Student Code of Conduct

Summary Statement: The University and its students must maintain appropriate conditions for learning. The pursuit of higher education for the development of knowledge, the pursuit of truth, the well-balanced development of students, and the common good of society are goals we live by at ESU. With that, the University must make provisions for the attainment of these goals. In so doing, the University must accept its social and legal responsibilities to the nation, the Commonwealth, the local community, and to all constituents of the academic community.

Within the University, freedom to learn is the student's most basic freedom and a primary concern of the entire academic community. The student should be encouraged to develop the capacity for critical judgment, to engage in a sustained and independent search for knowledge and truth, and to attain professional competence. The freedom to learn depends upon maintaining appropriate opportunities and conditions not only in the classroom, but also on the campus and in the local community.

The primary purpose of this document is to establish expectations related to conduct of all student members of the University community, as well as the rights that are to be afforded to students and student organizations. As a reminder, East Stroudsburg University seeks cooperation in establishing an academic and work environment that is free from discrimination and harassment against any person because of race, color, national origin, religion, sex, disability, age, sexual orientation, gender identity or veteran's status in accordance with applicable federal and state laws and regulations.

I. Definition of Terms

Administrative Hearing Officer, Hearing Officer, **Decision Maker or University Conduct Board** shall mean any person or group given the authority to review and adjudicate student conduct matters. These people or group are trained individuals representing the University community, or are hired by or contracted with the University to serve in this capacity, that hear the facts of a student conduct matter from all involved parties and witnesses. Based on the facts, the people or group determines a decision of "responsible" or "not responsible" and determines appropriate educational sanctions when required. In matters related to academic integrity, at least one person on the panel must be a faculty member. The faculty union (APSCUF) may appoint a minimum of five faculty members and up to a maximum of ten faculty members to the University Conduct Board.

In matters involving allegations of the Title IX policy on sexual harassment and sexual misconduct, students will not be selected to serve as panel members. In these matters, University Conduct Board members are selected from a pool of members who have been trained in the University's Sexual Misconduct Resolution Process or are members from an external organization who are qualified to serve in this capacity. For these matters, the University Conduct Board members serve as Decision Makers. Decision Makers will be free of conflict of interest and bias and will not serve as an Advisor to any Party or Appeal Officer in the same matter.

Administrative Hold means a hold placed on a student's University record to ensure that the student complies with educational sanctions. A hold may also be placed pending the resolution of a significant conduct matter if such action is reasonably necessary to preserve the University's ability to uphold the Student Code of Conduct. If a hold is placed on a record, the Registrar may prohibit the student from

conducting business at the University until the conditions of the hold have been met. Holds on student records will be initiated and released by the office of Student Conduct and Community Standards. A student with an Administrative Hold from SCCS is "not in good standing".

Advisor is an individual who may be present to support a party throughout the conduct process. The Advisor may be a member of the University Community, an attorney, or other individual selected by the party. The Advisor may accompany the party they are supporting to any hearing or meeting that the party is required to attend. Each party is responsible for coordinating and scheduling with their choice of Advisor.

In all conduct matters the Advisor may communicate only with the party they are supporting and may not otherwise speak for, or on behalf of, the party.

For all conduct matters except those addressed in the Sexual Misconduct Resolution Process the Advisor may not be a party or witness in the matter. Within the Sexual Misconduct Resolution Process, an Advisor is not prohibited from having a conflict of interest or bias in favor of or against a party, nor is the Advisor prohibited from being a Witness in the Sexual Misconduct Resolution Process.

Affected Party refers to the individual(s) who were possibly adversely affected by an incident or person(s).

Appeal Officer is the individual or individuals with the authority under law or otherwise appointed by the University to decide appeals. The Appeal Officer will be free of conflict of interest and bias, and will not serve as the Investigator, Title IX Coordinator, Advisor to any Party, or a Decision Maker in the same matter.

Appeal Outcome Letter means the letter sent in response to a student's appeal. The letter addresses the appeal of the student and either upholds the decision, dismisses the decision, remands the case to another Formal Hearing, or modifies the educational sanctions of the decision.

Complainant refers to an individual who has reported being or is alleged to be subjected to conduct that could constitute covered sexual misconduct as defined under the Title IX Policy.

Conduct Conference is a meeting for the student to learn about their rights in the Conduct Process, review the Referral, and review any other applicable information related to the alleged violation(s). In this meeting, the student may enter into Mutual Resolution with the Hearing Officer or request a Formal Hearing.

Conduct Process refers to the entire process outlined in the Student Code of Conduct ("SCC"), including the Conduct Conference, the Formal Hearing, and the Appeal process. This also includes Interim Action(s) and the Interim Suspension Process.

Consent is knowing and voluntary agreement to engage in specific sexual activity at the time of the activity communicated through clear actions and/or words that are mutually understood. In order to be valid, Consent must be active, present and ongoing.

Consent is not present when it is the result of coercion, intimidation, force, or threat of harm. Consent is not present when an individual is incapacitated due to alcohol, drugs, or sleep, or otherwise without capacity to provide Consent due to intellectual or other disability or other condition. Consent can be withdrawn at any time and consent to one form of sexual activity is not necessarily consent to other forms of sexual activity.

Day is defined as the normal business day and will not include Saturdays, Sundays, legal holidays/University administrative holidays, or when the campus is closed for business.

Educational Sanction refers to any educational sanction(s) imposed based upon a finding of responsibility for a violation of the Student Code of Conduct, including any modifications of a student or student organization status or standing, and any additional assigned requirements.

Formal Hearing is the resolution method facilitated by a University Conduct Board or an Administrative Hearing Officer involving the parties, witnesses and evidence with the Referred Student having a right to appeal. This also includes Administrative Hearings which may be facilitated by a Hearing Officer when student(s) do not participate in a Conduct Conference.

Faculty Member shall mean any person employed by the University who holds academic or administrative rank in the APSCUF Bargaining Unit; i.e., Adjunct, Instructor, Assistant Professor, Associate Professor, or Professor.

Good Standing with SCCS refers to a student who is free of disciplinary probation, administrative hold issued by SCCS, deferred suspension, suspension or expulsion.

Guest refers to any individual (student or non-student) who is not assigned to live in a particular room in an on-campus residence; is on the premises where the alleged violation occurred; and/or refers to any person visiting the University who is not affiliated with the University. Students may be held responsible for the actions of their guests.

Intimate Partner refers to persons who are or who have been dating, cohabitating, married, separated, or divorced, and may be of the same or opposite sex.

Investigator means an individual employed or appointed by the University to conduct an investigation in student conduct matters.

May is to be deemed permissive, imparting choice.

Medical Amnesty is a process that may be utilized when students seek assistance during a substance-related medical emergency. Students may qualify for Medical Amnesty if they meet the requirements described in the Student Handbook and complete any agreed upon educational activities. Medical Amnesty may also apply to a Witness or Affected Party reporting alleged violations of Hazing or alleged violations of the Sexual Misconduct (Title IX) Policy.

Mutual Resolution is one possible outcome of a Conduct Conference. Mutual Resolution requires a Referred Student to accept partial or full responsibility for the violation(s) of community standards and to develop educational sanction(s) for voluntary compliance with the Hearing Officer. Mutual Resolution may also be reached when the Hearing Officer and Referred Student mutually agree that there is not responsibility for an alleged incident based on the information reviewed in the Conduct Conference.

Notice is the written communication that provides information to a student concerning involvement in an alleged incident. Notice is conclusively presumed to be received by the student when such communication is sent to the student by official University email, and/or mailed to the address appearing on either the student's current local address or permanent address on record with the University at the discretion of SCCS.

Notice of Alleged Violations Letter means the letter sent to the student that outlines the date of the alleged incident, location of incident, and the alleged violations of community standards associated with the student's alleged conduct in the incident.

Outcome Letter is the letter sent to the student that describes the outcome of the Conduct Conference or the Formal Hearing. This letter lists the determination for each alleged violation of the Student Code of Conduct and, if any findings are 'responsible', the accompanying educational sanctions.

Preponderance of the Evidence means that information, considered as a whole, shows that the fact sought to be proved is more probable than not. This is the standard used in adjudicating all student conduct matters through the SCC.

Referral means the written documentation provided to SCCS alleging that a violation of the Student Code of Conduct may have occurred.

Referred Student refers to the person who has received correspondence from the office of Student Conduct and Community Standards stating that there are alleged violations of the Student Code of Conduct pending from the student's alleged conduct.

Request to Meet Letter is a letter asking a student, ESU community member, or non-affiliated Witness to make an appointment with SCCS. This letter is used when it is believed the recipient(s) has information pertaining to a specific incident or series of incidents.

Respondent refers to any individual who has been reported to be the perpetrator of conduct that could constitute sexual misconduct as defined under the Title IX Policy.

SCC is the acronym used to describe the Student Code of Conduct.

SCCS is the acronym used to describe the office of Student Conduct and Community Standards.

Sexual Misconduct Investigator shall mean the Title IX Coordinator, or the individual designated by the Title IX Coordinator to perform an investigation under the Title IX Policy. The Investigator may not have a conflict of interest or bias for or against an individual party, or for or against Complainants or Respondents in general. The Investigator may not serve as a Decision Maker, Appeals Officer or Advisor to any Party in the same matter.

Shall and **Will** are to be used in the imperative sense, not imparting choice.

Staff Member or **Administrator** shall mean any person employed by the University or SAA who is not a faculty member.

Student, for the purposes of the SCC, is an individual admitted, enrolled, or registered for any University course or program, regardless of the medium of the course or program, or degree-seeking status, or when not enrolled or registered for a particular term, who is eligible to enroll in future terms without seeking readmission. A student who withdraws, is academically dismissed after allegedly violating the Student Code of Conduct, or has a continuing relationship with the University is still considered a student.

Student Activity Association, Inc. or SAA shall mean the Student Activity Association or any person employed by the corporation that is entrusted with the funds generated from the Student Activity Fees from which SAA recognized clubs and organizations may request funding.

Student Organization, Student Club and/or Group shall mean any organized group, which has complied with, or is in the process of complying with the University's requirements for registration or recognition;

receives funds from the University's Student Activity Association; or is formed through University academic, athletic, or other departments. For incidents involving alleged violations of the Hazing Prevention Policy, the definition of Student Organization includes organizations at the University in which two or more of the members are enrolled students, whether or not the organization is established or recognized at the University.

University shall refer to East Stroudsburg University of Pennsylvania.

University Activity shall mean any activity on- or off-campus that is initiated, aided, funded, authorized, or supervised by the University.

University Official for the purposes of the SCC, means any representative of ESU direct service organization, ESU board, committee, office, or member of the ESU faculty, administration, or staff. According to the Student Code of Conduct, this definition includes student workers acting in accordance with their assigned duties.

Witness is used to define an individual who is in the proximity of an incident and viewed the actions of said incident, or who has relevant information about a given incident or actions related to a specific incident.

II. General Statement

Summary: *This Code of Conduct has been established for the benefit of students and the entire East Stroudsburg University community to create an atmosphere that is conducive for living and learning.*

a) A representative committee of students, faculty, and administrators of East Stroudsburg University developed the following Student Code of Conduct to ensure all students are aware of the policies that govern them; to provide a community free from harassment and physical violence; and to maintain civility by the proper application of the Code of Conduct and Due Process.

b) This Student Code of Conduct is established pursuant to 24 P.S. §20-2010-A (4) (Powers and Duties of Institution Presidents) and regulations of The Board of Governors of the State System of Higher Education, Board of Governors Policy 1984-13-A, Student Disciplinary Due Process Requirements and 22 PA Code Chapter 505. Should any part of this Student Code of Conduct be determined to be in violation of any federal, state or local law, then only that portion that is in contravention of the law will be voided and the other provision of this Code of Conduct shall remain in effect.

III. Jurisdiction

The office of Student Conduct and Community Standards/Designee and the University Conduct Board have been given the authority to review alleged violations of the Student Code of Conduct. Jurisdiction for the student conduct process extends to the conduct of any student, student organization, or athletic team both on- and off-campus. Such conduct includes but is not limited to: actions which adversely affect the University community and/or the pursuit of its mission; the integrity of the educational process; the safety and welfare of the University community; and/or conduct that violates local, state or federal law.

IV. Rights to Due Process

East Stroudsburg University shall guarantee procedural due process through the Student Code of Conduct. These guarantees include:

a) Notice in writing through the student's University issued email of the alleged violation(s) of the Student Code of Conduct;
b) An opportunity to be heard, whether through Conduct Conference or Formal Hearing, where the student is given the opportunity to have the alleged violation(s) discussed and addressed; and
c) The opportunity for the student to appeal a conduct decision(s) if rendered in a Formal Hearing.

V. Standard of Proof

The standard of proof in all student conduct proceedings will be decided by the "preponderance of the evidence" standard, which is commonly known as "more likely so than not" standard, meaning that the fact to be proven is more likely than not. This is the standard of proof used in most civil actions. The criminal standard of evidence, "beyond a reasonable doubt", will not be applied in any student conduct procedure.

VI. Statement of Community Standards and Definitions of Violations

Student Conduct and Community Standards encourages students to be responsible community members and recognize their ability to become productive members in our campus, local, and global community. An important part of community development is the establishment of shared expectations and standards.

The following forms of conduct may constitute a violation of our community standards and are subject to action through the Student Conduct Process. These statements apply to the conduct of all students and student organizations/groups within the University community.

Academic Misconduct

a. During a test or examination, using anything, such as, but not limited to, any device, document, person or other resource not authorized by the instructor.
b. Providing or receiving assistance in an examination, test, assignment, paper, or project in a manner not authorized by the instructor.
c. Buying, selling, stealing, or engaging in unauthorized exchange, or using any tests or examinations in advance of their administration.
d. Buying, selling, stealing, or engaging in unauthorized exchange, or improperly using any assignments, papers, projects, or course materials.
e. Presenting as one's own, the ideas or works of another person(s) scholastic, literary, or artistic – in whole or in part – without proper and customary acknowledgment of sources.
f. Falsifying or inventing information, data, or research material.
g. Obtaining information in a way contrary to the stated policies of the course and/or the University as stated herein.
h. Attempting to bribe or coerce any University employee or student in order to gain academic advantage.
i. Conspiring with others in order to circumvent academic requirements.
j. Substituting for another student, arranging for substitution by another student, or misrepresenting oneself as another person for a required class activity.

Misuse of Alcohol

a. The sale of, or intent to sell, alcohol without a proper license.
b. Providing alcohol to any person who is not of legal age to possess or consume alcohol.
c. Possession or consumption of alcoholic beverages by persons not of legal age.
d. Participation in any conduct that may constitute a crime and/or result in injury to person(s) or property while under the influence of alcohol.
e. The operation of a motor vehicle, by an individual of any age, under the influence of alcohol.
f. The consumption or possession of open alcoholic beverage containers in public areas on or off campus, that is not in accordance with federal, state and local laws or ordinances.
g. Attendance in class, at an organizational meeting, or at an educational event that is specific for an educational purpose, such as but not limited to, a lecture or presentation that may be a course requirement, while under the influence of alcohol is a violation.
h. Failure to abide by Residential Life and Housing alcohol guidelines.

If medical assistance is sought for a student in need who has consumed alcohol, the student and the student caller may qualify for Medical Amnesty as defined in the Student Handbook.

Campus Safety

a. Tampering with any fire safety equipment and/or emergency call equipment, not abiding by fire alarms, or the actual dismantling of any equipment alerting others that danger is in the way.
b. Issuing a bomb threat or other warning of impending disaster without cause.
c. The actual possession and/or detonation of any device that acts like an explosive and may harm persons or property is prohibited.

Complicity – Knowingly assisting someone in and/or being associated with a violation of a federal, state or local law or ordinances, applicable regulations and policies, or this Code of Conduct.

Disruptive Conduct

a. Behaving in a manner that is disorderly, unruly and/or disturbs the peace.
b. Actions that impair, interfere with, or obstruct the freedom of passage within or outside of University buildings and grounds.
c. Willful occupation of any portion of a University building or ground that restricts the freedom to utilize the building and/or space in accordance with its intended and regular purpose.
d. Actions that disrupt, endanger, or disturb the normal functions of the University or the safety of a person or persons.
e. Actions that disrupt and/or interfere with, in any way, an investigation and/or the student conduct process.

Failure to Comply – Failure to follow the directions of University officials made in the performance of their duties. This includes, but is not limited to: failure to complete educational sanctions, failure to accurately identify oneself when requested, and/or failure to respond to requests from Residential Life and Housing and Dining Services staff.

False Information – Knowingly providing false or misleading information to a University official in the performance of their duties. This includes falsifying, distorting, or misrepresenting the truth during proceedings under the Student Code of Conduct, including knowingly submitting a false complaint.

Gambling – Conducting, participating in and/or the organization of any form of games of chance or other activity that is prohibited by applicable federal, state or local law or ordinances.

Harassment – Engaging in conduct that is harassing, intimidating or threatening, or engaging in conduct that constitutes unlawful discrimination based on another person's race, color, sex, sexual orientation, gender identity, religion, creed, age, national or ethnic origin, citizenship, or veteran status or disability. This includes conduct involving electronic communication. Please also refer to the Notice of Non-Discrimination and Privacy Policy and the University's Discrimination and Harassment Policy.

Hazing – Violations of the Hazing Prevention Policy or any local, state, or federal hazing statute or regulation. Please also refer to the ESU Hazing Prevention Policy ESU-2019-02.

Information Technology – Misuse of any University communications equipment, services, or transmissions. Misuse or unauthorized use of University computers or violating the stipulations of the ESU Computer Policy. Please also refer to the Acceptable Use of Technology Policy ESU-2012-01-A.

Lewd Acts – Refers to any act that is sexual in nature, which would be considered indecent or shocking to a reasonable person. This might include the exposing of genitalia in public, fondling oneself in public, and/or urinating in public.

Misuse of Property – Deliberate destruction which results in damage to public or private property. The unauthorized access or entry into University property, buildings, structures, facilities, residence facilities or property of any member of the University community.

Misuse of University Materials – Forgery, alteration, duplicating, photographing, and/or falsification of University forms, records, either electronic or physical. Using another ESU community member's identification as your own. See also ESU eCard Cardholder Responsibility.

Narcotics and Drugs

a. Use, possession or constructive possession, sale, and/or use of controlled substances, including cannabis. Medical marijuana is prohibited from being present and/or used on-campus.
b. Possession of drug paraphernalia, including vape pens and cartridges with THC.
c. The use or possession of counterfeit or synthetic substances, frequently referred to as "designer drugs".
d. The manufacturing, distribution, sale or exchange, or possession of a significant quantity of any controlled substances.
e. Driving or operating a vehicle under the influence of narcotics or drugs.
f. Administering any prescribed, controlled, or illegal substance to another person without their consent.
g. Misuse of prescribed or controlled substances, except as expressly permitted by law.
h. Attending class, an organizational meeting, or educational event that is specific for an educational purpose, such as but not limited to, a lecture or presentation that may be a course requirement, while under the influence of drugs, is a violation.

If medical assistance is sought for a student in need who has consumed drugs, the student and the student caller may qualify for Medical Amnesty as defined in the Student Handbook.

Physical Harm – Assault and/or battery upon another person. Inflicting or attempting to inflict harm to another person while engaging in intentional, negligent or reckless behavior.

Policy or Law – Violations of University Policy and/or federal, state or local law.

Residence Hall Information and Policies – Violations of any policy or guideline governing university housing, as well as, the University housing agreement. Please also refer to the ESU Housing Agreement,

any addendum and the Residential Life and Housing Policy Booklet (booklet embedded in the 'Policies and Procedures' section).

Responsibility for Guest(s) – Failure to take responsibility for the actions of one's guest. Students may be responsible for violating University policy or this code even if the action is committed by their guest(s).

Retaliation

a. Adverse action taken against any individual on the basis of a good faith report made by such individual, or on the basis of such individual's participation in an investigation or hearing being conducted at ESU or within the criminal justice system.
b. Any action, directly or through others, which is aimed to deter a reasonable person from reporting sexual misconduct or participating in an investigation or hearing or action that is done in response to such activities. This includes but is not limited to intimidation, threats, coercion, or discrimination against any individual (1) for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations; or (2) because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding or hearing. A finding of retaliation under this policy is not dependent on a finding that the underlying sexual misconduct occurred.

Sex Based Discrimination – Discrimination on the basis of sex includes discrimination on the basis of sex, sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. This includes discrimination based on perceived identity whether that perception is accurate or not.

Sexual Assault – Includes any sexual act directed against another person, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent. Alleged violations are categorized as Regulatory when it occurs in the United States, within an Education Program or Activity and when the Complainant is participating or seeking to participate in an Education Program or Activity at the time of the filing of the complaint. Otherwise, alleged violations will be categorized as Non-Regulatory. Sexual Assault may be one of the following categories:

a. **Sexual Penetration Without Consent** - Any penetration of the mouth, sex organs, or anus of another person, however slight by an object or any part of the body, when consent is not present. This includes performing oral sex on another person when consent is not present.
b. **Regulatory Sexual Contact Without Consent** - The intentional touching of another person's clothed or unclothed body parts without consent, for the purpose of sexual degradation, sexual gratification, or sexual humiliation.
c. **Non-Regulatory Sexual Contact Without Consent** - The intentional touching of another person's genitals, breasts, buttocks, or anus, when consent is not present for any purpose other than sexual degradation, sexual gratification, or sexual humiliation or touching a person with one's own clothed or unclothed body parts without consent, for any purpose. This includes contact done directly or indirectly through clothing, bodily fluids, or with an object. It also includes causing or inducing a person, when consent is not present, to similarly touch or fondle oneself or someone else.
d. **Statutory Sexual Assault** – The age of consent for sexual activity in Pennsylvania is 16. Minors under the age of 13 cannot consent to sexual activity. Minors aged 13-15 years old cannot consent to sexual activity with anyone who is 4 or more years older than they are at the time of the activity. Minors aged 16 years of age or older can legally consent to sexual activity, as long as the other

person does not have authority over them as defined in Pennsylvania's institutional sexual assault statute.

Sexual Exploitation – Engaging in sexual behaviors directed toward or involving another person or use of another person's sexuality for purposes of sexual gratification, financial gain, personal gain, or personal advantage when consent is not present. This includes, but is not limited to, the following actions, including when they are done via electronic means, methods, or devices:

a. Sexual voyeurism or permitting others to witness or observe the sexual or intimate activity of another person without that person's consent;
b. Indecent exposure or inducing others to expose private or intimate parts of the body when consent is not present;
c. Recording or distributing information, images or recordings of any person engaged in sexual or intimate activity in a private space without that person's consent;
d. Prostituting another individual;
e. Knowingly exposing another individual to a sexually transmitted disease or virus without that individual's knowledge; or,
f. Inducing incapacitation for the purpose of making another person vulnerable to non-consensual sexual activity.

Sexual Harassment – includes the following as defined by Federal law and the University's Title IX Policy (ESU-2020-01). Alleged violations are categorized as Regulatory when it occurs in the United States, within an Education Program or Activity and when the Complainant is participating or seeking to participate in an Education Program or Activity at the time of the filing of the complaint. Otherwise, alleged violations will be categorized as Non-Regulatory.

a. **Regulatory Quid Pro Quo Sexual Harassment** - An employee conditioning the provision of aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct.
b. **Non-Regulatory Quid Pro Quo Sexual Harassment** - An official, volunteer or student conditioning the provision of aid, benefit, or service of the University on the individual's participation in unwelcome sexual conduct.
c. **Regulatory Hostile Environment Sexual Harassment** - Unwelcome conduct, on the basis of sex, that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the university's education program or activity.
d. **Non-Regulatory Hostile Environment Sexual Harassment** - Unwelcome conduct, on the basis of sex, that a reasonable person would determine is so sufficiently severe or pervasive, and objectively offensive that it unreasonably interferes with, limits, or deprives an individual from participating in or benefitting from any educational, employment, social or residential program offered in connection with the University.
e. **Dating Violence** – As defined in VAWA, includes any violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the Complainant; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) the length of the relationship; (ii) the type of relationship; and (iii) the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of Domestic Violence.
f. **Domestic Violence** – As defined in VAWA, includes any violence committed by a current or former spouse or intimate partner of the Complainant, by a person with whom the Complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the Complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the Complainant

under Pennsylvania's domestic or family violence laws or by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Pennsylvania.

g. **Stalking** – As defined in VAWA, means engaging in a course of conduct, on the basis of sex, directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others; or suffer substantial emotional distress. A course of conduct is when a person engages in two or more acts that include, but are not limited to, acts in which the person directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveys, threatens, or communicates to or about a person in a prohibited way, or interferes with a person's property. Stalking includes cyberstalking, in which electronic media such as the Internet, social networks, blogs, cell phones, texts, email or other similar devices or forms of contact are used to pursue, harass, or to make unwelcome contact with another person in an unsolicited way.

Smoking/Tobacco Use – Smoking and/or the use of tobacco is prohibited in all buildings including residence halls, classrooms and laboratories, indoor areas, and in open or partially open space such as sports or recreational facilities, theaters or performance establishments. Tobacco includes nicotine-producing products such as cigars, cigarettes, and pipes. Electronic cigarettes (smokeless) and chewing tobacco are also included. Smoking is not permitted within a 25-foot perimeter of a building, building entrance, air intakes and operable windows. Please also refer to the ESU Tobacco Policy ESU-2011-11-A.

Theft – The actual or attempted deprivation of public or private property. This includes but is not limited to shoplifting, deception in electronic banking; credit or debit card fraud/misuse, identity theft, and receiving stolen property.

Threat of Harm – Intentionally or recklessly engaging in physical, verbal or written conduct that creates a reasonable fear of infliction of physical pain or injury to another person or damage to property. This includes a single threat, or a course of conduct, regardless of whether such incidents are in person or conveyed through electronic means.

University Brand – Unauthorized use of the University name, logo, or other symbols of the University. Please also refer to Licensing and Branding.

Weapons or Explosive Devices – The unlawful possession, storage, use or sale of any weapon (lethal or non-lethal), ammunition, or any incendiary, explosive or destructive device. The following prohibited items include, but is not limited to, firearms, loaded or unloaded; pellet, BB, flare, tranquilizer, stun, spear, or dart guns; knives with blades longer than 3 inches; any cutting instrument where the blade is exposed in an automatic way; daggers or swords; striking instruments including clubs, truncheons, and blackjacks; martial arts weapons; bow and arrow combinations; explosive devices; ammunition or components to manufacture ammunition; or any object actually used as weapon to cause or threaten harm.

VII. Educational Sanctions

The following are educational sanctions that may be assigned to the student or student organization when there is responsibility for violating the student Code of Conduct. These educational sanctions are not progressive in nature. More than one educational sanction may apply. Note that other educational sanctions related to the violation of community standards may be used to assist with a student's or a student organization's skill development.

Educational Program Referral: May include but not be limited to alcohol and/or other drug education, time management education, and/or; emotions management education. Other educational sanctions may include writing a paper, presenting a program, designing a bulletin board, checking fire safety equipment, and/or attending an assigned workshop. The student must provide documentation of satisfactory completion of assigned program.

Campus/Community Service: Completion of a specified number of hours of service to the campus/community. When possible, the service requested shall be related to the student conduct matter.

Parental Notification: Parental notification may be rendered for students under 21 years of age when a student is either found, or takes, responsibility for an alcohol and/or illegal drug violation.

Restitution: Payment and/or reimbursement for replacement and/or repair of damages to University property.

Administrative Hold: A hold may be placed on a student's record to ensure that the student complies with educational sanctions.

Official Warning: An official notice that indicates to the student that future violations during the period covered by the warning may result in additional sanctions.

Residence Hall Room Reassignment: Movement from a current residential assignment to another location in campus housing. Housing rates may be impacted.

Residence Hall Probation: A status indicating that if a student is found responsible for further violations of the student Code of Conduct, especially if the conduct relates to Residence Life and Housing rules, the student may be removed from University housing.

Deferred Housing Suspension: The student's continued ability to remain in University housing depends upon the successful maintenance of satisfactory behavior and completion of other mandated sanctions, if applicable, during the specified time of deferred housing suspension. If there are other policy violations, especially violations of the rules and policies of University housing, the student will most likely be immediately removed from the residence halls, with no financial refund.

Residence Hall Suspension: Removal from university housing for a specified amount of time. Students suspended from the residence halls for disciplinary reasons, will not be eligible for a refund of room fees. Students must properly check out of their rooms in accordance with existing University procedures and within the time frame established by the office of Student Conduct and Community Standards/designee. Students are prohibited from re-entering any University residential area without approval of the office Student Conduct and Community Standards/designee once they have officially checked out.

Restriction(s) of Privileges: Students may be restricted from holding executive roles, leadership positions, living in, and/or visiting University owned or affiliated housing, participating in campus sponsored organizations and/or events.

No Contact Directive: Official written expectations issued by a University administrator restricting or prohibiting contact between individuals, and may also include other restrictions.

Deferred Adjudication: refers to the process when a student is responsible for a violation but the finding is held so the student can complete certain requirements in an allotted timeframe. In order to receive Deferred Adjudication, the student must begin by accepting responsibility. At the completion of all requirements, the student will be adjudicated "not responsible". This may only be used for specific non-violent, first-time offenses.

Disciplinary Probation: A status indicating that the student or student organization is not in good standing. This sanction may limit the student or student organization in participating in certain roles and/or functions at the University or in representing the University. A student or student organization on disciplinary probation may be subject to further discipline in the event of other misconduct.

Deferred Suspension: The student's continued enrollment depends upon the successful maintenance of satisfactory behavior and completion of other mandated sanctions, if applicable, during the specified time of deferred suspension and there are no further policy violations. This status also renders the recipient not in good standing.

Suspension: The student is suspended from the University for a definite period of time. When the period of suspension is completed, the student may be allowed to reapply and/or return to the University under stipulation(s) provided by SCCS/designee. Students suspended from the institution for disciplinary reasons, will not be eligible for a refund from classes or residence hall fees. The student may be prohibited from ESU property and events based upon the nature of the misconduct.

Expulsion: The student is permanently separated from the University without the ability to return. A student expulsed from the institution for disciplinary reasons, will not be eligible for a refund from classes or residence hall fees. The student may be prohibited from ESU property and events based upon the nature of the misconduct.

VIII. Interim Actions and Interim Suspension

Interim actions are temporary steps taken by the University through the office of Student Conduct and Community Standards in an effort to maintain the safety of the campus community and an environment conductive for academic success. Interim actions do not replace the regular conduct process, which shall follow the steps of procedural due process. Once a final decision has been made with regard to a student conduct matter, the interim action will be lifted or may continue as an assigned educational sanction. Interim actions may include, but are not limited to, administrative directives, a loss of privilege(s), or restriction from parts of campus.

The office of Student Conduct and Community Standards/designee may approve or institute the following interim actions without a hearing:

No Contact Directive
A written directive issued by Student Conduct and Community Standards restricting or prohibiting contact between individuals, and may also include other restrictions. A No Contact Directive is not an indication of responsibility for a violation of University policy; rather, it is intended to protect students while an alleged incident is reviewed through the student conduct process. The No Contact Directive remains in effect until a determined date, or through the outcome of the student conduct process.

Interim Removal from University Housing/Residence Halls
A student who is notified of an interim removal from University housing must immediately relocate from on-campus housing to an off-campus location. The student is prohibited from entering or visiting the residential portion of any campus residence hall or apartment during the interim removal period. The student may attend classes and University activities unless otherwise restricted from such activities. Students currently on an educational sanction of Deferred Housing Suspension are likely to be placed on interim removal from University housing if there are any additional referrals alleging violations of community standards or significant violations of the Residential Life and Housing Policy Booklet. Students removed on an interim basis from University housing are not eligible for any refunds.

Interim Restriction(s)
The student may be temporarily restricted from a specified activity or from specified University property, as deemed appropriate by the office of Student Conduct and Community Standards based on the alleged conduct being reviewed through the student conduct process. Interim Restriction may include temporary loss of ability to participate in a specified group/student organization activities. Interim Restriction may also include temporary restriction of ability to access specified University Property.

Interim Suspension

When there is reason to believe that a student presents an immediate and significant threat to the safety and well-being of other persons and/or property, an Interim Suspension may be imposed pending the formal disposition of the disciplinary case. A decision to impose an Interim Suspension is made by the office of Student Conduct and Community Standards.

The Director for the office of Student Conduct and Community Standards/designee will meet with the student to discuss the Interim Suspension and the Formal Hearing process. A hearing on the Interim Suspension will be convened within ten (10) business days, unless unanticipated circumstances make adherence to this time frame infeasible. The student may choose to have the Director/designee settle the case, if possible, during the Interim Suspension hearing. This would include the student entering into mutual resolution with SCCS and waiving their right, in writing, to a Formal Hearing. The student may accept the decision with all educational sanctions, in writing, following the Interim Suspension hearing or up to one hour before the Formal Hearing. If the student does not attend the Interim Suspension Hearing, a Formal Hearing will be scheduled and the Interim Suspension will remain in place until the outcome of the Formal Hearing.

Interim Student Group/Organization Restriction(s)
The student group/organization is prohibited from conducting specified activities, events, meetings or social functions during the student conduct process. This may also include restrictions such as a group/organizational No Contact Directive, loss of ability to use group/organization funds, or other restrictions deemed appropriate based on the alleged conduct reviewed through the student conduct process.

Interim Student Group/Organization Suspension
A written directive issued to recognized student groups/organizations directing the group to cease all operations until further notice. The group/organization may not conduct business, hold meetings, host events, attend events as a group, or continue with any philanthropic activities until further notice. Notices of an Interim Student Group/Organization Suspension will be sent to the group/organization President and the group's Advisor, if known. Any requests for exceptions must be communicated to the office of Student Conduct and Community Standards in writing. A letter from the group/organization's National Headquarters, if associated, must also accompany the request for exception. If the group/organization does not have, or is not associated with, a National Headquarters it is recommended that their request is accompanied by a letter from their group/organization advisor.

The Director for the office of Student Conduct and Community Standards/designee will meet with the student group/organization representative to discuss the Interim Suspension and the Formal Hearing process. A hearing on the Student Group/Organization's Interim Suspension will be convened within ten (10) business days, unless unanticipated circumstances make adherence to this time frame infeasible. The student may choose to have the Director or designee settle the case if possible during the Interim Suspension hearing. This would include the student group/organization entering into mutual resolution

with SCCS and waiving their right, in writing, to a Formal Hearing. The student group/organization may accept the decision with all educational sanctions, in writing, following the Interim Suspension hearing or up to one hour before the Formal Hearing. If the student group/organization representative does not attend the Interim Suspension Hearing, a Formal Hearing will be scheduled and the Interim Suspension will remain in place until the results of the Formal Hearing.

IX. Procedural Due Process/Stages of the Conduct Process (Non-Sexual Misconduct Matters)

The conduct process for a student or student organization begins when SCCS receives a referral of a potential violation of the Student Code of Conduct or local, state, or federal law. The referral is reviewed by SCCS and notice is sent to the student/student organization concerning the nature of the violation reported, date and location of incident, and inviting the student/student organization to meet with a member of SCCS or designee.

1. Receipt of Referral: SCCS receives a referral that is filed within a reasonable amount of time following the discovery of the alleged violation and no later than three (3) months after the discovery, except in extraordinary cases or cases involving allegations of serious misconduct. In certain cases, SCCS may waive the time period for filing alleged violations of community standards after making a finding, in writing, that waiving the time period for filing is in the best interest of the University.

   A referral may be initiated by a student, faculty member, University Police personnel, staff member, office personnel, or interested party to the University. The Director of SCCS or designee may request information concerning prior misconduct of the student from the University Police and other appropriate persons or offices.

   SCCS will then send the student notice of the referral through either (1) a Notice of Alleged Violations Letter informing the student of the process, or (2) an Interim Suspension Letter informing the student of the alleged violations of community standards and Interim Suspension Process. A Notice of Alleged Violations Letter may include Interim Actions other than an Interim Suspension. This notice will be sent to the student's official University email account. For student groups/organizations, this notice will be sent to the official University email account of the presiding officer of the organization (President).

2. Resolution Options: The University conducts meetings for students involved in incidents that may require conduct action. A member of the office of Student Conduct and Community Standards or designee will meet with the student for a Conduct Conference to review all alleged violations of community standards, pertinent information to the incident, and adjudication options. Unless otherwise specified in this Code of Conduct, the student has the right to choose from the following options:

   a. *Option One:* Mutual Resolution through Conduct Conference:

      This is an informal meeting conducted by a member of SCCS/designee. This meeting is intended to apprise the party of the information contained in the referral, discuss the alleged violations of community standards, and potential outcomes. Students are given the opportunity to explain their involvement in the incident and admit to responsibility for some/all of the violations. If a mutual resolution is reached, the student will sign a form waiving their right to a Formal Hearing and their right to an appeal. The Conduct Conference, which is not recorded, is adjudicated with

SCCS/designee. The student and the adjudicator will review all information concerning the alleged violation and the student will speak on their own behalf.

After the Conduct Conference, SCCS/designee may reach one of the following decisions and send the decision in an Outcome Letter: (1) Student is responsible; (2) Case dismissed due to student not being responsible; or (3) Case continued pending further investigation by the hearing officer.

b. *Option Two:* Formal Hearing with an Administrative Hearing Officer or the University Conduct Board:

This is a Formal Hearing before either one Administrative Hearing Officer or the University Conduct Board (UCB). The UCB is a panel consisting of students and faculty/staff; for cases falling within Title IX regulations, the panel will not include student board members. Students may bring witnesses who have knowledge of the incident to this hearing. Students also have an appeal option after a Formal Hearing. At the conclusion of the Formal Hearing, the adjudicating body has up to five (5) business days to reach a decision.

When circumstances arise (e.g., staffing constraints or a particularly complex matter), additional time may be required to issue a decision. If additional time is needed, that will be communicated to the Referred Student(s). In cases of sexual misconduct or sexual harassment, the Complainant will also be notified of the delay.

Once a decision is reached, the decision will be sent in the form of an Outcome Letter to the student's official University email address. If SCCS does not receive an appeal from the student within five (5) business days from the date of Outcome Letter, it will be understood that the student accepts the decision as final, waives their right to appeal, and all educational sanctions will be effective.

If the Referred Student(s) fails to attend the Conduct Conference or does not respond to the requests concerning the alleged matter, the matter will be scheduled for a Formal Hearing. A letter will be sent to the Referred Student informing them of the hearing date/time.

Prior to a Formal Hearing, a student may make an appointment to review any file information related to the alleged violations of community standards. At a Formal Hearing, the student or representative(s) of the organization may be advised and accompanied (but not represented) by an Advisor, such as a member of the University community or by legal counsel procured at the student's expense. The advisor may only consult and interact privately with the student. The decision rendered by the Administrative Hearing Officer or UCB during a formal hearing shall be based solely upon the evidence/information presented in the hearing. This is a recorded hearing where witnesses may be called to provide information. The student's witness(es) must have pertinent information to the case. (Character witnesses are not permitted.) If, during a hearing, additional violations are brought to light, new alleged violations of community standards may be filed and a new hearing may be scheduled.

c. *Option Three, if offered by SCCS:* Conflict Resolution Session(s):

When appropriate and agreeable to all parties involved, a conflict resolution process may be conducted in lieu of adjudication of Code of Conduct violations. The Director of Student Conduct and Community Standards/designee will determine when this process may be an option and

discuss this process with parties involved. At the conclusion of the Conflict Resolution Session(s), an Outcome Letter will be sent to all involved parties.

X. Decision

All decisions of the Administrative Hearing Officer, Hearing Officer, Decision Maker or the University Conduct Board are final after the appeal process has been exhausted, for all educational sanctions up to and including expulsion.

XI. Appeals of Formal Hearings

Appeals are decided by the Vice President for Campus Life and Inclusive Excellence/designee for non-academic cases, the Provost/designee for Academic Integrity Cases, or the President/designee in cases that result in Expulsion.

Appeals must be made in writing by the student and submitted/delivered to the office of Student Conduct and Community Standards within five (5) business days after the date of the Outcome Letter. Upon receipt of the written appeal, the office of Student Conduct and Community Standards will submit the appeal to the designated individual and defer the imposition of the sanction(s) pending the decision on the appeal. Appeals must be based on:

a) Lack of procedural due process;
b) Lack of substantial evidence to support the decision;
c) New evidence that was not previously available that could substantially change the nature of the case; or
d) Severity of sanctions only if the sanction resulted in one or more of the following: loss of eligibility to live in and/or visit University-owned/operated housing, suspension, and/or expulsion.

If the appeal meets one of the categories listed above, it will be reviewed by the designated individual and the following may be recommended:

a) Uphold the decision;
b) Alter the decision and/or sanction that has been imposed;
c) Return the matter to the office of Student Conduct and Community Standards with instructions for re-adjudication relative to specific issues; or
d) Overrule the decision and dismiss the case.

Decisions on appeal will be rendered by the Vice President/designee, Provost/designee, or President/designee within ten (10) business days, unless justifiable circumstances make adherence to this time frame infeasible.

The Appeal Officer's decision is considered final University action. There is no other appeal process.

XII. Cases With Alleged Violations of the Title IX Policy

Additional procedural requirements for cases involving alleged violations of the Title IX Policy (see also: Title IX Policy ESU-2020-01):

1. All incidents of sexual misconduct and sexual harassment must be reported to the Title IX Coordinator. The Complainant has the right not to report sexual misconduct to University Police and/or local police if they choose. Referrals submitted to Student Conduct and Community

Standards with an alleged incident of sexual misconduct will be referred to the Title IX Coordinator for review through the Title IX Policy.

2. Formal Hearings for student Respondents within the Sexual Misconduct Resolution Process will be coordinated by Student Conduct and Community Standards. Notice will be sent by Student Conduct and Community Standards and no less than ten (10) business days prior to the Formal Hearing.

3. Retaliation against any individual on the basis of a good faith report made by such individual, and/or on the basis of that individual's participation in an investigation, hearing, and/or final outcome of the sex discrimination resolution process is contrary to the community standards and is strictly prohibited under this Code of Conduct.

4. Both the Respondent and Complainant have the right to have one Advisor of their choice present at all steps of the process, including the Formal Hearing. The Advisor may include a parent, guardian, or attorney (at the party's personal expense). The Advisor may confer with the Respondent or Complainant, but may not speak on the party's behalf. The Advisor is allowed to conduct the cross examination on behalf of the party in the Formal Hearing for cases within the Sexual Misconduct Resolution Process.

5. Both the Respondent and Complainant may have character witnesses present on their behalf at the Formal Hearing.

6. Both the Respondent and Complainant have the right to be informed of the outcome of the hearing in writing. Unless there are extenuating circumstances, the outcome of the Formal Hearing will be issued within ten (10) business days after the completion of the hearing. Both parties will be notified if there is a delay in the issuance of an Outcome Letter.

7. Both the Respondent and Complainant, have the right to appeal the outcome of a Formal Hearing on the following grounds:

    1) A procedural irregularity under the University policy or procedures that more likely than not affected the hearing outcome.
    2) New evidence that was not reasonably available through the exercise of reasonable diligence at the time of the hearing or dismissal of the Formal Complaint that more likely than not could affect the outcome of the matter.
    3) The Title IX Coordinator, Investigator(s), or Decision Maker(s) had a conflict of interest or bias for or against an individual party, or for or against complainants or respondents in general, that more likely than not affected the outcome of the matter.
    4) The Disciplinary Sanction imposed was arbitrary or capricious or the appropriateness of the sanction. If appealing under this category, the other Party will be given five (5) days to respond to the Disciplinary Sanctions basis of appeal after being notified of the appeal.

Appeals to the outcome of a Formal Hearing must be submitted in writing to Student Conduct and Community Standards within five (5) business days and must indicate the grounds for the appeal.

Appeals submitted for cases with alleged violations of the Title IX Policy will be decided by an Appeal Officer designated by the President; cases that result in expulsion may be decided by the President. Decisions on appeal will be rendered within ten (10) business days, unless unanticipated circumstances make adherence to this time frame infeasible. Parties will be notified if unanticipated circumstances arise and a decision is delayed.

The Appeal Officer's decision is considered final University action. There is no other appeal process.

The following are possible educational sanctions for cases falling under the Sexual Misconduct (Title IX) Policy:

Official warning for one semester
Official warning for two semesters
Disciplinary probation for one semester
Disciplinary probation for two semesters
Deferred suspension for one semester
Suspension for one semester
Suspension for two semesters
Suspension for three semesters
Suspension for four semesters
Suspension for five semesters
Suspension for six semesters
Expulsion
Educational program referral such as the civility workshop or ethics seminar
Outside mental health assessment with a licensed clinician-at the student's own cost
Trespass from campus
Suspension from housing for one semester
Suspension from housing for two semesters
Suspension from housing indefinitely
Restriction of activity for one semester
Restriction of activity for two semesters
Restriction from activity for three semesters
Restriction from activity for four semesters
Restriction from activity for duration of undergraduate or graduate enrollment
Administrative Hold on student account.

The University may impose these educational sanctions upon Respondents, singly or in combination, after making a determination of responsibility through the Formal Hearing.

XIII. Provision for Amendments

This document is reviewed annually by the Director of Student Conduct and Community Standards in consultation with University Legal Counsel. When time and staffing permit, a committee of students, faculty and administrators will periodically review this document and suggest changes to the office of Student Conduct and Community Standards.

XIV. Disclosure of Disciplinary Records and Records Retention

Disclosure of Disciplinary/Student Conduct Records:

All students' disciplinary records are kept in accordance with the Family Educational Rights and Privacy Act (FERPA) of 1974 (the "Buckley Amendment"), 20 U.S.C. 1232g. In accordance with these provisions, all disciplinary files are confidential and may only be disclosed:

- To the student;
- To a person or agency possessing a signed consent from the student authorizing the release to the designated person/agency. Signed consent forms must meet the requirements of FERPA.

Consent forms are available from the office of Student Conduct and Community Standards at the student's request.

- Records may also be disclosed to the following individuals without consent of the student:
    - To the parents of a dependent student (as defined by the Internal Revenue Service);
    - To the parents or guardians of a student under the age of 21 who has been found responsible, or accepted responsibility for an alcohol or drug violation. In such instances, the parents/guardians may be notified of the violation(s) unless the student shows proof of independent status. The student will have five (5) business days from the date of the Outcome letter to show such evidence.
    - To a court official, agency, or other designated individual in order to comply with a subpoena or court order served upon the University. When served with a subpoena or court order, the University will notify the student in writing that it is complying with the court order, unless otherwise required by the court order.
    - To a requesting individual where the Student has been found responsible, or accepted responsibility, under the Student Code of Conduct for a violation relating to a crime of violence or a non-forcible sex offense, as provided in FERPA (34 C.F.R. § 99.39).[1] In such instances, only the final results (the name of the student, the violation committed, the Educational Sanction imposed, and date of decision and duration of Educational Sanction) will be disclosed. The names of other students, including any reporting parties or affected students and witnesses, will not be disclosed without the consent of the student.
    - To the victim of a Referred Student alleged to have committed a crime of violence or non-forcible sex offense. In such instances, a finding of responsibility is not required; however, the University will disclose only the final results (the name of the student, the violation committed, the Educational Sanction imposed, date of decision and duration of Educational Sanction) of the disciplinary proceeding.
    - To others within the University with a legitimate need to know and for compliance with other University policies and reports.

Consistent with the Sexual Misconduct (Title IX) Policy, the University will disclose the outcome of the Formal Hearing through the Sexual Misconduct Resolution Process to both the Complainant and the Respondent. The University may also disclose the results of a disciplinary proceeding brought against the alleged perpetrator to the alleged complainant of any crime of violence, as that term is defined in 18 U.S.C. 16. Student organization/group records may be disclosed in alignment with University policies and at the University's discretion.

Records Retention:

All disciplinary records are the property of the office of Student Conduct and Community Standards. The office will maintain these records for seven (7) years from the date of graduation, or the last date of enrollment if the student did not graduate. All records related to student group conduct will be kept in the student group's official file indefinitely and the group outcomes may be shared or published at the University's discretion. Records involving expulsions are kept indefinitely.

[1] A crime of violence is any act(s) that would, if proven, constitute: destruction/damage/vandalism of property, arson, assault offenses, burglary, forcible sex offenses, robbery, criminal homicide, kidnapping or robbery, as more fully defined in Appendix A to Part 99 of FERPA.