entire hearing. Judgment shall be based solely upon the evidence presented at a hearing. In cases where sexual misconduct is alleged, judgment shall be based solely upon a preponderance of the evidence presented at the hearing and the provisions of the Sexual Violence Addendum will apply. In the case of a "responsible" decision, short of suspension or dismissal from the college, the hearing board shall determine the sanction. Sanctions will be determined by a simple majority vote. Past disciplinary records may be taken into consideration.

The chairperson shall present the decision of the hearing board to the accused student and summarize the reasons for the decision. A student found in violation of this code will be asked to sign a statement indicating that he/she understands the ruling. Signing this statement does not necessarily indicate agreement with the decision.

Both the accused student and the complainant must be informed as soon as practicable but no later than 30 days after the outcome of any institutional disciplinary proceeding brought alleging violation of the code. The outcome of a disciplinary proceeding represents only the institution's final determination with respect to the alleged offense and any sanction that is imposed against the accused student.

## G. Sanctions

It is the responsibility of the student to complete sanctions within the required time period. A student found in violation of this code must return to the director of the college judicial system, the "Completion of Sanction" form signed by the appropriate individuals. Failure to complete sanctions may result in an official "hold" placed on all permanent records of a student and/or further charges being brought.

In the event of non-compliance with an order of suspension or dismissal, University Police will be responsible for ensuring enforcement. The following sanctions may be imposed upon an individual, or student organization, if found guilty of one of the specified violations:

1. **Reprimand or warning:** Written notice that continuation or repetition of the violation within a period of time stated in the warning may be a cause for more severe disciplinary action.
2. **Social probation:** Restriction from participation in specified college/sponsored activities, events, or use of specified college facilities.
3. **Restitution:** Reimbursement for damage or misuse of property.
4. **College or community service:** In consultation with the Dean of Students, individuals may be assigned appropriate community or college service. Such service may not exceed 40 hours and may not conflict with the student's religious or ethical views.
5. **Disciplinary probation:** Status of student is declared probationary for a specific period of time which shall not be less than three months nor more than one calendar year. Further violation of recognized rules and regulations may warrant immediate suspension or expulsion from the college. This sanction precludes the individual from representing the college in an official capacity such as intercollegiate athletics or student office, and it may include the loss of specific privileges.
6. **Suspension or dismissal:** The hearing board may recommend to the college president that a student found in violation of this code be suspended or dismissed from the college. Students dismissed from the College as a result of violations of the *Code* shall not receive credit for the semester in which the expulsion occurred and will be liable for all tuition and fees for that semester.
7. **Interim suspension:** The college president may suspend a student pending a hearing and determination thereof, whenever: in his/her considered judgment the continued presence of such student would constitute a clear danger to him/herself or to the safety of persons or property or would pose an immediate threat of disruptive interference with the normal conduct of the institutions' activities and functions, provided, however, that the president shall grant a hearing, within a reasonable period, on the request of any student so suspended with respect to the basis for such suspension. During this period of such a suspension, the student shall not, without prior permission of the president or his/her designated representative, enter or remain on the campus of the State University College at Buffalo other than to attend the hearing. Violation of any condition of the interim suspension shall be grounds for dismissal from the college. The student must leave the campus within 48 hours of notification of the suspension or expulsion unless an

appeal is granted or an extension is approved by the college president or his/her designee. The suspended or expelled student may not visit the campus unless prior permission by the college president or his/her designee is given.

8. **Sexual Misconduct Sanctions:** Sanctions for students found responsible for sexual misconduct violations are listed under the Sexual Violence Addendum to the Code.
9. **Sanctions for Residence Hall Related Violations:**
  - A. **Residence hall probation.** A student's resident status is declared probationary for a specified period of time. *Residence hall probation is a strict warning against further violation(s) of residence hall/college policies. Further violations may result in loss of a student's license to live on campus.*
  - B. **Imposed reassignment.** A resident student will be reassigned to an available space on campus to be determined by the judicial hearing board and director of residence life. The student will be required to move to the new assignment within a specified and reasonable period of time or be subject to immediate suspension from the residence halls.
  - C. **Suspension/expulsion from the residence halls.** The student will be required to vacate the residence halls for a reasonable specified period. The student may apply to the director of residence life or his/her designee to be readmitted to the residence halls following a period of suspension. Any individual under suspension or expulsion from the residence hall is prohibited from entering any residence hall without explicit permission, in writing, from the director of residence life of his/her designee.

#### H. Transcript Notation

1. Effective June 1, 2004, Buffalo State College will indicate a permanent notation on the official college transcript of any student that is dismissed as a result of either serious and/or repeated violations of the *Code of Student Rights, Freedoms and Responsibilities*.
2. For crimes of violence, including, but not limited to sexual violence, defined as crimes that meet the reporting requirements pursuant to the federal Clery Act<sup>1</sup> established in 20 U.S.C. 1092(f)(1)(F)(i)(I)-(VIII), institutions shall make a notation on the transcript of students found responsible after a conduct process that they were "suspended after a finding of responsibility for a code of conduct violation" or "expelled after a finding of responsibility for a code of conduct violation." For the respondent who withdraws from the institution while such conduct charges are pending, and declines to complete the disciplinary process, institutions shall make a notation on the transcript of such students that they "withdrew with conduct charges pending."
  - a. Students may submit an appeal to the Dean of Students seeking removal of a transcript notation for a suspension, provided that such notation shall not be

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<sup>1</sup> Violations equivalent to the Clery Act (as updated by the Violence Against Women Act Final Regulations) Part I crimes covered under the legislation that would require a transcript notation are: murder; rape, fondling, incest and statutory rape; robbery; aggravated assault; burglary; motor vehicle theft; manslaughter; and arson. Institutions may, but are not required to, include transcript notations for additional violations.

removed prior to one year after conclusion of the suspension, while notations for expulsion shall not be removed. If a finding of responsibility is vacated for any reason, any such transcript notation shall be removed.

#### **I. Absence of Accused Student**

If the accused student does not appear at the hearing and if it has been determined that the accused student did receive the required notice of the hearing, the case will be heard in his/her absence and a decision will be rendered by the judicial board.

#### **J. Absence of the Complainant**

If the complainant does not appear at the hearing and if it has been determined that the complainant did receive the required notice of the hearing, the case may be dismissed.

#### **K. Absence of Quorum**

In the event that a quorum of the hearing board is not present, the hearing will be rescheduled. The rescheduled hearing will take place within ten days of the first hearing date.

#### **L. Reporting Decisions**

A written report of the findings of the judicial hearing and the sanctions, imposed or recommended, by the board, shall be prepared by the chairperson and forwarded to the director of the college judicial system, the vice president for student affairs and, where necessary, the college president.

#### **M. Appeals**

1. Any student found in violation of the rules and regulations of the Code of Rights and Responsibilities has the right to request an appeal of any decision made by a judicial hearing board.
2. In cases where sexual misconduct is alleged, both the complainant and the victim have the right to request an appeal of any decision made by a judicial hearing board.
3. An appeal must be made in writing to the director of the judicial system within ten **(10)** days of receiving notification of the outcome of the hearing. An appeal must include the specific *reason(s)* for the request: procedural error, inappropriate application of college regulations, presence of new information, or the leniency or severity of sanctions imposed. Appeals may include requests to personally address the appeals board. The appeals board shall first determine whether or not an appeal will be granted. If granted, the appeals board shall schedule a hearing. In cases where an error is found or there is compelling new evidence, the appeals board shall set aside the original decision and either enter its own judgment or recommend a new hearing. The appeals board may elect to request to speak directly with complainants, witnesses or student (s) accused.
4. All sanctions imposed shall be considered in effect until/unless reversed by the Appeals Board. The decision of the appeals board is final.

5. Reporting Decisions: The appeals board shall follow the same procedure as the judicial hearing board.

#### **N. Judicial Records**

1. Student records, including files, taped proceedings and testimony of cases heard before the judicial hearing board are confidential.
2. College guidelines concerning the confidentiality of student records in accordance with the "Family Educational Right and Privacy Act (PL 93-380) of 1974," as amended, shall be followed.

#### **O. Non-Retaliation Policy**

Both complainants and accused students are prohibited from engaging in any form of retaliatory action against the other party, any witness at a hearing, members of the hearing or appeals boards, judicial affairs staff or any other party associated with the complaint.

### **VIH. Revisions and/or Amendments**

All revisions and/or amendments to the Code of Student Rights, Freedoms, and Responsibilities must be approved by the College Council with the advice of the president and the College Senate.

*Revised September, 2015*

**Buffalo State College *Code of Student Rights, Freedoms and  
Responsibilities***

**Sexual Violence Addendum**

*Approved by the College Council, February 24, 2015  
and Revised to Comply with NYS 'Enough is Enough' Law  
September, 2015*

# Buffalo State College Code of Student Rights, Freedoms, and Responsibilities

## *Sexual Violence Addendum*

### **I. Introduction**

Buffalo State strives to create a campus community which is intolerant of sexual violence. Sexual violence is a violation of college policy and federal civil rights law and may also be subject to criminal prosecution. The College is committed to fostering a community that promotes prompt reporting of sexual violence and timely and fair resolution of sexual violence complaints. Creating a safe and respectful environment is the responsibility of all members of the campus community. Buffalo State strongly encourages persons who believe they have been a victim of sexual violence to report the incident, to seek assistance, and to pursue judicial action for their own protection and for the entire college community.

Buffalo State provides due process to students accused of sexual violence. This Addendum is designed to uphold these principles, while also ensuring a complainant's protections under Title IX and SUNY Policies on Sexual Violence Prevention and Response. Nothing in this Addendum is intended to abridge any student's rights. Those accused shall be subject to appropriate campus due process (judicial processes, disciplinary action) and/or criminal proceedings if the victim pursues a criminal complaint.

### **II. Definition of Violations**

Sexual violence, as that term is used in this document and prior U.S. Office for Civil Rights guidance, refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent (as defined by the affirmative consent policy included herein). A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. Sexual violence can be carried out by other students, college employees, or third parties. All such acts of sexual violence are forms of sex discrimination prohibited by Title IX.

Student Judicial and Appeals Boards will consider alleged violations using the definitions listed in this section, in compliance with SUNY policy, hearing boards will apply the following definition to determine whether consent was present:

#### Affirmative Consent:

Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in 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.

- a) 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
- b) Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- c) Consent may be initially given but withdrawn at any time.

d) 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.

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

f) When consent is withdrawn or can no longer be given, sexual activity must stop.

g) Consent cannot be given if any of the parties are under the age of 17 or otherwise cannot consent. Sexual

Misconduct Violations:

A Non-consensual sexual contact: Any intentional sexual touching by a man or a woman upon a man or a woman that is without consent and/or by force.

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

C^ 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

D. Sexual assault: Sexual assault is defined to be a Code of Conduct violation consistent with the Federal definition of rape adopted by the Department of Education in Final Regulations (<http://www.apo.aov/fdsvs/Dkg/FR-2014-10-20/pdf/2014-24284.pdf>, page 62789), from the Uniform Crime Reporting system of the Federal Bureau of Investigations. "The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim." Consent for these purposes is the consent definition in these policies and the legislation.

**For students found responsible for sexual assault, the available sanctions are suspension with additional requirements and expulsion/dismissal.**

E. Sexual harassment: unwelcome, gender-based verbal, non-verbal, or physical conduct that is sexual in nature and sufficiently severe, persistent, or pervasive that it unreasonably interferes with, denies, or limits

someone's ability to participate in or benefit from the University's educational program and/or activities, and is based on power differentials, the creation of a hostile environment, or retaliation.

F. **Sexual violence:** physical sexual acts perpetrated against a person's will or perpetrated where a person is incapable of giving consent. A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion.

**Stalking:** intentionally engaging in a course of conduct, directed at a specific person, which is likely to cause a reasonable person to fear for his or her safety or the safety of others or cause that person to suffer substantial acts that alarm, cause fear, or seriously annoy such other person(s) and that serve no legitimate purpose, and repeatedly communicating by any means, including electronic means, with such person(s) in a manner likely to intimidate, annoy, or alarm him/her.

### **III. Policy for Alcohol and/or Drug Use Amnesty in Sexual and Interpersonal 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. Buffalo State 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. Buffalo State strongly encourages students to report incidents of domestic violence, dating violence, stalking, or sexual assault to campus 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 Buffalo State officials or law enforcement will not be subject to Buffalo State'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.

### **IV. Students' Bill of Rights**

The State University of New York and Buffalo State 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 Buffalo State and SUNY-wide 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 justice process free from pressure 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 practicable and not to 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.

#### **V. Judicial System and Process**

Under the Sexual Violence Addendum, victims/survivors shall have the right to file student conduct charges against the accused. Conduct proceedings are governed by the procedures set forth in this *Sexual Violence Addendum* 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, both the accused and the victim/survivor will have:

1. 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.
2. 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.
3. 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.
4. 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.

5. 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.
6. The right to offer evidence during an investigation and to review available relevant evidence in the case file, (or otherwise held by the College).
7. The right to present evidence and testimony at a hearing, where appropriate.
8. The right to a range of options for providing testimony via alternative arrangements, including telephone/videoconferencing or testifying with a room partition.
9. The right to exclude prior sexual history with persons other than the other party in the conduct process or their own or past, 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.
10. 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.
11. The right to make an impact statement during the point of the proceeding where the decision maker is deliberating on appropriate sanctions.
12. The right to simultaneous (among the parties) written or electronic notification of the outcome of a conduct proceeding, including the decision, any sanctions, and the rationale for the decision and any sanctions.
13. The right to written or electronic notice about the sanctions(s) that may be imposed on the accused based upon the outcome of the conduct proceeding. **For students found responsible for sexual assault,<sup>2</sup> the available sanctions are suspension with additional requirements and expulsion/dismissal.**
14. Access to at least one level of appeal of a determination before a panel, which may include one or more students, that is fair and impartial and does not include individuals with a conflict of interest.
15. The right to have access to a full and fair record<sup>3</sup> of a student conduct hearing, which shall be preserved and maintained for at least five years and is available by contacting the office of Judicial Affairs, Campbell Student Union, room 311, telephone 716-878-3501.

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<sup>2</sup> Sexual assault is defined to be a Code of Conduct violation consistent with the Federal definition of rape adopted by the Department of Education in Final Regulations (<http://www.gDO.gov/fdsvs/pkg/FR-2014-10-20/pdf2014-24284.pdf>, page 62789), from the Uniform Crime Reporting system of the Federal Bureau of investigations. "The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim." Consent for these purposes is the consent definition in these policies and the legislation.

<sup>3</sup> The college will allow participants reasonable access during business hours and is specifically not required to provide participants with copies of the record.

16. The right to choose whether to disclose or discuss the outcome of a conduct hearing.<sup>4</sup>
17. 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.

#### Judicial and Appeals Boards

Judicial and Appeals Boards will be comprised and convened as described in the *Code of Student Rights, Freedoms and Responsibilities*, except as follows:

1. **Training Requirements:** Members of the Judicial and Appeals Boards must 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.
2. Board members must complete sexual violence adjudication training before hearing any sexual violence cases.
3. **Absence of Student Board Members:** In the event that all parties involved agree to have a hearing without the presence of student Judicial or Appeals Board members, then additional faculty or staff members will be substituted. All parties must sign a waiver acknowledging their agreement to this substitution.

#### Filing a Student Judicial Complaint:

A student judicial complaint form must be completed in writing and submitted to the Director, Office of Judicial Affairs, Campbell Student Union room 311 (telephone 878-3501) in order for the alleged violations to be reviewed under the Code of Conduct, <http://deanofstudents.buffalostate.edu/iudicial-affairs>

1. Reports or statements made to either University or local police are not provided by those agencies to the Office of Judicial Affairs and do not constitute a judicial complaint. A separate complaint form must be filed with the Office of Judicial Affairs, or the complainant may choose not to file a judicial complaint at all.
2. Assistance in filing a judicial complaint is available from the Office of Judicial Affairs, the Dean of Students Office, the Counseling Center, or the Office of Equity and Campus Diversity/Title IX Coordinator.

#### Judicial Process

1. After a written judicial complaint has been filed with the Office of Judicial Affairs, the Director or designee shall meet with the complainant to obtain his/her account of the alleged incident and review

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<sup>4</sup> Students may not be required to sign a non-disclosure agreement or other document forbidding them from discussing their case. This applies to respondents and reporting individuals. Participants are not themselves barred by FERPA from sharing this information. However, that this does not allow students to unreasonably share private information in a manner intended to harm or embarrass another individual, or in a manner that would recklessly do so regardless of intention. Such sharing may be retaliation which can result in separate charges under the Code of Conduct.

the College's disciplinary process, including the selection of an advocate as detailed in the *Code of Student Rights, Freedoms, and Responsibilities*.

2. The Office of Judicial Affairs shall notify, in writing, the student(s) accused, reporting the charge(s) made against him/her and providing a copy of the complaint. The Director or designee shall meet with the student (s) accused to explain the charges, the College's judicial process, the factual allegations concerning the violation, a reference to the specific code of conduct provisions alleged to have been violated, and possible sanctions.
3. The student(s) accused shall be given the opportunity to provide a written account of his/her perspective of the act(s) in question to the Office of Judicial Affairs. If a statement is provided it will be disclosed to the complainant and the Hearing Board. This statement must be submitted within three days prior to the hearing.
4. The Judicial Process will run concurrently with any criminal justice investigation and proceeding, if applicable, except for temporary delays as requested by external municipal entities while law enforcement gathers evidence. Temporary delays will not last more than 10 days except when law enforcement specifically requests and justifies a longer delay.
5. In the event that the student accused accepts responsibility, then s/he will be required to sign a statement acknowledging this fact. Depending on the severity of the violations, the Director or his/her designee may either issue sanctions or refer the matter to a Hearing Board.
6. Informal resolution mechanisms set forth in the Code of Conduct will only be used if the parties voluntarily agree to do so.
  - a. The complainant will not be required to resolve the problem directly with the accused.
  - b. Complainant(s) who agree to informal resolution may, at any time before a final resolution is achieved, refuse such measures and request a formal hearing.
  - c. Informal resolution may not be used in cases involving sexual assault as defined in this addendum.
7. Once a judicial complaint has been filed, a hearing will be scheduled at the earliest possible date, and all parties shall be informed in writing of this date no less than ten (10) business days prior. Scheduling of hearings in incidents of alleged sexual violence shall take precedence over less severe cases.
8. The hearing process is detailed in the *Code of Student Rights, Freedoms, and Responsibilities*, except as outlined below.
  - a. Parties may be separated during the hearing at the request of either the complainant(s) or the student(s) accused to provide testimony via alternative arrangements, including telephone/videoconferencing or testifying with a room partition.
  - b. The victim/survivor's prior sexual history with persons other than the other party in the conduct process or their own past mental health diagnosis or treatment history shall be excluded from admittance in the college disciplinary phase that determines responsibility.
  - c. Past findings of domestic violence, dating violence, stalking, or sexual assault may be admissible in the disciplinary stage that determines sanction.

d. Both the victim/survivor and the accused are entitled to make an impact statement during the point of the proceeding where the hearing board is deliberating on appropriate sanctions.

A. Decisions:

**Preponderance of evidence standard:** The hearing board will determine the responsibility of the student(s) accused by a simple majority plus one (1) vote of those present during the entire hearing. **In cases where sexual violence is alleged, judgment shall be based solely upon a preponderance of the evidence presented at the hearing.** Preponderance of evidence asks whether it is "more likely than not" that the sexual harassment or sexual violence occurred. If the evidence presented meets this standard, then the accused should be found responsible.

Hearing board recommendations are submitted to the Vice President for Student Affairs for review. Upon approval, all parties (complainant/victim, and the students] accused) shall be informed in writing of the Judicial Board's decision, as provided under the *Code of Student Rights, Freedoms and Responsibilities*.

B. Notice of Hearing Results

Both the victim/survivor and the accused student shall simultaneously be informed by written or electronic notice of the outcome of the hearing, including the decision, any sanctions, and the rationale for the decision and any sanctions.

C. Appeals:

All appeals processes shall follow the guidelines in the *Code of Student Rights, Freedoms, and Responsibilities*, except as noted below.

1. In cases where sexual violence is alleged, both the complainant and the accused have the right to request an appeal of any decision made by a judicial hearing board which may include one or more students, that is fair and impartial and does not include individuals with a conflict of interest. An appeal must be made in writing to the director of the judicial system within ten (10) days of receiving notification of the outcome of the hearing. An appeal must include the specific reason(s) for the request: procedural error, inappropriate application of college regulations, presence of new information, or the leniency or severity of sanctions imposed.
2. 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 ten (10) days, which the appeals board will consider together.

- B. Parties Receiving Notice of the Outcome of a Judicial Hearing: both the complainant and the accused will receive notice of the outcome of a judicial hearing as soon as possible but no more than thirty (30) days following the conclusion of the hearing.
- C. Parties Filing an Appeal of the Results of a Judicial Hearing: both the complainant and the accused are entitled to an appeal of the results of a judicial hearing. Such an appeal must be submitted within ten (10) days of receipt of notice of the outcome of the judicial hearing.
- D. Appeals Hearing and Notice of the Outcome of an Appeal: the appeals board will meet to review appeals as soon as possible once all appeal-related documents have been submitted. Upon the conclusion of the appeal, both the complainant and the accused will receive notice of the outcome within thirty (30) days. The decision of the appeals board is final.

## VII. Sanctions

Sanctioning for sexual violence violations shall follow the guidelines set out in the *Code of Student Rights, Freedoms, and Responsibilities* except as described below.

- A. Past findings of domestic violence, dating violence, stalking, or sexual assault may be admissible in the disciplinary stage that determines sanction.
- B. Neither mediation nor informal resolutions are appropriate in cases of sexual assault.
- C. **For students found responsible for sexual assault,<sup>5</sup> the available sanctions are suspension with additional requirements and expulsion/dismissal.**

## VIII Policies Required by *Enough is Enough* Legislation

### A. Policy for the review of no contact order

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.

### B. Policy for review of an interim suspension

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.

### C. Policy for review of interim measures/accommodations

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.

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<sup>5</sup> All sanctions imposed shall be considered in effect until/unless reversed by the Appeals Board. The decision of the appeals board is final.

## VI. Timeline

The following is a timeline of the major steps in the judicial review process:

- A. Student Judicial Hearing: if a student judicial complaint is submitted, a student judicial hearing will be held as soon as possible but no more than 30 days following receipt of the complaint.

**D. Policy on transcript notation.**

For crimes of violence, including, but not limited to sexual violence, defined as crimes that meet the reporting requirements pursuant to the federal Clery Act<sup>6</sup> established in 20 U.S.C. 1092(f)(1)(F)(i)(I)-(VIII), institutions shall make a notation on the transcript of students found responsible after a conduct process that they were "suspended after a finding of responsibility for a code of conduct violation" or "expelled after a finding of responsibility for a code of conduct violation." For the respondent who withdraws from the institution while such conduct charges are pending, and declines to complete the disciplinary process, institutions shall make a notation on the transcript of such students that they "withdrew with conduct charges pending." Each institution shall publish a policy on transcript notations and appeals seeking removal of a transcript notation for a suspension, provided that such notation shall not be removed prior to one year after conclusion of the suspension, while notations for expulsion shall not be removed. If a finding of responsibility is vacated for any reason, any such transcript notation shall be removed.

- a. Students may submit an appeal to the Dean of Students seeking removal of a transcript notation for a suspension, provided that such notation shall not be removed prior to one year after conclusion of the suspension, while notations for expulsion shall not be removed, if a finding of responsibility is vacated for any reason, any such transcript notation shall be removed.

**E. Policy on how parties can review the case file/evidence**

In student disciplinary proceedings involving domestic violence, dating violence, stalking, or sexual violence, the campus will allow parties to review available evidence held by the campus in accordance with college/university policy. Parties can also present available evidence as appropriate under campus policies.

**IX. Non-Retaliation:**

All persons are prohibited from engaging in any form of retaliatory action against another party including complainants and student (s) accused, witnesses at a hearing, members of the hearing or appeals board, Judicial Affairs staff or any other person associated with the judicial complaint. Retaliation is considered to be any action that is perceived as intimidating, hostile, harassing, retribution, vengeance, or violent that occurs as a result of a judicial action.

**X. Revisions/ and / or Amendments:**

All revisions and/or amendments to this Addendum must be approved by the College Council with the advice of the Buffalo State College President and the College Senate. The Addendum will be regularly reviewed, along with the Code itself, as needed to remain current with changing laws, regulations, and policies.

<sup>5</sup> Sexual assault is defined to be a Code of Conduct violation consistent with the Federal definition of rape adopted by the Department of Education in Final Regulations (<http://www.gpo.gov/fdsys/pkg/FR-2014-10-20/pdi/2014-24284.pdf>, page 62789), from the Uniform Crime Reporting system of the Federal Bureau of Investigations. "The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim." Consent for these purposes is the consent definition in these policies and the legislation.

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<sup>6</sup> Violations equivalent to the Clery Act (as updated by the Violence Against Women Act Final Regulations) Part I crimes covered under the legislation that would require a transcript notation are: murder; rape, fondling, incest and statutory rape; robbery; aggravated assault; burglary; motor vehicle theft; manslaughter; and arson. Institutions may, but are not required to, include transcript notations for additional violations.