

RESPONSE POLICY FOR SEXUAL VIOLENCE AND OTHER MISCONDUCT

SUNY Corning Community College Board Policy and Administrative Procedures

Effective Date: March 13, 2015	RBOT Resolution # 4852--23 Response Policy for Sexual Violence and Other Misconduct
Amendment date: March 16, 2023	Author: Human Resources Office
References: RBOT Policy Manual, College Catalog, College website	Amends: RBOT Resolution #4336-17; T4417-18

Policy Statement

This policy and any associated administrative requirements and procedures are intended to comply with the uniform sexual assault prevention and response policies developed by the State University of New York for implementation at each of its State-operated and community college campuses, as well as with applicable federal and New York State law.

Definition of Sexual Violence

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 within this policy). 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 could involve students, College employees, third parties or a combination. All such acts of sexual violence are forms of sex discrimination prohibited by Title IX and the College's Equal Employment and Educational Opportunity Policy.

Definition of 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 a clear permission regarding willingness to engage in sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

- Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- Consent may be initially given but withdrawn at any time. When consent is withdrawn or can no longer be given, sexual activity must stop.
- Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.
- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.

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. Corning Community College 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. The College strongly encourages students to report incidents of domestic violence, dating violence, stalking, or sexual assault to institution officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to College officials or law enforcement will not be subject to the College'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.

Reporting Options, Resources, Protections, and Accommodations for Victims/Survivors

In accordance with the Students' Bill of Rights, available at:

www.corning-cc.edu/sexualviolence, reporting individuals will have the right to pursue more than one of the options below at the same time, or to choose not to participate in any of the options below:

Reporting:

- To disclose *confidentially* the incident to one of the following College officials, who by law may maintain confidentiality, and can assist in obtaining services (more information on confidential reporting is available at:

<https://www.corning-cc.edu/sexualviolence/confidentialdisclose>).

-Chaplain's Office, Commons Building, (607) 962-9257

-Health Services Office, Commons Building, (607) 962-9257

- To disclose *confidentially* the incident and obtain services from the New York State, New York City or county hotlines: <http://www.opdv.ny.gov/help/dvhotlines.html>. Additional disclosure and assistance options are catalogued by the Office for the Prevention of Domestic Violence and presented in several languages: <http://www.opdv.ny.gov/help/index.html> (or by calling 1-800-942-6906), and assistance can also be obtained through:

-SurvJustice: <http://www.survjustice.org/services.html>

-Legal Momentum: <https://www.legalmomentum.org/>

-NYSCASA: <http://www.casanys.org>

-NYSCADV: <http://www.nyscadv.org/>

-Pandora's Project: <http://www.pandys.org/lgbtsurvivors.html>

-GLBTQ Domestic Violence Project: <http://www.glbtqdv.org/>

-RAINN: <https://www.rainn.org/get-help>

-Safe Horizons: <http://www.safehorizon.org/>.

(Please note that these hotlines are for crisis intervention, resources, and referrals, and are not reporting mechanisms, meaning that disclosure on a call to a hotline does not provide any information to the campus. Reporting Individuals are encouraged to additionally contact a campus confidential or private resource so that the campus can take appropriate action in these cases).

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

- Title IX Coordinator, David Burdick, (607) 962-9328, Executive Director of Auxiliary Campus Services, 1 Academic Drive, Administration Building, Corning, NY 14830, dburdic4@corning-cc.edu

- Department of Public Safety, (607)962-9000 or publicsafety@corninig-cc.edu

- To file a criminal complaint with the Department of Public Safety and/or with local law enforcement and/or state police:

- Corning Community College Department of Public Safety, (607)962-9000 or publicsafety@corninig-cc.edu

- Steuben County Sheriff, Dial 911 or 7007 Rumsey St. Ext., Bath, NY 14810, (800) 724-7777 or (607) 622-3930.

- New York State Police, Dial 911 or Painted Post Barracks 3859 Meads Creek Road, Painted Post, NY 14870, (607)962-6865.

- To receive assistance from the Department of Public Safety in initiating legal proceedings in family court or civil court.

- To file a report of sexual assault, domestic violence, dating violence, and/or stalking, and/or talk to the Title IX Coordinator for information and assistance. Reports of sexual assault will be investigated in accordance with the College's Equal Employment and Educational Opportunity Complaint Procedure, available at: <https://www.corning-cc.edu/sexualviolence>

Complaints of domestic violence, dating violence, and/or stalking will be investigated in accordance with procedure established under the student conduct process. The reporting individual's identity shall remain private at all times if said reporting individual wishes to maintain privacy. If a reporting individual wishes to keep his/her identity anonymous, he or she may call the Title IX Coordinator's office anonymously to discuss the situation and available options (<https://www.corning-cc.edu/sexualviolence>).

- David Burdick, (607) 962-9328, Executive Director of Auxiliary Campus Services, 1 Academic Drive, Administration Building, Corning, NY 14830, dburdic4@corning-cc.edu

- When the accused is an employee, a reporting individual may also report the incident Dave Burdick, Title IX Coordinator, Administration Building, (607) 962-9328, dburdic4@corning-cc.edu, or may request that one of the above referenced confidential or private employees assist in reporting the incident to the Human Resources Office. Disciplinary proceedings will be conducted in accordance with applicable College policy or collective bargaining agreements. When the accused is an employee of an affiliated entity or vendor of the College, College officials will, at the request of the reporting individual, assist in reporting to the appropriate office of the vendor or affiliated entity and, if the response of the vendor or affiliated entity is not sufficient, assist in obtaining a persona non grata letter, subject to legal requirements and College policy.

- You may withdraw your complaint or involvement from the College process at any time.

- At the first instance of disclosure by a reporting individual to a College representative, the following information shall be presented to the reporting individual, “You have the right to make a report to the College’s Department of Public Safety, local law enforcement, and/or State Police or choose not to report; to report the incident to the College; to be protected by the College from retaliation for reporting an incident; and to receive assistance and resources from the College.

Resources:

- Emergency access to obtain effective intervention services:

Survivor Support Services:

135 Walnut Street, Corning, NY 14830

755 E. Church Street, Elmira, NY 14901

323 Owego Street, Unit #12, Montour Falls, NY 14865

Toll-Free Hotline: 888-810-0093

Sexual contact can transmit Sexually Transmitted Infections (STI) and may result in pregnancy. Information on testing for STIs, emergency contraception, and whether such testing is provided for free or at a cost is available from SARC.

- A free, confidential counseling and resource referral service for students and their family members which is available 24/7:

- Clinical Associates, <https://www.clinicalassociates.org/sap> 607.936.1771

- Within 96 hours of an assault, you can get a Sexual Assault Forensic Examination (commonly referred to as a rape kit) at a hospital. While there should be no charge for a rape kit, there may be a charge for medical or counseling services off campus and, in some cases; insurance may be billed for services. You are encouraged to let hospital personnel know if you do not want your insurance policyholder to be notified about your access to these services. The New York State Office of Victim Services may be able to assist in compensating victims/survivors for health care and counseling services, including emergency funds. More information may be found here: <https://ovs.ny.gov/help-crime-victims>, or by calling 1-800-247-8035.

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

Protection and Accommodations:

- When the accused is a student, to have the College issue a “No Contact Order,” consistent with College policy and procedure, 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.

The College will promptly review existing “No Contact Orders” at a party’s request, including requests to modify the terms of or discontinue an order, The parties can submit evidence to support their requests. If the College finds it appropriate, it can even make a schedule for the parties who seek to use the same facilities without running afoul of the “No Contact Order.”

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

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

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

- To receive assistance from The Department Of Public Safety 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 The Department of Public Safety or, if outside of the jurisdiction or if the Department of Public Safety does not have arresting powers to call on and assist local law enforcement in effecting an arrest for violating such an order.

- When the accused is a student and presents a continuing threat to the health and safety of the community, to have the accused subject to interim suspension pending the outcome of a complaint procedure or conduct process. The College will promptly review existing interim suspensions at a party’s request, including requests to modify the terms or discontinue an interim suspension. Parties can submit evidence to support their request.

- When the accused is not a student but is a member of the College community and presents a continuing threat to the health and safety of the community, to subject the accused to interim measures in accordance with applicable collective bargaining agreements, employee handbooks, and College policies and rules.

- When the accused is not a member of the college community, to have assistance from the Department of Public Safety or other College officials in obtaining a persona non grata letter, subject to legal requirements and College policy.

- To obtain reasonable and available interim measures and accommodations that effect a change in academic, housing, employment, transportation, or other applicable arrangements in order to ensure safety, prevent retaliation, and avoid an ongoing hostile environment. Parties may request a prompt review of the need for and terms of any interim measures and accommodations that directly affect them. The parties can submit evidence to support their requests. While reporting

individuals may request accommodations through any of the offices referenced in this policy, the following office can serve as a point to assist with these measures:

- David Burdick, (607) 962-9328, Executive Director of Auxiliary Campus Services, 1 Academic Drive, Administration Building, Corning, NY 14830, dburdic4@corning-cc.edu

Student Conduct Process:

- To request that student conduct charges be filed against the accused. Conduct proceedings are governed by the procedures set forth in the Corning Community College Course Catalog and Information Guide (<https://www.corning-cc.edu/student-code-conduct>), as well as federal and New York State law, including the due process provisions of the United States and New York State Constitutions.

- Throughout conduct proceedings, the respondent and the reporting individual will have:

- The same opportunity to be accompanied by an advisor of their choice who may assist and advise the parties throughout the conduct process and any related hearings or meetings. Participation of the advisor in any proceeding is governed by federal law and the Student Code of Conduct;

- The right to a prompt response to any complaint and to have their complaint investigated and adjudicated in an impartial, timely, and thorough manner by individuals who receive annual training in conducting investigations of sexual violence, the effects of trauma, impartiality, the rights of the respondent, including the right to a presumption that the respondent is “not responsible” until a finding of responsibility is made, and other issues related to sexual assault, domestic violence, dating violence, and stalking.

- The right to an investigation and process conducted in a manner that recognizes the legal and policy requirements of due process (including fairness, impartiality, and a meaningful opportunity to be heard) and is not conducted by individuals with a conflict of interest.

- The right to receive advance written or electronic notice of the date, time, and location of any meeting or hearing they are required to or are eligible to attend. Accused individuals will also be told the factual allegations concerning the violation, a reference to the specific code of conduct provisions alleged to have been violated, and possible sanctions.

- The right to have a conduct process run concurrently with a criminal justice investigation and proceeding, except for temporary delays as requested by external municipal entities while law enforcement gathers evidence. Temporary delays should not last more than 10 days except when law enforcement specifically requests and justifies a longer delay.

- The right to offer evidence during an investigation and to review available relevant evidence in the case file (or otherwise held by the College).

- The right to present evidence and testimony at a hearing, where appropriate.

-The right to a range of options for providing testimony via alternative arrangements, including telephone/videoconferencing or testifying with a room partition.

-The right to exclude prior sexual history with persons other than the other party in the conduct process or their own mental health diagnosis or treatment from admittance in College disciplinary stage that determines responsibility. Past findings of domestic violence, dating violence, stalking, or sexual assault may be admissible in the disciplinary stage that determines sanction.

-The right to ask questions of the decision maker and via the decision maker indirectly request responses from other parties and any other witnesses present.

-The right to make an impact statement during the point of the proceeding where the decision maker is deliberating on appropriate sanctions.

-The right to simultaneous (among the parties) written or electronic notification of the outcome of a conduct proceeding, including the decision, any sanction(s), and the rationale for the decision and any sanctions.

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

-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.

-The right to have access to a full and fair record of a student conduct hearing which shall be preserved and maintained for at least five years.

-For information on the Student Code of Conduct and the student conduct process, contact the Assistant Dean of Student Services, Gymnasium, (607) 962-9318.

- The right to choose whether to disclose or discuss the outcome of a conduct hearing.
- The right to have all information obtained during the course of the conduct or complaint process be protected from public release until the appeals panel makes a final determination unless otherwise required by law.

Warning! If you are reading a printed copy of this document, you may not have the current information. Please refer to the Regional Board of Trustees Policy Manual, available on the Office of the President's web page, for the latest version of this policy.