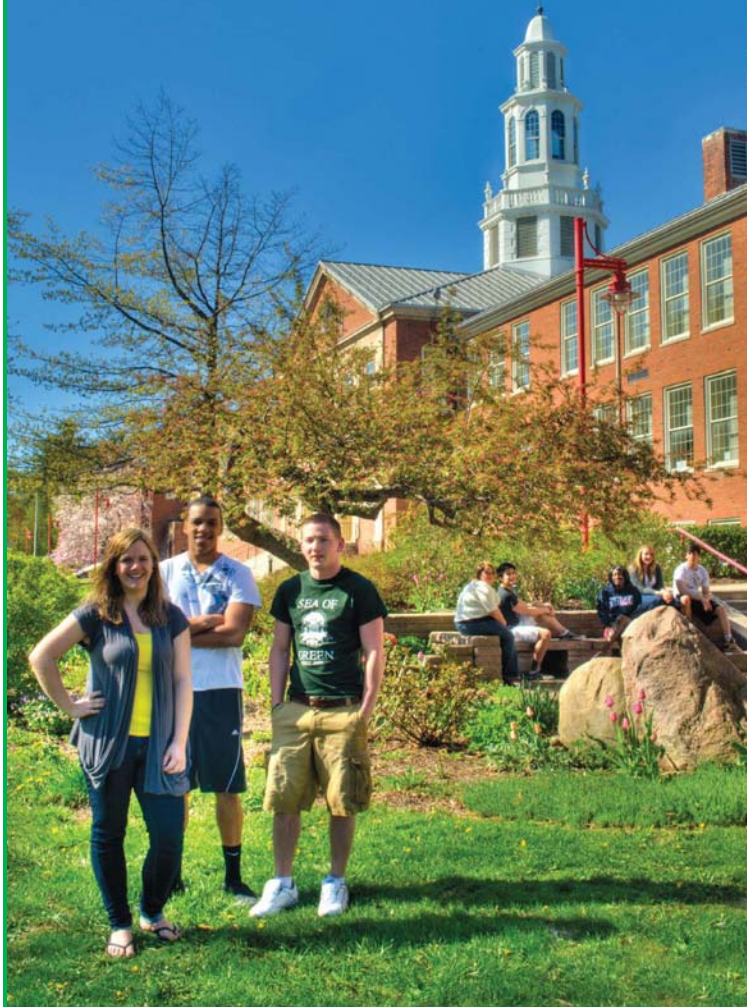


Code of Student Conduct



The College at
BROCKPORT
STATE UNIVERSITY OF NEW YORK



2011-2012



Welcome to our
smoke-free campus

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All students at The College at Brockport have access to the *Code of Student Conduct*. This document can be found in the annual *Student Handbook/Planner* publication and on the College’s Student Policy Web page at www.brockport.edu/policies.

Student Policies pertaining to academics such as the policy on *Academic Dishonesty* and the policy on *Procedures for Dealing with Students who are Disruptive in the Classroom* can be accessed on the Student Policy Web page at www.brockport.edu/policies.

The College at Brockport Code of Student Conduct 2011 - 2012

The College at Brockport is committed to fostering a safe and healthy campus environment conducive to education, study, work and personal development. In order to establish and maintain this desired environment, the College has adopted the *Code of Student Conduct* by which all students and student organizations are expected to abide at all times.

The *Code of Student Conduct* states the behavioral expectations and standards of conduct for all students. The rules pertain to the actions of individuals while they are students, either on or off the campus grounds. Therefore, a student who is off campus and charged with a civil or criminal offense where there is a nexus to the College may be subject to College disciplinary action. The student conduct coordinator shall use discretion on whether the *Code of Student Conduct* shall be applied to conduct occurring off campus.

Student groups and organizations may be charged with violations of the *Code of Student Conduct*. A student group or organization and its officers may be held collectively and/or individually responsible when violations of this student code occur. The student conduct system procedures have been established to ensure due process and fundamental fairness to all individuals and organizations involved. This document provides an explanation of the process involved for responding to allegations of student misconduct, in addition to explaining what actions the College shall take in dealing with violations of the Code.

Section I: Rules of Student Conduct

Federal, state and local laws, rules, and regulations are the overall policies under which the College, as a state-operated institution, is governed. With specific reference to such laws, rules, and regulations each student is expressly advised that the following behavior is prohibited. Students or student organizations engaging, attempting to engage, or assisting in the following are subject to disciplinary sanctions:

1. Conduct that violates any local, state, or federal law or rule and/or any regulation established by the Board of Trustees of the State University of New York.
2. Possession, use and/or storage of air guns, firearms, rifles, shotguns, and other weapons, explosives, dangerous objects or chemicals, even if legally possessed, on College property or at an official College function.
3. Violation of any provision of the *Residence Hall License, Student Townhomes Handbook and License* or rules contained in the document *Residence Hall/Student Townhomes Alcohol Policy*.
4. Attempted or actual theft of or damage to College property or services or property belonging to any member of the College community or unauthorized possession of stolen

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property on College premises. Property includes, but is not limited to, data and information stored on electronic or computer media and passwords.

5. Tampering with fire safety equipment, fire alarm equipment and/or setting off false alarms in any building on College premises or intentionally interfering with or failing to follow emergency procedures.
6. Intentionally overloading, damaging, dismantling or tampering with elevators or elevator equipment.
7. Trespassing/unauthorized use of facilities and services. No person shall enter into and/or utilize any College facility or service without proper authorization. No one shall enter a facility from which they have been restricted from as part of a student conduct sanction.
8. Unauthorized possession, duplication or use of any keys to any College premises or unauthorized entry to or use of College premises.
9. Unauthorized Presence. Students who have no specific legitimate reason for being in College buildings or on campus grounds may be subject to a charge of unauthorized presence. This includes, but is not limited to, being present in buildings and facilities that are officially closed or where the individual does not have a College official's written permission.
10. Advertising, soliciting, or selling any goods or services on campus without prior written permission from the vice president for enrollment management and student affairs or designee. Unaddressed handbills, announcements, election flyers, or advertisements are not to be placed under campus doors or on vehicles on campus property. Individuals should refer to the campus posting policy for more information.
11. Violation of the College's smoking policy: *Smoke-free Campus Policy with Minor Exemptions*. A copy of the smoking policy is found at [**www.brockport.edu/policies**](http://www.brockport.edu/policies).
12. Disorderly and/or disruptive conduct that interferes with the normal operations of the College or infringes on the rights of others. Leading or inciting others to disrupt scheduled and/or normal activities associated with the College.
13. Intimidation, harassment, or other conduct that attempts or threatens, and/or endangers the life, health, and/or welfare of any member of the institution.
14. Stalking. When a person intentionally and for no legitimate purpose repeatedly engages in conduct toward another person, in any form (physical, electronic, written or telephonic means), by one or more of the following:
 - a. Following that person in or about a public place or places when the person has been previously informed to cease that conduct, and/or
 - b. contacting another person repeatedly where the person has been informed to cease that conduct, and/or
 - c. repeatedly committing acts, which cause a person to reasonably fear physical injury.

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15. Physical assault. Any act that intentionally or recklessly causes physical injury to another person and/or causes such injury to the person or a third person. Physical assault includes, but is not limited to, inflicting bodily harm upon any person, taking any action for the purpose of inflicting harm upon any person, or subjecting another person to unwanted physical contact.
16. Hazing. Any action that degrades, humiliates, abuses or endangers the mental, emotional, or physical health or safety of a student, or which destroys or removes public or private property, for the purpose of initiation, admission into, affiliation with, or as a condition for continued membership in, a group, team or organization. Hazing can occur regardless of the person's willingness to participate. Please refer to The College at Brockport's *Hazing Policy* found at www.brockport.edu/policies.
17. Sexual Misconduct. Any of a broad range of prohibited behaviors designated by four distinct prohibited behaviors: 1) sexual harassment; 2) non-consensual sexual contact; 3) non-consensual sexual intercourse; and 4) sexual exploitation. All sexual misconduct cases will be managed through the Sexual Misconduct Code, Section IX of the *Code of Student Conduct*.
18. Abuse of the Student Conduct System, including, but not limited to:
 - a. Failure to comply with the instructions of a student conduct officer, student conduct body or College official.
 - b. Disruption or interference with the orderly conduct of a student conduct proceeding.
 - c. Providing false or misleading information to the student conduct officer or College Official.
 - d. Attempting to discourage an individual's participation in, or use of, the student conduct system through intimidation or any other means.
 - e. Attempting to influence the impartiality of a member of a student conduct body prior to, and/or during the course of, the student conduct proceeding.
 - f. Harassment (verbal or physical) and/or intimidation of a member of a student conduct body prior to, during, and/or after a student conduct proceeding.
 - g. Influencing or attempting to influence another person to commit an abuse of the student conduct system.
 - h. Violating any disciplinary sanction imposed in accordance with the *Code of Student Conduct*.
19. Failure to identify oneself or present a valid student identification card when requested to do so by any faculty, staff, or student staff or law enforcement officer in the performance of official duties.
20. Failure to comply with the reasonable and lawful requests or directives of College officials or law enforcement officers acting in performance of their duties and/or interference with faculty, staff, or student staff acting in the performance of their official duties. Compliance includes, but is not limited to, appearing at offices when directed to do so, showing identification and leaving areas when directed to do so.
21. Forgery or any other act of knowingly furnishing false information to the institution; in the form of a false complaint or report or unauthorized alteration or use of institutional

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documents, including those stored on electronic or computer media, or instruments of identification (such as an ID card).

22. Falsifying information or failing to report required information (such as previous college attendance, prior conduct sanctions or felony history) on any admissions application or related materials.
23. Gaining unauthorized access to data or information on College files, including those files on electronic or computer media, or to data or information which is the property of a member of the community stored on the College's electronic computer media.
24. Theft or other abuse of electronic technologies, including but not limited to:
 - a. Unauthorized entry into a system (voice/data/video/mechanical/security), to use, read or change the contents, or for any other purpose.
 - b. Unauthorized transfer of a file.
 - c. Unauthorized use of another individual's identification and password.
 - d. Intentional use of computing facilities to interfere with the operation of any computing system.
 - e. Use of electronic mail/instant messages to send chain letters, harassing messages.
 - f. Use of College computing facilities for commercial activities.
 - g. Unauthorized transfer/copying of copyright material (e.g., software, mp3 files) that is not protected by fair use.
25. The unlawful possession, personal use, purchasing or distribution of any controlled substance (as defined in NYS Public Health Law 3306), prescription drugs prescribed to self or another person, and/or possession of drug paraphernalia on College property or at official College functions.
26. Consumption, possession or purchase of alcoholic beverages by any persons less than twenty-one (21) years of age. Distribution of alcoholic beverages to anyone less than twenty-one (21) years of age, either on or off campus. Please refer to the College's Alcohol Policy found at www.brockport.edu/policies and www.brockport.edu/reslife/.

Section II: Student Conduct Definitions

1. The term "College at Brockport" or "College" means the State University of New York College at Brockport.
2. The term "student" means an individual who has been accepted to The College at Brockport or is taking courses at the College, either fulltime or part time, matriculated or non-matriculated, pursuing undergraduate, graduate, or professional studies. Persons who withdraw after an alleged violation of the *Code of Student Conduct*, who are not officially enrolled for a particular term but who have a continuing relationship with The College at Brockport as are persons who are living in The College at Brockport residence halls, although not enrolled in this institution.

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3. The term “The College at Brockport official” or “College official” includes faculty and staff, and any person employed by The College at Brockport, performing assigned administrative or professional responsibilities.
4. The term “The College at Brockport premises” includes all land, buildings, facilities, and other property in the possession of, or owned, used or controlled by, The College at Brockport (including adjacent streets and sidewalks). The *Code of Student Conduct* applies at all locations of The College at Brockport, including the MetroCenter.
5. The term “student organization” means any number of persons who have complied with the formal requirements for The College at Brockport recognition/registration.
6. The term “policy” means the written regulations of The College at Brockport, as found in, the *Code of Student Conduct*, the *Residence Hall License*, *College Alcohol Policy*, the *Residence Hall Handbook*, policy statements regarding sexual harassment and non-discrimination as well as bias and bias-related incidents, any policy listed on the College’s website, the Student Policy Web page at www.brockport.edu/policies and the graduate/undergraduate catalogs. Copies of these policies can be found in their respective offices and at www.brockport.edu.
7. The “student conduct coordinator” is that person designated by the College president to be responsible for the administration of the *Code of Student Conduct*.
8. The term “student conduct administrator” means The College at Brockport official authorized by the student conduct coordinator/president’s designee to conduct a hearing or conference with a student to discuss allegations of misconduct. The student conduct coordinator/president’s designee may authorize the student conduct administrator to impose sanctions in all cases.
9. The term “student charged” means any student accused of violating the *Code of Student Conduct*.
10. The term “complainant” means any person or persons who have filed charges against a student alleging a student violated the *Code of Student Conduct*.
11. The term “hearing board” means any person or persons authorized by the conduct coordinator/president’s designee to determine whether a student has violated the Student Code and to recommend sanctions that may be imposed when a rules violation has been committed.
12. The term “appeal officer” means the vice president for enrollment management and student affairs or any person authorized by the vice president to decide upon the appeal outcome for a student or student organization conduct case.
13. The term “preponderance of the evidence” means the standard of proof required to determine if a student violated the *Code of Student Conduct*. The standard is met when the information brought forth for the conduct case is more likely to be true than not true.

Section III: Student Conduct Authority

The president of the College has the ultimate authority in student disciplinary matters. However, responsibility for adjudication and other processing of most disciplinary matters is delegated to professional staff in certain institutional offices including, but not limited to, the student conduct coordinator, residence hall staff, the Conduct Boards, student conduct officers, the assistant to the vice president for student affairs, and the vice president for enrollment management and student affairs.

Section IV: Student Conduct System

A. Student Conduct Coordinator

The student conduct system at The College at Brockport is under the direction of the student conduct coordinator, who is appointed by the vice president for enrollment management and student affairs. The student conduct coordinator has been delegated the responsibility to administer the student conduct system.

Responsibilities of the student conduct coordinator include but are not limited to:

- a. Responsible for the administration of the student conduct system.
- b. Publishes the *Code of Student Conduct* annually and recommends revisions that are subject to the approval of the vice president for enrollment management and student affairs or designee.
- c. Provides availability of the *Code of Student Conduct* to any party upon verbal or written request to the student conduct coordinator.
- d. Functions as a student conduct officer and trains and supervises other student conduct officers appointed by the vice president for enrollment management and student affairs or designee. The student conduct coordinator assigns student conduct cases among the student conduct officers for preliminary review and resolution.
- e. Monitors the process for receiving charges against individual students for violations of College regulations.
- f. Conducts an investigation to determine if the charges have merit.
- g. Arranges conduct board hearings as required and presents student conduct cases at these hearings.
- h. Maintains the official student conduct records resulting from enforcement of the *Code of Student Conduct*.

B. Student Conduct Officers

Student conduct officers are appointed by the vice president for enrollment management and student affairs or designee to adjudicate student conduct cases. The student conduct officer:

- a. Receives incidents referred by the student conduct coordinator for adjudication.
- b. Schedules a preliminary review with each student so charged to discuss the charges, student's rights and potential sanctions are explained. This step offers students the choice to have the student conduct officer hear the case or to refer the case to a student conduct or administrative conduct board.

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- c. Determines the sanction to be applied when the student has admitted to charges in a preliminary review or is found responsible in an administrative hearing; subject to the approval of the student conduct coordinator.
- d. Officially communicates all student conduct charges and decisions to each student so charged and communicates with any other College officials who have a legitimate interest in the disciplinary status of the student.
- e. Transmits student conduct files to the student conduct coordinator for filing when a case has been resolved.

C. Student Conduct Boards and Administrative Conduct Boards

1. An Administrative Conduct Board is composed of a student, a faculty member and a College staff member appointed by the vice president or designee. Alternates may be appointed from the student body, faculty and/or staff. A panel of three members may hear the case with the agreement of the complainant and the accused.
2. The Student Conduct Boards and Administrative Conduct Boards:
 - a. Hear cases as scheduled by the student conduct coordinator.
 - b. Hear statements and information/evidence related to the case in question.
 - c. Seek answers to all questions pertaining to statements and information/evidence presented.
 - d. Determine the merits of the charges against the student after a full discussion of the case in closed session. Recommends disciplinary action to the student conduct coordinator or vice president's designee.
 - e. Acts in an advisory capacity upon the request of the student conduct coordinator in a case where the student has admitted to charges, but where a significant disciplinary action may be imposed and therefore a full review of all relevant facts is advisable.

D. Appeal Officer

The vice president for enrollment management and student affairs or designee will hear appeals of student conduct cases and student organization conduct cases. Refer to Student Conduct Procedures, Section VI. (F). Appeals, for further information.

E. Disciplinary Action Review

All disciplinary actions are subject to review and/or amendment by the president of the College.

Section V: Disciplinary Actions/Sanctions

The following disciplinary actions may be imposed by a student conduct coordinator, conduct officer or conduct board upon any student found to have violated the *Code of Student Conduct*:

- A. **Official Warning.** This is an official acknowledgment that the student's behavior violated a rule(s) and indicates more severe disciplinary sanctions may result if the student is found responsible for further violations.

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- B. **Residence Hall Probation.** Residency status of the student is probationary for a specified period of time. The student has an opportunity to demonstrate that s/he can act as a responsible member of the residence hall community. The terms of the probation may be varied to fit the individual circumstances. The length of the probation may not exceed one year.
- C. **Residence Hall Reassignment.** The student is reassigned to another room and/or hall and may be restricted from her/his former residence.
- D. **Conduct Probation.** Conduct Probation shall be for a designated period of time and includes the probability of more severe disciplinary sanctions if the student is found responsible for violating the *Code of Student Conduct* or College Policies during the probationary period. Any violation committed during the probationary period may result in a review of the student's status at The College at Brockport.
- E. **Revocation or Denial of Recognition.** Group or organization misconduct may include revocation or denial of recognition (including all privileges) from The College at Brockport.
- F. **Suspension from the Residence Halls.** The student is suspended from the residence hall system for a specified period of time.
- G. **Interim Suspension.** An interim suspension may be implemented immediately and without prior notice, imposed by the vice president for enrollment management and student affairs or designee: a) to ensure the safety and well-being of members of the College community or for the preservation of College property; b) to ensure the student's own physical or emotional safety and well-being; or c) when the student poses a significant threat of disruption of or interference with the normal operations of the College. This is a temporary suspension in which the student shall be restricted from all or any portion of the College premises including classes, access to the residence halls or other campus facilities and/or all other College activities or privileges for which the student might otherwise be eligible for as determined to be appropriate by the vice president for enrollment management and student affairs or designee. These restrictions will remain in effect until the conclusion of a full hearing or administrative decision. Conditions for reinstatement to the College may be specified.
- H. **Conduct Suspension.** This is the separation of the student from the College for a definite period of time. Students who have been suspended are restricted from access to campus premises except by written permission from the vice president for enrollment management and student affairs or designee. Conditions for readmission may be specified. "Conduct Suspension" will appear on the student's transcript, with the period of suspension specified.
- I. **Conduct Dismissal.** This is the permanent separation of the student from the College without opportunity to re-enroll in the future. Students who have been dismissed are restricted from access to campus premises except by written permission from the vice president for enrollment management and student affairs or designee. "Conduct Dismissal" will appear on the student's transcript.

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NOTE: Recommendations for interim suspension, conduct suspension and conduct dismissal are forwarded to the vice president for enrollment management and student affairs or designee.

Discretionary Sanctions: The student conduct system promotes an educational response in an effort to enhance student development, in addition to the disciplinary action, may apply the following conditions:

- 1) **Developmental Experience.** The student may be required to attend and/or participate in a workshop, group, program and/or other related assignment. Students will be responsible for any costs associated with a program.
- 2) **Mandated Mental Health Assessment:** The student must attend a mental health assessment and/or session in the Counseling Center by a specific date. The student is required to follow all recommendations made by the Counseling Center as a result of the assessment.
- 3) **Restitution.** The student may be required to compensate for loss, damage, defacement, theft, injury or unauthorized use of property. This may take the form of monetary or material replacement and/or appropriate service.
- 4) **Community Service.** The student may be assigned College community service working in a campus department or assigned to a specified site within the local community. Failure to complete the assignment may result in a more severe sanction.
- 5) **Restorative Justice Practices.** This is an alternative approach that promotes individual responsibility and community restoration through mutually beneficial solutions that foster repair, reconciliation and the rebuilding of relationships. This process involves helping students that have been charged with a violation of the *Code of Student Conduct* to understand the harm they may have caused others and facilitate the development of empathy for those harmed by their behavior(s).
- 6) **Loss of Privileges.** The student may be denied specific privileges for a designated period of time. These may include, but are not limited to:
 - i. **Facility Restriction.** The student may be denied use of or otherwise may be restricted from specified campus facilities.
 - ii. **Social Restriction.** The student may be restricted from participation in College-sponsored activities for a specified period of time.
 - iii. **“No-contact” Order.** This may include a directive that the parties refrain from having contact with one another, directly or through proxies, whether in person or via electronic means, and for a designated period of time.
- 7) **Mediation.** When a case involves conflict between students, groups or organizations, the parties may be assigned to mediation by the student conduct officer. Mediation is an objective, confidential and non-judgmental process whereby both parties to a dispute meet with a mediator who will assist them in reaching a written agreement to resolve their conflict. Parties are responsible for

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complying with the terms of the agreement. Violated agreements will not be remediated, but may necessitate further student conduct action. Note: Mediation will not be used to resolve complaints of non-consensual sexual contact and/or non-consensual sexual intercourse.

- 8) **Removal from the Residence Hall System.** The student may be required to move out of her/his residence hall and be restricted from living on campus.

NOTE: More than one previously stated sanction can be imposed for any single conduct violation.

Section VI: Student Conduct Procedures

The College's Student Conduct System manages all charges brought against any student or student organization for alleged violation of the *Code of Student Conduct* and maintains the exclusive authority to impose disciplinary sanctions. It is the responsibility of the hearing body to determine whether the alleged behavior constitutes a violation of the conduct code.

The hearing bodies are not courts of law; therefore, the formal rules of procedure and process and/or technical rules of evidence that are used in the courts do not apply to the Student Conduct System.

A. Conduct Charges/Complaint:

1. Any member of the College community may file a complaint against any student for misconduct.
2. Allegations of misconduct must be submitted in the following ways:
 - a. In written form to the student conduct coordinator;
 - b. At the Office of University Police by completing a University Police Incident Report or Service Report; or
 - c. With the Office of Residential Life/Learning Communities by completing a Residence Hall Incident Report.
3. The student conduct coordinator may assign the complaint to a conduct officer.

B. Notice of Student Conduct Charges

1. The student conduct officer will review the complaint to determine if:
 - a. There was a violation of the *Code of Student Conduct*.
 - b. There is reasonable information to indicate that the accused student may have violated the conduct code.
2. If the student conduct officer determines that the complaint meets the above referenced standards, she/he will schedule a preliminary review with the accused student.
3. If the accused student is unable to be contacted by any other means, she/he will be notified in writing of pending charges and given a time and place to meet with the student conduct officer. The student is sufficiently notified if informed in person or if

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the letter is personally delivered to her/him or mailed to his/her local and/or home address that appears on official College records.

4. If the accused student fails to respond within (5) five business days from personal notification or the postmark date of the notification letter, she/he will be deemed to have waived his/her right to choose between a student conduct board hearing or an administrative hearing. The student conduct coordinator will then determine the type of hearing and the date and time it will be held. The student will be notified in writing of the charges against her/him and the date, time and location of the hearing. The student may request a copy of the College's student conduct system procedures.

C. Preliminary Review

1. The student conduct officer reviews the complaint and charges against the student and also reviews the student conduct process and the rights of the student.
2. If the student conduct officer determines that the sanction for the violation(s) would be Conduct Probation or less and:
 - a. The student accepts responsibility; the student conduct officer may determine an appropriate sanction at this time, if no further information is required.
 - b. The student denies the charge(s); the student conduct officer will hear the student's information and gather any additional information that is available and relevant to the case in question or refer the case to the student conduct board, and after reviewing all relevant information, the student conduct officer may make a determination of responsible or not responsible.
3. If the student conduct officer determines that the sanction would be greater than Conduct Probation, the student is issued a charge letter outlining possible Student Code violation(s).
 - a. The student accepts responsibility; the student conduct officer may either: Review all available information and determine the disciplinary action(s), or present the case to the administrative conduct board or student conduct board for their recommendation on disciplinary action.
 - b. The student denies the charge(s); the student may choose to have a hearing before the student conduct officer (administrative hearing) or before the student conduct board or administrative conduct board.
4. The student's hearing will be held within ten (10) business days from the date of the preliminary review, unless the student conduct officer, administrative conduct board or student conduct board, determine that legitimate grounds exist for delay. The student will be provided written notice of charges; the date, time and place of hearing; possible consequences of being found responsible for the charge(s); and a copy of the *Code of Student Conduct*. The student will be advised at the preliminary review that these documents will be available for her/him at the office of the student conduct officer no fewer than (3) three business days before the date of the hearing. The student will be responsible for obtaining these documents.
5. When a case involves conflict among students, groups or organizations, the student conduct officer may assess if mediation would be an appropriate means for resolution. The request must be approved by the student conduct coordinator.

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- a. Mediation is a voluntary, objective, confidential and nonjudgmental process whereby both parties to a dispute meet with a mediator who will assist them in reaching a written agreement to resolve their conflict. Parties are responsible for keeping the agreement. Violated agreements will not be referred back to mediation.
- b. Failure to comply with the mediation agreement may result in student conduct charges and disciplinary action.

D. Administrative Conduct Board or Student Conduct Board Hearing

1. The student conduct coordinator presents the case to the student conduct board or administrative conduct board. She/he may be aided by the student conduct officer who held the preliminary review.
2. In the case of a student who denies the charges, the student conduct board or administrative conduct board determines the merits of the charges and recommends disciplinary action if the charges are substantiated.
3. The student conduct board or administrative conduct board will reach its determination on the merits of the charges and the disciplinary action by majority vote.

E. Parental Notification. As permitted by the Family Educational Rights and Privacy Act, the parents of students (under the age of 21) found responsible for alcohol and/or drug violations of the *Code of Student Conduct* will be notified.

In addition, parents may also be notified for other violations of the *Code of Student Conduct* as permitted by the Family Educational Rights and Privacy Act.

F. Appeals. Any student/student organization found responsible for a violation of the *Code of Student Conduct* shall have the right to appeal by filing a written petition for appeal.

1. A decision reached by the Conduct Board or a sanction imposed by the student conduct officer may be appealed by the accused student(s)/student organization to the vice president for enrollment management and student affairs or designee. The student/student organization must make appeals in writing within five (5) business days after receipt of the written decision.
2. An appeal may be heard on the following grounds only:
 - a. The Administrative/Student Conduct Board, Sexual Misconduct Board or student conduct officer failed to observe the procedural requirements established by the *Code of Student Conduct*.
 - b. The sanction is grossly inappropriate to the proven offense.
 - c. New evidence has appeared that was not known at the time of the original hearing and could not have reasonably been discovered at the time of the original hearing that could have had a material impact on the outcome of the original conduct decision.

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3. An appeal officer will be concerned primarily with the points raised in the written appeal. Students or members of student organizations will not be present during an appeal hearing, unless determined otherwise by the appeal officer.
4. A student/student organization found responsible for a violation may not be charged with a more severe sanction as a result of appealing her/his/their case.
5. The appeal officer may take any of the following actions:
 - a. Affirm the findings and sanctions of the original conduct official or hearing board,
 - b. modification of the charges and/or sanctions, or
 - c. determine the student/student organization not responsible of the charge(s).

Appeals must be delivered to: Appeals Officer, Vice President for Enrollment Management and Students Affairs, Student Conduct System, 7th Floor, Allen Administration Building.

G. Good Samaritan Clause:

The term “Good Samaritan” is used to refer to a student(s) who summons medical attention for a person (including themselves) in need of medical assessment and/or treatment for a problem that this person may have contributed to or caused by participating in the use and abuse of alcohol and or other drugs.

While the College does not condone violations of the *Code of Student Conduct* or state and federal laws, the College may take into consideration potentially life-saving actions of students who act as “Good Samaritans” by reducing the disciplinary actions associated with alcohol and or other drug use violations, including limited immunity to campus student conduct charges.

Section VII: Policies Pertaining to the Student Conduct System

- A. A student who withdraws from the College after being charged with a violation will not be exempt from campus student conduct action. The normal student conduct procedure may be followed at any time, but in all cases before a student is allowed to reenroll. If a student withdraws during a preliminary review and the officer determines the case to have the potential for the student to have a sanction of suspension or dismissal, a hold may be placed on the student’s account until the case is resolved. This hold will restrict the student from registering and being able to obtain an official transcript. The accused student will receive due notice of hearings. Any resulting sanction of suspension or dismissal will replace the “withdrawal” status on the transcript. Lesser sanctions will be kept on file for reference if the student applies for readmission.
- B. A graduating senior who is found guilty of a violation and who received a suspension for a period extending beyond her/his graduation date may not receive the diploma until the term of suspension has been served and all requirements of her/his sanctions are fulfilled.

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- C. In accordance with the Family Educational Rights and Privacy Act of 1974, the College may release information pertaining to individual student conduct cases to appropriate College personnel and to parents of students who are dependent. Information from a student's student conduct file will not be made available, without the student's written consent, to anyone other than the student, appropriate College personnel, and parents of dependent students except by court order or lawfully issued subpoena.
- D. A sanction of suspension or dismissal from the College will appear on the student's transcript as "Conduct Suspension," with the period of suspension specified, or "Conduct Dismissal."
- E. A student's student conduct record will be maintained for a period of seven (7) years from the date of the last entry or until the student graduates, except in a matter of suspension or dismissal, in which case the record is maintained indefinitely.
- F. The term "business days" used in this code with reference to scheduling and notification refers to days in which the administrative offices of the College are officially open for business.

Additional Information

1. A student who is charged with a violation just prior to the termination of a semester when there is not sufficient time to hold a hearing before the semester ends will be given a hearing as soon as is feasible after the semester ends. The accused student who leaves the Brockport area is responsible for transportation and other expenses related to her/his right to be present at the hearing as scheduled.
2. Failure to appear in response to the charge(s) on the date fixed for the hearing, unless there has been a continuance approved by the student conduct coordinator prior to the hearing, will result in the hearing being held without the accused. The hearing will be held and a determination of responsibility/non-responsibility and recommended sanction will be made. The student will be notified of the sanction. Within five (5) business days of the postmark date of the notice of sanction, if the student shows good cause for failure to appear and failure to give prior notice of intention not to appear, the student conduct coordinator may withdraw the sanction and arrange a rehearing.
3. Administrative hearings, administrative/student Conduct Board hearings and sexual misconduct board hearings may be audio recorded by the College.
4. Cameras or other reproduction equipment, other than the College's audio recording device, are not permitted in a student conduct hearing.
5. All student conduct hearings are closed.

Section VIII: Student's Rights when Charged with a Violation

1. The burden of proof in a hearing is with the party bringing the charges. The College meets this burden by an admission of responsibility by the student, or by the presentation of information and evidence at a hearing which results in the administrative/student conduct board, sexual misconduct board or conduct officer finding the charge supported by a preponderance of the evidence.
2. The right to be given written notice of the nature of the charges and to be informed of one's rights prior to a hearing.
3. The right to receive, upon request, a list of the witnesses who will appear in the hearing in support of the charges. The provision of such a list of witnesses will not preclude the testimony of witnesses who were unknown at the time of such request.
4. The right to receive, upon request, the names of the administrative/student conduct board members or sexual misconduct board. If the student feels any member or members of the administrative/student conduct board cannot objectively and fairly hear the case, the objection must be made to the student conduct coordinator at least 24 hours prior to the hearing. The student conduct coordinator will determine the merits of the complaint, based on substantive information, and will decide whether or not to replace the board member(s) in question. The accused may not discuss any matters related to the pending hearing.
5. The right to deny the charge in a preliminary review and, where the contemplated sanctions are greater than conduct probation, the right to:
 - a. An administrative hearing before a student conduct officer, or
 - b. a hearing before an administrative/student conduct board.
6. The right to bring witnesses and/or representatives to the student's case or examining witnesses. Postponement of a scheduled hearing may be allowed by the student conduct coordinator on the basis of unavailability of important witnesses or representatives, but only if good cause for said unavailability is shown. No postponement will go beyond (10) ten business days.
7. The right to raise questions that may be directed to witnesses and/or the person filing the complaint, if such person is available to the hearing board. These questions are submitted to the student conduct officer and this officer will determine appropriateness of questions.
8. The right to produce witnesses and documentary evidence on her/his own behalf.
9. The right of access to the audio recording of the hearing. The student may request to review the audio recording by scheduling a meeting time with the student conduct coordinator.
10. The right to appeal her/his case.

Section IX: SEXUAL MISCONDUCT CODE

Part A: Sexual Misconduct Prohibited Behaviors

Part B: Reporting Procedures

Part C: Student Conduct Procedures

Part D: Sexual Misconduct Disciplinary Action

Part E: Complainant's/Victim's Rights

Part F: Campus Resources

Part A: Sexual Misconduct Prohibited Behaviors

Sexual Misconduct is comprised of a broad range of prohibited behaviors and for the purposes of this Sexual Misconduct Code is designated by four distinct prohibited behaviors: 1) sexual harassment; 2) non-consensual sexual contact; 3) non-consensual sexual intercourse; and 4) sexual exploitation.

1. **SEXUAL HARRASSMENT** is conduct, including physical contact, advances, and comments in person and/or via phone, text message, email, or other electronic medium, that is (a) unwelcome; (b) based on sex or gender stereotypes; and/or (c) is so severe or pervasive that it unreasonably interferes with a person's academic performance or equal opportunity to participate in or benefit from College programs or activities.

For the purpose of this Sexual Misconduct Code there are three types of Sexual Harassment: a) Hostile Environment, b) Quid pro quo, or c) Retaliatory Harassment.

- a. A "Hostile Environment" exists when there is harassing conduct that is sufficiently severe, pervasive/persistent and patently/objectively offensive so that that it alters the conditions of education or employment, from both a subjective (the alleged victim's) and an objective (reasonable person's) viewpoint.

In evaluating whether the environment is "hostile" the following circumstances may be considered, but is not limited to:

- 1) the frequency of the conduct [pattern or practice of harassment];
- 2) the nature and severity of the conduct[single or isolated incident if sufficiently severe];
- 3) whether the conduct was physically threatening;
- 4) whether the conduct was humiliating;
- 5) the effect of the conduct on the alleged victim's mental or emotional state;
- 6) whether the conduct was directed at more than one person;
- 7) whether the conduct arose in the context of other discriminatory conduct;
- 8) whether the conduct unreasonably interfered with the alleged victim's educational or work performance; or
- 9) whether the speech or conduct deserves the protections of academic freedom.

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b. “*Quid pro quo* sexual harassment” exists when there are unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature; and when submission to or rejection of such conduct results in adverse educational or employment action.

c. “Retaliatory harassment” is any adverse educational or employment action taken against a person because of the person’s participation in a complaint or investigation of discrimination or sexual misconduct.

2. NON-CONSENSUAL SEXUAL CONTACT:

Non-Consensual Sexual Contact is

- any sexual touching,
- however slight,
- with any object,
- by a man or a woman upon a man or a woman,
- without consent.*

Sexual contact with the breasts, buttocks, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth or other orifice.

3. NON-CONSENSUAL SEXUAL INTERCOURSE:

Non-Consensual Sexual Intercourse is

- a. any sexual intercourse (anal, oral, or vaginal),
- b. however slight,
- c. with any object,
- d. by a man or woman upon a man or a woman,
- e. without consent.*

Intercourse however slight, meaning vaginal penetration by a penis, object, tongue or finger, anal penetration by a penis, object, tongue, or finger, and oral copulation (mouth to genital contact or genital to mouth contact).

*CONSENT DEFINED

Consent is permission, freely given by word or action, by all participants to a sexual act. Consent can be given by words or actions, as long as those words or actions create mutually understandable permission regarding the conditions of sexual activity. Consent is active, not passive. Silence and/or absence of resistance cannot be interpreted as consent. According to New York State law in order to give effective consent, one must be at least 17 years old.

Violation of the consent policy as part of the sexual misconduct code may include the following considerations, but not limited to:

- A person cannot consent if he or she is unable to understand what is happening or is disoriented, helpless, asleep, or unconscious for any reason, including due to alcohol or

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drugs, or from being administered a “substance” for the purpose of inducing incapacity or incapacitated due to a mental disability.

- When a student has sexual activity with someone they know to be or should know to be—mentally or physically incapacitated (by alcohol or other drug use, unconsciousness or blackout), they are in violation of this policy. Incapacitation is a state where one cannot make a rational, reasonable decision because they lack the ability to understand the who, what, when, where, why or how of their sexual interaction.
- It is not an excuse that the student accused of sexual misconduct was intoxicated and/or under the influence of other drugs, therefore, did not realize the incapacity of the other.
- Consent to some sexual contact (such as kissing) cannot imply consent for other forms of sexual activity (such as intercourse).
- A current or previous intimate relationship is not sufficient to imply consent for future sexual acts.
- A person can withdraw consent at any time during sexual activity by expressing in words or actions that he or she no longer wants the activity to continue, and, if that happens, the other person must stop immediately.
- A verbal “no” or other verbal expression of dissent and/or physical resistance, no matter how indecisive or weak or passive, always means “no.”
- Consent cannot be obtained by use of physical force, compelling threats, intimidating behavior, or coercion. Coercion is unreasonable pressure for sexual activity. When someone makes clear to you that they do not want to engage in sexual intercourse, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

4. 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 other sexual misconduct offenses. Examples of sexual exploitation include, but are not limited to: taking pictures or video or audio recording of another in a sexual act, or in any other private activity without their consent or engaging in sexual activity with another person while knowingly infected with a sexually transmitted infection (STI) or sexually transmitted disease (STD) and without informing the other person of the infection.

Part B: Reporting Procedures

Title IX Coordinator Information:

Ms. Adrienne Collier, Title IX Coordinator

Assistant Director of Human Resources / Affirmative Action Officer

Office location: 419 Allen Administration Building

Contact information: Phone no. (585) 395-5119 or email at affirm@brockport.edu

Duties and Responsibilities: Monitoring and oversight of overall implementation of Title IX Compliance at the College, including coordination of training, education, communications, and

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administration of complaint procedures for faculty, staff, students and other members of the College community.

Karen Logsdon, PhD, Title IX Deputy Coordinator for Students

Assistant to the Vice President for Enrollment Management and Student Affairs

Office of the Vice President for Enrollment Management and Student Affairs

Office Location: 707 Allen Administration Building

Contact information: Phone no. (585) 395-5042 or email at klogsdon@brockport.edu

Duties and Responsibilities: Responsible for Title IX compliance for matters involving students, including training, education, communication, and oversight of the grievance procedure for all complaints against Brockport students. The Title IX Deputy Coordinator(s) is available to meet with students and have informed campus departments on the process for referring students to this office.

Ms. Susan Hoffman, Title IX Deputy Coordinator for Athletics

Associate Athletic Director/Senior Woman Administrator

Office of Intercollegiate Athletics

Office location: B210 Tuttle North

Contact information: Phone no. (585) 395-5327 or email at shoffman@brockport.edu

Duties and Responsibilities: Responsible for Title IX Compliance in matters related to gender equity in athletics programs.

CONFIDENTIALITY AND REPORTING

In order to make informed choices when consulting campus resources, victims need to be aware of confidentiality and mandatory reporting. On campus, some resources may maintain your complete confidentiality, offering you options and advice without any obligation to tell anyone, unless you want them to. Other resources are expressly there for you to report crimes and policy violations, and they are obligated to take action when you report your victimization to them. If you are unsure of someone's duties and ability to maintain your privacy, ask them before you talk to them.

Confidential Reporting Options

If you would like to speak with a campus professional who will be obligated by law to keep your information confidential, you can go to the Student Health and Counseling Center in Hazen Hall. The staff in Hazen will be able to assist you medically and emotionally. New York State Public Health Law §18 regulations prohibit medical and mental health professionals from releasing any information about you unless given written permission to do so. However, please know that if these health and counseling professionals are concerned you may be a danger to yourself or to someone else, they will be required by law to report their concern to appropriate campus officials.

There are also off-campus professionals who will maintain confidentiality such as Rape Crisis Services who can be contacted by calling their 24-hour hotline at (800) 527-1757.

Non-Confidential Reporting Options

You are encouraged to speak to appropriate College officials, such as University Police officers, the Student Conduct Coordinator and/or the Title IX Deputy Coordinator to make formal reports of

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your victimization. You can expect to have incidents be taken seriously by the College, when formally reported, and to have those incidents investigated and properly resolved through administrative and conduct procedures and through the legal system. In order to do this, the College may need to involve other professionals, but only those who need to know in order to carry out College policies and procedures and comply with federal and state laws. Please understand that the circle of College officials will be kept to a minimum in order to preserve your rights and privacy.

Part C: Conduct Procedures

I. Conduct Procedures

1. **The Complaint:** A complaint of sexual misconduct can be filed with the Student Conduct System, University Police or the College's Title IX Coordinator or Deputy Coordinator (refer to Part B for contact information). The College Official will request the complainant to provide the complaint in a written statement.
2. **Initial Meeting with Complainant:** The vice president of enrollment management and student affairs or conduct official designee will schedule an individual meeting with the complainant in order to provide to the complainant a general understanding of the College procedures when filing a complaint, to identify immediate support services and accommodations available to the complainant and to inform the complainant of options for addressing the sexual misconduct complaint.
 - a. Immediate services may include, but are not limited to, medical and counseling services by referral to student health and counseling and local hospital; rape crisis services; academic support; referral to University Police; and offering escort services.
 - b. This meeting may also involve a discussion of any accommodations that may be appropriate concerning the complainant's overall health and safety including academic, housing, and/or employment.
 - c. The conduct official will inform the complainant of the "Good Samaritan" Clause that may provide amnesty when alcohol and other drugs may have been involved [refer to the Code of Student Conduct, Section VI. (G)].
3. **Complainant Options and Decision:** The conduct official will review and explain the complainant's options for the sexual misconduct case which include: 1) Informal Sexual Misconduct Resolution through the Student Conduct System; 2) Formal Sexual Misconduct Resolution; 3) Request for Confidentiality and/or 4) File Criminal Charges.
 - a. The conduct official will provide the complainant a *written notice* describing the resolution options.
 - b. The conduct official will seek to determine how the complainant wishes to proceed and will obtain a *written acknowledgment* of which option the complainant decided to pursue along with the complainant's signature.
 - c. When the complainant wishes to proceed with either Informal or Formal Adjudication, the conduct official will seek to acquire the name of the accused, and the date, location and nature of the alleged sexual misconduct.
 - d. The conduct official designee will promptly prepare the formal complaint which will include the name of the accused, and the date, location and nature of the alleged Sexual Misconduct. The conduct official will prepare for the conduct case based on the wishes of the complainant.

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- e. The conduct official will schedule an individual meeting with the accused student in order to review the student conduct procedures in cases of sexual misconduct, a review of accused student's rights and to identify immediate interventions or support that may be needed. The accused student will be informed that any act of actual or perceived threat of retaliation towards the complainant, his or her family members, his or her associates, or to those providing information as witnesses by the accused or the accused student's associates will not be tolerated and may subject the accused student and his or her associates to be charged with "Retaliatory Harassment" [described in Part A, Section I (c)].
4. **Interim Measures.** In all cases of alleged Sexual Misconduct, the College will undertake an appropriate inquiry and take prompt and effective action to support and protect the complainant, including taking appropriate interim steps before the final outcome of the investigation and hearing.
 - a. The conduct official may impose a "no-contact" order, which typically will include a directive that the parties refrain from having contact with one another, directly or through proxies, whether in person or via electronic means, pending the investigation and outcome of case.
 - b. The Title IX Coordinator may take further protective action that he or she deems appropriate when taking such steps to separate the complainant and the accused student, to minimize the burden on the complainant. Violation(s) of the College Official's directives and/or protective actions may lead to additional disciplinary action for the accused student.
 - c. The conduct official will inform the complainant to report any and all forms of retaliation from the accused student(s) and/or his or her associates to the conduct office. The conduct official will follow-up with complainant(s) to determine whether any retaliation or new incidents of harassment have occurred.

II. Sexual Misconduct Resolution

A. Informal Sexual Misconduct Resolution

1. A complainant who wishes to file a formal complaint to the Student Conduct System but who does not wish to pursue Formal Adjudication may request a less formal proceeding, known as an "Informal Resolution." Although less formal than Formal Resolution, it is not mediation.
2. **Purpose of Informal Resolution.** It provides an opportunity for the complainant to confront the accused student, in the presence of, and facilitated by, a presiding Conduct Officer and the ability to communicate his or her feelings and perceptions regarding the incident, the impact of the incident, and his or her wishes and expectations regarding protection in the future. The accused student will have an opportunity to respond.
3. **Advisors.** The complainant and the accused student each may bring an advisor to the Informal Resolution. Advisors are assigned and subject to the same restrictions set forth for advisors in Formal Resolutions [refer to B. (6)]. The Board Chair or a designee of the Chair will preside over the Informal Adjudication, and may elect to be assisted by another member of the Board.
4. **Outcome of Informal Resolution.** This process will not result in a formal disciplinary sanction but may result in the imposition by the Student Conduct System of protective actions agreed upon by the parties, or (with or without such agreement) based on

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information derived from the proceedings, along with any other relevant information known to the College at the time of the Informal Resolution.

5. **Election of Formal Resolution.** The College or the complainant may, at any time prior to the conclusion of the Informal Resolution, elect to end such proceedings and initiate a Formal Sexual Misconduct Resolution instead. In such cases, statements or disclosures made by the parties in the course of the Informal proceedings may not be used as evidence in the Formal Resolution (although nothing herein precludes any such statements or information disclosed in the Informal Resolution from being considered by the conduct official in the imposition of protective actions).

B. Formal Sexual Misconduct Resolution

A complainant may elect to pursue a hearing before a panel of the Sexual Misconduct Board, as described in this section.

1. **The Sexual Misconduct Board.** The Sexual Misconduct Board is a formal group composed of students, faculty and staff appointed by the vice president for enrollment management and student affairs or designee, who also appoints the Board Chair. The Board Chair will ensure that all Board members receive annual training in their responsibilities. The Board is comprised of at least one student, and at least two faculty and/or staff. The Board Chair will select the Panel and will either serve as the presiding chair or will appoint the presiding chair.
2. **Investigation.** When the complainant indicates a desire to pursue Formal Resolution, the conduct official will prepare and forward the complaint to the Office of the Vice President for Enrollment Management and Student Affairs or designated office for an investigation by such person or persons. A typical investigation will be completed within sixty (60) days, if not sooner. The designee will prepare a written report of the findings which will be distributed, concurrently, to both of the parties and to the vice president or designee. If a hearing is held, the Panel will also be provided a copy of the investigation report.
3. **Granting/Denying a Hearing.** The conduct official will determine that a hearing should be granted after reviewing the facts from the investigation by determining if the alleged conduct constituted Sexual Misconduct.
 - a. When the conduct official determines that a hearing should be granted, notice of that determination will be delivered, concurrently, to both parties and to the vice president for enrollment management and student affairs or designee. The conduct official may specify which charges of Sexual Misconduct Prohibited Behavior(s) that will go forward for a hearing.
 - b. A complainant whose request for a hearing is denied may appeal that decision to the vice president for enrollment management and student affairs or designee, whose decision will be final.
4. **Notice of Hearing.** When a hearing is granted by the conduct official or granted on appeal, the Board Chair will commence the formal conduct process by providing written notice to both parties (the "Notice of Hearing") stating: (1) the date, time, and place of the pre-hearing meeting at which preliminary matters will be discussed; (2) the names of the Board members selected. A party wishing to challenge the participation of any Board member must notify the Board Chair, in writing, within ten (10) business days of receipt of the Notice of Hearing, stating the specific

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reason(s) for the party's objection. The Chair will determine whether the challenge has merit and reserves discretion to make changes in the Panel composition at any time.

5. **Delivery of Notice of Hearing.** The Notice of Hearing will be delivered, at the Board Chair's discretion, by email or in person, and will be considered effective immediately upon receipt. The hearing will take place promptly following delivery of the Notice of Hearing. The parties are expected to cooperate in the scheduling of the hearing. If either party fails to appear at the scheduled hearing, the Board Chair may postpone the proceedings or direct that the Board proceed and determine the complaint on the basis of the evidence presented, provided the absent party was duly notified of the scheduled hearing date, as outlined above.
6. **Advisors for Complainant and Accused.** Both the complainant and the accused student may have advisors present to support and assist them during the pre-hearing, hearing, and appeal stages of the Formal Student Misconduct process.
 - a. The Board Chair will appoint to each party an advisor who has been formally trained in Sexual Misconduct or the complainant and accused may select an advisor but must be a current member of the Brockport College community (faculty, staff or student).
 - b. An advisor may not be a witness or someone who has a current formal role with either party or be an attorney. Either party is free to consult an attorney but must hold consultations outside of the hearing room.
 - c. An advisor may not direct questions to the Board or witnesses at the hearing, but may suggest questions in writing to the Board Chair and may consult with the student that he or she is assisting.
 - d. The Board Chair will not allow an advisor's presence to inhibit the parties' open testimony or the conduct of the hearing.

C. Request for Confidentiality

If the complainant does not wish to pursue an Informal or a Formal Resolution and/or requests that his or her complaint remain confidential, nonetheless Title IX requires the College to investigate and take reasonable action in response to the information reported. The conduct official will inform the complainant of the College's obligation. Title IX requires the College to evaluate the complainant's request(s) that the complaint not be adjudicated or remain confidential in the context of the College's commitment to provide a reasonably safe and non-discriminatory environment for all students.

- a. In order to make such an evaluation, the conduct official may conduct a preliminary investigation into the alleged Sexual Misconduct and may weigh the complainant's request(s) against the following factors: the seriousness of the alleged Sexual Misconduct; whether there have been other complaints of Sexual Misconduct against the same accused student; and the accused student's right to receive information about the allegations if the information is maintained by the College as an "education record" under the Family Educational Rights and Privacy Act (FERPA).
- b. The conduct official will inform the complainant if the College cannot ensure confidentiality even when the College cannot take disciplinary action against the accused student because the complainant insists on confidentiality and/or that the complaint not be adjudicated. Title IX requires the College to take prompt and effective action to limit the effects of the alleged sexual misconduct and to prevent

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its recurrence. The vice president for enrollment management and student affairs or designee reserves the authority to issue a “no-contact” order and other interim measures described in I. (4) of this section.

D. File Criminal Charges. Students will be referred to University Police. This department will assist students and refer them to the appropriate law enforcement agency if necessary. The College will work closely with the appropriate law enforcement agency to avoid compromising the criminal investigation. The College will take immediate “interim measures” as stated in I. (4) of this section to protect the student in the educational setting. The College may proceed with a separate investigation from the criminal investigation or provide rationale in writing to explain the reason for waiting for the completion of the criminal investigation. This rationale will be communicated to the complainant and accused student and documented in the conduct case file.

Note: Mediation will not be used to resolve complaints of non-consensual sexual contact and/or non-consensual sexual intercourse.

III. Hearing Procedures: Formal Sexual Misconduct Resolution

A. Pre-Hearing

1. **Submissions.** The parties (complainant and accused) will provide the Sexual Misconduct Board Chair with a list of witnesses they propose to call, and copies of documents that are redacted of personally identifiable information and a description of any other information they propose to present at the hearing, on or before a date set by the Chair. The Chair will provide each party with a copy of the list of witnesses, and identification of or copies of documents or other information submitted by the other party. In the absence of good cause, as determined by the Board Chair, the parties may not introduce witnesses, documents, or other evidence at the hearing that were not provided to the Chair by the designated deadline. The parties are also responsible for the attendance of their witnesses at the hearing.
2. If, at any time prior to the hearing, after reviewing the conduct official’s investigation report and the complainant's list of witnesses and other evidence, the accused student elects to acknowledge his or her actions and take responsibility for the alleged Sexual Misconduct, he or she may request that the Board Chair propose a resolution to the charges and a sanction and, with the consent of the complainant, resolve the complaint without a hearing.
3. **Pre-Hearing Meeting and Determination of Charges and Witnesses.** The Chair will schedule a pre-hearing meeting prior to the hearing date. At the meeting, the Chair will review hearing procedures with the parties. The Chair will also review the charges of alleged Sexual Misconduct (and related misconduct, if applicable), and review the parties' respective lists of proposed witnesses to assist them in eliminating redundant testimony. The College reserves the right, through the Board Chair, (a) to add to or modify the charges specified by the vice president's designee/conduct official, (b) to add witnesses to the witness lists at the pre-hearing meeting and/or at the hearing.
4. **Pre-Hearing Discussion.** Once a Board member has been named to the sexual misconduct case, he or she may not discuss the merits of the complaint with anyone

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not involved in the proceedings, with the parties themselves, or with anyone acting on the behalf of the parties. The Chair will provide the Board member with a copy of the Notice of Hearing, the conduct official's investigation report, and the list of witnesses submitted by the parties with an instruction to avoid private discussion of the merits of the complaint.

5. **Outside Counsel.** Outside legal counsel may be present at the hearing on behalf of either party. Such counsel may privately consult with and advise the parties during the proceeding but may not examine witnesses or otherwise directly participate on behalf of either party.
 6. **Sexual Misconduct Board's Counsel.** The Board Chair may seek advice from the State University of New York, Office of the General Counsel throughout the hearing process.
- B. **Conduct of the Hearing.** The hearing will not follow a courtroom model, and formal rules of evidence will not be observed.
1. The Board Chair will determine the order of the witnesses and resolve any questions of procedure arising during the hearing. The parties are responsible for ensuring that their proposed witnesses are present. The Sexual Misconduct Board will review in advance of the hearing all the written materials provided to them by the Chair. Only the Board Chair and Board members may question the individual parties and any witnesses, unless permission is granted by the Chair to modify the questioning process.
 - a. Either party or their advisors may ask the Chair to pose additional questions or inquire further into specific matters by submitting these requests in writing. (If necessary, a brief recess may be granted to allow both parties an opportunity to prepare and submit such requests.) The Chair is empowered to disallow any questions that are irrelevant or redundant. After all witnesses have been questioned, each party may make a closing statement and request a short recess to prepare it.
 - b. If the Board determines that unresolved issues exist that would be clarified by the presentation of additional evidence, the Chair may recess the hearing and reconvene it in a timely manner to receive such information. (A recess may not be based on the failure of witnesses to appear without good cause or on the proposed introduction of documents or other evidence that should have been presented at the pre-hearing meeting).
 2. **Testimony or Participation by the Accused.** The accused student has the option not to testify; however, the exercise of that option will not preclude the Board from proceeding and determining the complaint on the basis of the information presented.
 - a. If the accused student fails to appear at the hearing, after being duly notified of its place and time, the Board Chair may postpone the proceedings or direct that the Board proceed.
 3. **Alternate Testimony Options.** The College will provide the complainant the option to testify outside the physical presence of the accused student during the hearing in appropriate circumstances. The availability of testimony through the use of technology such as Skype and videoconferencing will be at the sole discretion of the Board Chair.
 4. **Recording.** The Board Chair will arrange for the hearing to be recorded and may arrange for the preparation of any transcript of the recording that he or she deems

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appropriate or which a party requests. Such recording will be arranged through the Office of the Vice President for Enrollment Management and Student Affairs or designated office.

5. **Evidentiary Standard.** The Department of Education's Office of Civil Rights has interpreted Title IX to require schools to evaluate evidence of alleged Sexual Misconduct under a "*preponderance of the evidence*" standard and that is the standard adopted by this Policy. A preponderance of the evidence means that the conduct in question "*more likely than not*" occurred. In the context of a hearing, the accused student will be found to be responsible for the alleged Sexual Misconduct if the Sexual Misconduct Board concludes that such Sexual Misconduct more likely than not occurred based upon careful review of all information presented.
6. **Sanction.** In determining an appropriate sanction for the accused, the Sexual Misconduct Board may consider any record of past violations of the Code of Student Conduct, as well as the nature and severity of such past violation(s). The Board will consider as part of its deliberations whether the accused student poses a continuing risk to the complainant and/or the College community. The sanction decision will be made by the Board by majority vote. Any sanction imposed will be explained or supported in the written decision of the Board. The Sexual Misconduct Board is required to consider suspending or dismissing any student found responsible for Sexual Misconduct; however, the Board may impose any sanction that it finds to be fair and proportionate to the violation.
7. **Decision.** The Student Misconduct Board Chair will provide the Board's decision in writing to both parties, concurrently, and to the vice president for enrollment management and student affairs or designee, within ten (10) business days from the conclusion of the hearing.
8. **Appeals.** Either party (complainant and accused) may appeal the Student Misconduct Board decision and will follow the *Code of Student Conduct's* Appeal Process (Section VI. (F)). Both the student found to have violated the Student Misconduct Code and the complainant have the right to appeal the decision or sanctions to the vice president for enrollment management and student affairs or designee in writing within five (5) business days of receipt of the conduct letter or the final outcome of the conduct case. This office will send notice of the appeal to the Chair of the Student Misconduct Board and will notify the accused and complainant as appropriate. The appeal officer is expected to rely upon the written record of the Sexual Misconduct Board and may consult with Board members. In general, the vice president or designee will not conduct a new factual investigation. Both the complainant and accused will be notified concurrently in writing of the outcome of the appeal. Members of the Sexual Misconduct Board will also be notified in writing of the appeal outcome.
9. **Effective Date of Sanction.** Sanctions imposed by a Sexual Misconduct Board are not effective until timely appeal of the decision to the Appeal Officer is resolved. However, if advisable to protect the welfare of the complainant or the College community, the Board may include in its determination letter that the conduct probation, conduct suspension, or conduct dismissal be effective immediately and continue in effect until such time as the vice president or designee may otherwise determine. The vice president may suspend the determination pending exhaustion of appeal, or allow the student to attend classes or other activity on a supervised or

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- monitored basis, or make such other modifications to the determination as may be advisable. The vice president's or designee's decision may not be appealed.
10. **Transcript Notation in Cases of Conduct Suspension or Conduct Dismissal.** If the Board imposes a sanction of conduct suspension or conduct dismissal, then, following exhaustion of any appeals as outlined in B (8) above, the Board Chair will notify the College Registrar to place a notation on the student's transcript reading "Conduct Suspension" or "Conduct Dismissal," as the case may be.
 11. **Privacy of the Conduct Process.** In order to comply with FERPA and to provide an orderly process for the presentation and consideration of relevant information without undue intimidation or pressure, the hearing process is not open to the general public. Accordingly, documents prepared in anticipation of the hearing including the designated Investigator's report, the Notice of Hearing, and the pre-hearing submissions, documents, testimony, or other evidence introduced at the hearing, and any transcript of the hearing itself may not be disclosed outside of the hearing proceedings, except as may be required or authorized by law.
 12. **Issuing of Documents.** Following the hearing, the Board will issue two documents to the accused student and the complainant, the Sexual Misconduct Board's Decision Letter and a Memorandum Opinion. Each such document will be issued concurrently to the accused student and the complainant. The Board Chair will have personally identifiable information properly redacted prior to issuance.
 - a. The determination letter will contain only the following information: the name of the accused student; whether the accused student has been found responsible or not responsible for Sexual Misconduct; and the sanction imposed, if any. As mandated by Federal law, both the accused student and the complainant have a right to this information. College policy neither encourages nor discourages further disclosure of the decision letter by either student.
 - b. The memorandum opinion will contain an explanation of the Board's reasoning for its decision. The memorandum opinion is both an education record and private record of the hearing and may not be disclosed without the written consent of the parties and the College, except where disclosure is authorized or required by law.

Part D : Sexual Misconduct Disciplinary Action

Sexual Misconduct is a serious violation of the *Code of Student Conduct*. A student found responsible for violating this policy may be assigned sanctions that include, but are not limited to the following range of disciplinary actions:

- Official warning
- Loss of privileges
(No-contact order)
- Removal/re-assignment of housing
- Conduct probation
- Interim suspension
- Conduct suspension
- Conduct dismissal

Please note that the College recognizes that not all forms of violations of this sexual misconduct policy are the same and the College reserves the right to impose differing

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sanctions. The College will consider the concerns and rights of both the complainant and the person accused of violations of this policy when making determinations. Section V: Disciplinary Actions/Sanctions of the *Code of Student Conduct* will be used to guide sanctioning for sexual misconduct cases.

The decision of the student conduct process will be communicated in writing to the complainant and the accused of the conduct decision, as to the College policies, if any, determined to have been violated, and a description of any sanctions to be imposed. Certain sexual misconduct violations, as described in this policy, may also be construed as criminal acts which may subject the accused to prosecution under New York state criminal statutes.

Part E: Complainant's/Victim's Rights

The following rights shall be accorded to complainants/victims of sexual misconduct:

- a. to be treated with dignity and compassion by the student conduct body, and by all persons involved in the disciplinary process;
- b. to have any allegation of sexual misconduct investigated and adjudicated by appropriate criminal and civil authorities of the jurisdiction in which the sexual assault is reported; and
- c. to receive full and prompt cooperation and assistance from campus personnel in notifying the proper authorities.

On- and Off-campus Resources:

Complainants/victims have the right:

- a. to information pertaining to counseling and other assistance available to her/him; and
- b. to be notified of existing campus and community based medical, counseling, mental health and student services for victims of sexual assault whether or not the crime is formally reported to the Student Conduct System or local law enforcement authorities.

Pertaining to the Student Conduct System:

Complainants/victims have the right:

- a. to information pertaining to the campus conduct process and appropriate referrals for information on the criminal process;
- b. to assistance throughout the student conduct process, including the right to have an advisor or advocate present at all stages;
- c. to due process protections, including the right to written notification of a hearing, the right to hear all information presented, the right to present information and witnesses, and the right to the final results of a hearing;
- d. to be given the option for an alternate location during the formal hearing;
- e. to have any unrelated past behavior excluded from the hearing process;
- f. to provide a written impact statement to the student conduct coordinator. The victim impact statement will remain a part of the record through all levels of appeal;
- g. to not have her/his identity released by the College throughout the conduct process, in relation to campus and other media, and from all other uninvolved parties;

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- h. to be free from intimidation and harassment throughout the student conduct process and be informed of procedures to report retaliatory behavior; and
- i. to request that campus personnel take the necessary steps reasonably available to prevent unwanted contact or proximity with an accused student(s). This may include timely modification of living arrangements and/or class schedule.

Part F: Campus Resources

The College at Brockport provides victim-centered services through a multidisciplinary approach. A small team of professionals work collaboratively to offer sexual assault response services which may include, but are not limited to the following: a) The Student Health Center assists victims of sexual assault and rape by providing immediate medical attention to the victim, referral to a local emergency room for a Sexual Assault Nurse Examiner (SANE) exam, and manages the necessary follow up care. Also, the Student Health Center has on staff a qualified SANE nurse. For after hours care, students are referred to a local emergency room and to Rape Crisis Services for immediate medical care and support; b) The Counseling Center assists victims who are Brockport students through crisis intervention, individual and group counseling services; and c) University Police will assist students with filing a criminal report and/or a report to the College's student conduct system or Title IX Coordinator.

Important contact information:

Student Health Center, Hazen Hall, (585) 395-2414, www.brockport.edu/healthctr
Counseling Center, Hazen Hall, (585) 395-2207, www.brockport.edu/cc
University Police, Lathrop Hall, (585) 395-2222, www.brockport.edu/up
Rape Crisis 24-hour hotline at (800) 527-1757,
www.plannedparenthood.org/rochester-syracuse/rape-crisis-service-22607.htm
Women's Center, Seymour Union, lower level, B124, (585) 395-5584,
www.brockport.edu/womensctr

For further information on resources refer to the College's Campus Safety Report at:
www.brockport.edu/policies/docs/campus_safety_report_clery_act_and_campus_crime_statistics.pdf

This sexual misconduct code incorporates language included in the NCHERM Model Sexual Misconduct Policy by Brett Sokolow and colleagues at The National Center for Higher Education Risk Management (NCHERM). NCHERM granted permission for use on 6/24/11.

Section X: Code Interpretation and Revision

- A. Any question of interpretation regarding the *Code of Student Conduct* shall be referred to the vice president for enrollment management and student affairs or designee for final determination.
- B. The *Code of Student Conduct* shall be reviewed every three years under the direction of the vice president for enrollment management and student affairs.
- C. The *Code of Student Conduct* must be approved by the Brockport College Council (Most recent revision and approval date was September 17, 2011).